



Cunningham Swan

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CONFIDENTIAL

February 20, 2024

SENT BY EMAIL TO: TDafoe@stratford.ca

Mayor and Members of Council
c/o Tatiana Dafoe, City Clerk
City of Stratford
1 Wellington Street
P.O. Box 818
Stratford, ON N5A 6W1

Dear Mayor and Members of Council:

**RE: Closed Meeting Investigation
Our File No.: 36684-4**

This public report of our investigation is being provided to Council in accordance with Section 239.2(1) of the *Municipal Act*. We note that Section 239.2(11) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Closed Meeting Investigator is prepared to attend at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. Council does not have the authority to alter the findings of the report, only consider the recommendations. Per section 239.2 (12), if the report contains a finding that all or part of a meeting was held in

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closed session contrary to the *Act*, then Council is required to pass a resolution stating how it intends to address the recommendations in the report.

The Closed Meeting Investigator has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Investigator is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Investigator the duty to conduct investigations in response to complaints under the *Municipal Act*, and that the Investigator is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Investigator's final decision in this matter.

Complaint, Background, and Procedure

In October 2022, we released a report following an investigation of complaints with respect to a large number of closed session meetings held by the City of Stratford (the "October 2022 Report"). Each meeting that we addressed in that report was the subject of an individual complaint naming that specific meeting and alleging that it was improperly held in closed session. As noted in that report, no complaint was received with respect to the November 23, 2020, meeting, although it fell within the time period of all the other complaints, and therefore we did not investigate that meeting.

We have now received a complaint with respect to the November 23, 2020, closed session. As with the other complaints that formed part of the October 2022 Report, the complaint alleges that this meeting did not meet certain closed session requirements. This complaint was received at the same time as a further complaint with respect to votes held at all closed sessions from 2018 to 2023. That complaint is the subject of its own separate report, released at the same time as the present report (the "February 2024 Report").

In the interest of efficiency and enhancing understanding, this report will address both questions – whether the meeting of November 23, 2020 was properly held in closed session, and whether any votes were properly conducted in closed session. This report should be read in conjunction with the October 2022 Report and the February 2024 Report, as it applies the same procedure, analysis, and reasoning as found in those reports.

Analysis of the November 23, 2020, Meeting

Our October 2022 Report concluded that motions to move into closed session used at meetings during this period were deficient. We repeat that finding here for the November 23, 2020 meeting.

In terms of the substance of the meeting, as well as votes held, we find as follows:

Agenda items 4.1 through 4.6 were all discussions of appointments to various committees. In each case, personal information from the applicants appears to have been discussed. As such,

we find that these were properly discussed in closed session. For each of these topics, the vote held was to direct staff to place appointments on a public agenda; we find each of these was properly voted on in closed session. However, in two of those votes, Council also instructed staff to re-advertise for vacant positions; vacant positions necessarily do not involve personal information, and therefore this instruction must be provided in open session.

Item 4.7 was also scheduled as a discussion of appointments, this time to the Town and Gown Advisory Committee. However, there were no applicants for this position, and the Minutes instead reflect a decision to re-advertise. With no applicants, there can not have been any discussion of personal information within the meaning of the *Municipal Act*. Accordingly, this discussion was not properly held in closed session. In that vein, we also find that the vote to re-advertise the vacant positions was not properly held in closed session, for the same reason.

Item 4.8 is indicated as deferred to another meeting. The propriety of this topic has already been analyzed in the context of the meeting at which it was discussed.

Item 5.1 was a lengthy discussion on a proposed industrial development. As with other meetings, the difficulty in analyzing this discussion is that it varied considerably. Portions of the discussion were undoubtedly properly in closed session, including legal advice as well as criteria and positions applied to negotiations. Other portions of the discussion appear to have strayed into matters that are properly discussed in open session. However, in line with guidance from the Court, and as discussed in our October 2022 report, Council should not be expected to move in and out of closed session continuously for every sentence or comment addressing a matter that does not fit the exceptions. By and large, the discussion pertained to ongoing negotiations and the City's position therein. As such, we find that this topic was appropriate for closed session. Although the minutes indicate several motions were made, they all appear to have been deferred, and no vote was held during this agenda item.

Conclusions and Recommendations

As noted above, we found that agenda item 4.7 was not a proper subject for a closed session, and that the vote held during that item was also improper. We also identified similar improper components of two other votes held during the closed session. Both the October 2022 Report and February 2024 Report contain recommendations with respect to the same nature of issues as identified in this report. We repeat and rely upon the recommendations contained in those reports, and do not find that any further recommendation or comment is necessary.

This concludes our investigation into this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

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