

CLOSED MEETINGS INVESTIGATOR

Recommendation

The City Manager and the Commissioner of Legal and Administrative Services and City Solicitor recommend as follows:

1. That the City of Vaughan enter into an agreement with Local Authority Services Limited ("LAS") for the provision of investigation services related to sections 239.1 and 239.2 of the *Municipal Act*.
2. That an Appointment By-law be brought forward for execution.
3. That \$20,000.00 be allocated in the 2008 budget for the associated costs.
4. That an administrative fee of \$125.00 be charged to those persons who request an investigation pursuant to section 239.1 of the *Municipal Act* and that notice be given, and the Fee By-law be amended accordingly.

Economic Impact

Funds of \$20,000.00 must be allocated in the 2008 budget for this initiative.

Communications Plan

A News Release will be issued announcing this initiative.

Purpose

The recent *Municipal Act* amendments include a provision authorizing municipalities to appoint an investigator for the purposes of investigating complaints regarding closed meetings. The *Act* was amended in an effort to enhance accountability and transparency. This report sets out the options for Council with respect to this new provision.

Background – Analysis and Options

Section 239.1 of the *Municipal Act* enables any person to request an investigation as to whether a municipality or local board has complied with either the statutory requirements for closed meetings as set out in section 239 or an existing procedural by-law in respect of a meeting or part of a meeting that was closed to the public. The investigation can be undertaken by either an independent investigator appointed by the municipality or the provincial Ombudsman under the *Ombudsman Act*, if the municipality has not appointed its own investigator. If a municipality has not appointed an investigator by January 1, 2008, complaints would be investigated by the provincial Ombudsman.

Role of Investigator

The investigator may investigate complaints related to closed meetings held by Council, local boards (not the library board) or committees of either held on or after January 1, 2008.

The investigator's independence and impartiality are key factors that each municipality must have regard to in appointing an investigator and in the assignment of the investigator's powers and duties. Likewise, each investigator must have regard to their independence and impartiality in carrying out his or her functions. Other important factors in relation to both the appointment and

assignment of duties as well as the carrying out of those duties include confidentiality and credibility of the investigator's investigative process.

Every investigation by the investigator shall be conducted in private. The investigator may hear or obtain information from such persons as he or she sees fit, and may make such inquiries as he or she sees fit. The investigator and every person acting under his or her instructions is required to preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties. However, the investigator may disclose in any report such matters as in his or her opinion ought to be disclosed in order to establish grounds for his or her conclusions. The investigator's duty of confidentiality prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

The investigator's proceedings, opinions or decisions shall not be challenged, reviewed, quashed or called in question by any court, except on the ground of lack of jurisdiction. The investigator cannot be called to give evidence in any court or any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions. Further, anything said or any information supplied or any document or thing produced by any person in the course of an investigation by the investigator is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

If, after conducting an investigation, the investigator is of the opinion that the meeting or part of the meeting that was the subject matter of the investigation appears to have been closed to the public contrary to section 239 of the *Municipal Act, 2001* or to a procedural by-law under subsection 238(2), the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit. Once these reports are received by the municipality or local board, they must be made available to the public.

Appointment of an Investigator

Various options are available for the appointment of an investigator:

- 1) Appointing an investigator exclusively for the City of Vaughan
- 2) Sharing an investigator with neighbouring municipalities
- 3) Contracting for a province-wide service
- 4) Directing complaints to the Provincial Ombudsman's office

In making its selection, Council must consider the provisions of the *Act* that speak to impartiality, credibility, confidentiality and independence. If Council does not appoint an investigator, the Provincial Ombudsman will automatically assume the role of investigator.

One drawback of the appointment of a single investigator may be a lack of shared experience and this would likely be the most costly option. In addition, a single investigator's time may be taxed and his or her experience and skill set may not be as broad.

Staff consulted with neighbouring York Region municipalities in an effort to pursue a "shared" investigator. Although there was interest initially, the Association of Municipalities Ontario (AMO) and its subsidiary company Local Authority Services Ltd. (LAS) circulated information in the summer that they were preparing a province-wide service. Many municipalities waited for this option rather than proceed independently.

The province-wide service option allows for access to a panel of investigators with extensive municipal backgrounds as well as easy access to a library of resources including a wide range of decisions from a large number of municipalities and various investigators. A consistent standard of service for all participants can be expected along with an appropriate and fair investigation process. There will also be a reduced administrative burden on the municipality.

The Provincial Ombudsman's office option for complaint investigation will have no fee for this service, however the Ombudsman's office will have a limited knowledge of local government and administration. This option may also result in a slower investigative process as the Ombudsman's office handles tens of thousands of cases on an annual basis. Staff are not aware of any municipalities choosing to utilize the Ombudsman's services.

Council Members have been forwarded copies of materials provided by LAS outlining its program and draft agreement as well as a letter from the Ombudsman's office enclosing information on its services.

AMO/LAS Investigator Program

Staff have been in contact with AMO/LAS in regard to the new program set up to assist municipalities in meeting the requirement for an investigator under the new provisions of the *Municipal Act*. A large number of municipalities have expressed interest in the LAS Investigator Program and to date, approximately 17 have entered into formal agreements with LAS for their services.

If the municipality chooses to appoint LAS as the investigator, LAS delegates that authority to a third party, Amberley Gavel Ltd., a corporation run by persons with extensive municipal experience, that will have a pool of investigators available to be called upon. The municipality will be required to pay a retainer fee of \$300.00 per year for a two year term (total \$600.00) expiring December 31, 2009. There is also a daily investigation fee of \$1250.00 (based on an 8 hour day) plus taxes, in addition to reasonable out of pocket expenses (travel, meals, translation, admin. costs). LAS estimates that a standard investigation would require two days.

In addition to investigation services, LAS will provide the municipality with an ongoing educational component as well as access for all participating municipalities to all completed reports via a password protected website. LAS will also provide information on the panel of investigators.

The draft agreement prepared by LAS generally deals with the powers and delegation provisions outlined in section 239 of the *Act*, liability and indemnification provisions, fees, additional services as specified above, term and renewal provisions as well as the process for dealing with investigation requests.

Processing Investigation Requests

Requests for investigations will be submitted to the Clerk's Department and forwarded to Amberley Gavel Ltd. along with all related documentation, including applicable by-laws, meeting agendas and attachments, meeting minutes and contact information for all persons present at the meeting in question. A review officer will be appointed and will perform an initial review of the matter to determine if an investigation is warranted. Where it is not warranted or is withdrawn, the matter will be closed and a report will be submitted to Council. Where warranted, an investigation will proceed. This may involve consultation with various parties. The final report will set out findings of the investigation with reasons and may contain recommendations where applicable. It will be submitted to Council and the requester and thereafter, made public.

Investigation Request Fees

Section 239 in the *Act* does not address the issue of a fee for investigation requests however section 391(1)(a) authorizes a municipality to impose fees or charges on persons for services or activities provided by or on behalf of it. Staff recommends that a modest fee be imposed upon the receipt of an investigation request in order to ensure that the request is not frivolous. The fee can be set at a rate similar to that imposed by the Ontario Municipal Board for appeals (\$125.00) or by the Assessment Review Board (\$75.00 for residential appeals and \$150.00 for commercial appeals). This fee, though minimal, can be used to offset the cost of the fees charged by LAS.

Relationship to Vaughan Vision

The appointment of an investigator supports the objectives of Vaughan Vision to demonstrate leadership and promote effective governance by ensuring greater accountability and transparency.

Regional Implications

The Region of York and all local municipalities in York have advised they are interested in the LAS program. Markham is still reviewing the matter.

Conclusion

It is recommended that Council direct a contract be entered into for the services of Investigator offered by Local Authority Services Ltd. (LAS), to investigate complaints regarding closed meetings. In addition, an appointment by-law must be executed. The Fee By-law must also be amended to include a fee for investigation requests, after appropriate notice is given.

Attachments

Attachment 1: LAS Investigator Program Package (Council only)

Attachment 2: Ombudsman Ontario letter with "Frequently Asked Questions" enclosure (Council only)

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