Ombudsman
ONTARIO

ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

December 28, 2011

Ms. Rose Caterini, City Clerk
City of Hamilton
77 James St. North
P.O. Box 2040, LCD1
Hamilton, ON
L8R 2K3

Dear Ms. Caterini,

RE: Our File No. 242820-001

I am writing further to our conversation of December 12, 2011 regarding the results of the Ombudsman's preliminary review of a complaint received regarding the June 27 General Issues Committee (the Committee) meeting. Specifically, the complaint alleged that the Committee improperly discussed a grant request from McMaster University behind closed doors.

As part of our Office's review, we spoke with you as well as certain members of Council. We also reviewed relevant sections of the *Municipal Act, 2001* (the Act) and the City's Procedure By-law (10-053), as well as the meeting materials for the June 27 meeting.

The information provided to our Office indicates that on June 27, 2011, the Committee went *in camera* to hear a presentation from McMaster University (McMaster). According to the minutes, the meeting was closed under the "proposed or pending acquisition or disposition of land" exception (s. 239(2)(c) of the Act). The minutes indicate that five representatives of McMaster University "addressed the Committee with respect to a proposed McMaster Health Campus

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on the property where the Hamilton Wentworth District School Board administration offices are currently located." The McMaster representatives requested a $20-million dollar contribution from the City for this venture.

The minutes note that during the McMaster presentation, the Committee Clerk advised the Committee Chair that the contents of the presentation did not fall within the cited exception for proceeding *in camera*. The City Solicitor also expressed to the Committee that questions and discussions had to stay within the parameters of the exception. The information provided to our Office indicates that the meeting continued *in camera* despite these cautions.

Once the McMaster representatives left the room, staff advised the Committee that a staff report would be brought back at a future meeting, outlining issues that require further investigation. The Committee then reconvened into open session.

In open session the Committee passed a motion that the presentation provided by the McMaster delegation with respect to a McMaster Health Campus proposal be received. The Committee also voted to direct staff to "analyze and report back on the accommodation requirements of Public Health Services, and determine the impacts of the leasing proposal."

Two members of Council advised our Office that the McMaster presentation was repeated almost verbatim in open session at a later meeting. One member of Council found it "puzzling" that the presentation was held in closed session on June 27, since it only involved a "broad overview" of the McMaster project.

Analysis

The information provided to our Office indicates that on June 27 the Committee proceeded *in camera* under s. 239(2)(c) of the Act ("a proposed or pending acquisition or disposition of land by the municipality or local board"), to hear a presentation from representatives of McMaster University. It does not appear that the McMaster presentation and subsequent discussions fall squarely within the cited exception, as it was not the municipality or a local board that would be acquiring or disposing of the land; McMaster was attempting to acquire land from the School Board. As discussed on December 12, a school board is not a "local board" for the purpose of the Act. This session was therefore improperly closed to the public.

According to the minutes, both the Committee Clerk and the City Solicitor identified that the *in camera* presentation and discussions did not fall within the cited exception, and took appropriate steps to bring this non-compliance to the

Committee's attention; however it also appears that the discussions continued after these notifications.

In the future, all Council members should be vigilant in ensuring that *in camera* discussions come within the narrow exceptions outlined in s. 239 of the Act.

We also noted that Council should exercise caution when bringing third parties into a closed session. Although this is not prohibited under the Act, meeting with third parties behind closed doors has the potential to create suspicion in the eyes of the public. Unless discussions clearly fall within the exceptions to the open meeting requirements, and it is absolutely necessary for Council to meet with third parties for confidentiality reasons, it is preferable that such meetings take place in open session.

You expressed general agreement with the findings and comments made by our Office, and agreed to share them with Council publicly. We ask that you notify us when you have had the opportunity to do so. We will also be providing the complainant with the outcome of our review.

I would also like to take this opportunity to thank you for the cooperation our Office received during this review.

Sincerely,

Michelle Bird
Ombudsman Ontario