



Hamilton

INFORMATION REPORT

TO:	Chair and Members of General Issues Committee
COMMITTEE DATE:	August 8, 2016
SUBJECT/REPORT NO:	Ombudsman's Recommendation Report (CL16007(a)/LS16013(a)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Janice Atwood-Petkovski , Legal Services ext. 4636 and Rose Caterini, Clerks ext. 5409
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SIGNATURE:	

Council Direction: N/A

Information:

Background/Context

Last summer, on July 13, 2015, the Compliance Audit Committee met publicly to hear several applications for compliance audits. On July 15, 2015 the Committee met privately to deliberate on its decisions. As set out in the Compliance Audit Committee procedures, the Committee may reserve and deliberate in private. This reflects the appropriate procedure for administrative tribunals.

On October 22, 2015 the Provincial Ombudsman received a complaint that the Committee meeting had been closed to the public contrary to s.239 of the Municipal Act.

Staff provided the Ombudsman with explanations and written submissions, explaining that a Compliance Audit Committee is an administrative tribunal and not a 'local board' under the Municipal Act, and that administrative tribunals are entitled to deliberate in private – a right that has been recognized and upheld by the Courts.

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Following provision of the preliminary report, City staff shared with the Provincial Ombudsman additional comments from Council and from members of the Compliance Audit Committee.

On July 15, 2016 the Ombudsman released its Recommendation Report, directing that it be made available to the public at the next Committee and Council meeting. The Ombudsman's Recommendation Report is attached hereto as Appendix "A" to this Information Report CL16007(a)/LS16013(a). The Ombudsman recommends that the City formally recognize that the Election Compliance Audit Committee is a 'local board' under the Municipal Act, and that the committee comply with the open meeting rules, proceeding in camera only for reasons under the statutory closed meeting exceptions of the Municipal Act.

Investigation Deals only with Procedure

The Ombudsman investigated the process of the Compliance Audit Committee and in particular, the procedure of deliberating in private. The investigation is limited to whether the open meeting requirements of the Municipal Act govern the Committee's procedures, and whether those open meeting requirements have been observed.

The Ombudsman notes that this is the first time it has investigated a complaint of a meeting of a compliance audit committee.

'Local Board' definition

The open meeting provisions of the Municipal Act (s. 239) apply to meetings of council, committees and local boards. The pivotal determination is whether the compliance audit committee falls within the Municipal Act definition of 'local board'. The relevant Municipal Act definitions are:

S. 1(1)

"local board" means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority.

S.238(1) In this section and in sections 239 to 239.2,

"local board" does not include police services boards or public library boards.

Applying four criteria which it has identified as determinative, the Ombudsman finds that the compliance audit committee falls within the definition of 'local board'. Once having determined that the compliance audit committee is a 'local board', the Ombudsman finds the open meeting provisions of the Municipal Act must apply.