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CONFIDENTIAL

SENT BY EMAIL TO: Kaitlin.bos@wilmot.ca

December 2, 2024

Township of Wilmot
c/o Kaitlin Bos, Deputy Clerk
60 Snyder's Road West
Baden, ON
N3A 1A1

Dear: Mayor and Council

RE: Closed Meeting Investigation – Final Report
Our File No. 39433-1

On September 6, 2024, a complaint was made to the Township of Wilmot, which was received by our office on September 12, 2024. Portions of the complaint were initially unclear; our office followed up with the complainant and the complaint was revised in order to facilitate review.

The complaint concerns specific closed meetings held by the Township of Wilmot in 2023 and 2024. More precisely, the complaint specified a particular topic and the particular closed sessions in which the complainant believes the topic was discussed. Our office was asked to review each of these identified closed meetings and, where the subject in question was discussed, review whether the discussion complied with the requirements for closed meetings as imposed in the *Municipal Act*.

As a preliminary matter, the identification of specific subject matter by the complainant created some difficulty. Our office is required to provide only the information needed to make this report understood and must continue to maintain the confidentiality of matters properly in closed session. The topic that is the subject of this complaint was, very broadly, a subject being discussed with the Government of Ontario at the relevant time. Although the complaint identifies specific meetings at which the complainant believes this subject matter

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was discussed, certain of the meetings listed in the complaint did not, in fact, include discussion of this matter; those meetings are not included in our analysis below. Where more than one topic was discussed at a meeting, we have only addressed the subject matter relevant to the complaint.

Summary

Generally, our office found that the closed session rules were complied with. Each of the closed sessions we reviewed began with a properly formulated motion to move into closed session, and we did not identify any improper voting. We did identify one meeting where the subject matter did not match the cited exception; although this does render the meeting non-compliant with the *Act*, the actual topic of discussion could indeed have been held in closed session under a different exception, had that additional exception been cited in the resolution. As such, this breach was merely technical and the discussion in closed session did not need to have been held in open session.

Analysis

In conducting this review, our office considered the following elements of a closed meeting:

- Was the motion to move into closed session in compliance with the requirements of the *Municipal Act*?
- Was the subject matter of the closed session one that could be discussed in closed session in compliance with the requirements of the *Municipal Act*?
- Were the restrictions on closed session votes, as contained in the *Municipal Act*, complied with?

By default, municipal council meetings must be open to members of the public. This is an important cornerstone of transparency and democracy, and is enshrined in the *Municipal Act*. However, there are certain circumstances where discussing a matter in public would be harmful to the interests of the municipality; it could reveal details of the municipality's position in a lawsuit or a negotiation to the other side, or could prevent third parties from engaging with municipalities. For that reason, the *Municipal Act* includes a variety of circumstances in which a meeting may be held in closed session, with the public excluded. In our analysis, we refer to these circumstances as the "closed meeting exceptions".

All council meetings must first begin in open session, with the public able to attend. Council may then proceed to exclude the public by passing a motion to move into closed session. That motion must specify the exception being relied on, and provide at least some level of detail about the subject to be addressed. The level of detail required is minimal, and municipalities are not required to compromise the confidentiality of the closed session. At times, it may not be possible to provide any such details depending on the circumstances.

When in closed session, the discussion must generally remain on topic and within the cited exception. Courts have recognized that discussions may drift towards subjects that are not within the cited exception or any exception; council is not expected to continually move in and out of closed session where the subject matter largely remains appropriate for closed session.

Finally, the *Municipal Act* is very clear that voting cannot occur in closed session. Again, there are exceptions; in order to be properly in closed session, a vote must pertain to a subject matter that falls within a closed session exception, and must be procedural in nature or provide direction to staff or agents of the municipality. Substantive decision making in closed session is not permitted.

March 14, 2023

The motion to move into closed session contained the following information:

Information Supplied in Confidence from the Province of Ontario - Section 239 (2)(h)

- information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item, and Section 239 (2)(i) - a trade secret or scientific, technical, commercial or financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

In our opinion, this is sufficient to meet the requirements of the *Municipal Act* with respect to moving into closed session.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic which consisted, in whole or in substantial part, of information provided by the Province on condition of confidentiality. As such, the discussion was properly in closed session. No vote was taken, save for standard procedural votes to approve agendas, adjourn, etc.

July 24, 2023

The motion to move into closed session contained the following information:

Information Supplied in Confidence from the Province of Ontario - Section 239 (2)(h)

- Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item, and Section 239 (2)(i) - a trade secret or scientific, technical, commercial or financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the

competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

In our opinion, this is sufficient to meet the requirements of the *Municipal Act* with respect to moving into closed session.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic which consisted, in whole or in substantial part, of information provided by the Province on condition of confidentiality. Similarly, confidential information supplied by a non-government entity was also discussed. As such, the discussion was properly in closed session. No vote was taken, save for standard procedural votes to approve agendas, adjourn, etc.

August 28, 2023

The motion to move into closed session contained the following information:

Information Supplied in Confidence from the Province of Ontario - Section 239 (2)(h)

- Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item, and Section 239 (2)(i) - a trade secret or scientific, technical, commercial or financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

In our opinion, this is sufficient to meet the requirements of the *Municipal Act* with respect to moving into closed session.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic which consisted, in whole or in substantial part, of information provided by the Province on condition of confidentiality. Similarly, confidential information supplied by a non-government entity was also discussed. As such, the discussion was properly in closed session. No vote was taken, save for standard procedural votes to approve agendas, adjourn, etc.

September 11, 2023

The motion to move into closed session contained the following information:

Information Supplied in Confidence from the Province of Ontario - Section 239 (2)(h)

- Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item, and Section 239 (2)(i) - a trade secret or scientific, technical, commercial or financial or labour relations information, supplied in confidence to the municipality or local board,

which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

In our opinion, this is sufficient to meet the requirements of the *Municipal Act* with respect to moving into closed session.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic which consisted, in whole or in substantial part, of information provided by the Province on condition of confidentiality. As such, the discussion was properly in closed session. No vote was taken, save for standard procedural votes to approve agendas, adjourn, etc.

October 16, 2023

The motion to move into closed session contained the following information:

Information Supplied in Confidence from the Province of Ontario - Section 239 (2)(h)

- Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item, and Section 239 (2)(i) - a trade secret or scientific, technical, commercial or financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

In our opinion, this is sufficient to meet the requirements of the *Municipal Act* with respect to moving into closed session.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic which consisted, in whole or in substantial part, of information provided by the Province on condition of confidentiality. Similarly, confidential information supplied by a non-government entity was also discussed. As such, the discussion was properly in closed session. No vote was taken, save for standard procedural votes to approve agendas, adjourn, etc.

October 30, 2023

The motion to move into closed session contained the following information:

Confidential Information Supplied in Confidence from the Province of Ontario – Section 239(2)(f) Advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

According to the meeting minutes, a lawyer was in attendance. The bulk of the discussion at the meeting pertained not to solicitor-client advice but to updates on a confidential matter.

At the end of the meeting, the minutes note that the solicitor discussed certain specific items; based on the minutes alone, it is not clear to us if these items were in the nature of solicitor-client privilege.

In our opinion, the subject matter of this meeting did not align with the closed meeting exception cited in the resolution. However, the meeting predominantly, if not entirely, concerned information provided in confidence by another level of government, another exception under the *Municipal Act* that would authorize a closed session.

In our October 20, 2022, report concerning the City of Stratford, we determined that, where the subject matter of a meeting did not match the cited exception, the meeting was improperly held in closed session. Although this may seem overly technical, the reality is that the motion to move into closed session is generally the only information the public has regarding the subject matter being discussed. The information available to the public to scrutinize the actions of Council in closed session is already extremely limited; relying on the wrong exception undermines the small amount of transparency provided for.

Our 2022 Stratford Report discusses two other issues that apply here. First, Courts have been clear that councils are not expected to move in and out of closed session every time a single comment strays from the applicable exceptions. Here, however, the minutes reflect that the meeting consisted almost entirely of an update on the confidential matter, with only a short portion at the end of the meeting indicated as being from the solicitor. This was not a case where discussion drifted to a different topic.

Second, our 2022 Stratford Report cites an earlier report concerning the City of Stratford, by a different closed meeting investigator, for the rule that simply having a lawyer in the room is not enough to invoke the exception for solicitor-client privilege. That exception pertains specifically when the solicitor's advice is sought or provided. As such, the lawyer's presence during discussions in which they were not involved is not sufficient to allow the entire discussion to proceed under the exception for solicitor-client privilege.

In conclusion, a portion of this meeting was properly in closed session; the balance was not. However, this was solely because the exception for confidential information supplied by another level of government was not cited in the resolution. Had the resolution been properly drafted, the entirety of the meeting certainly would have conformed with the *Municipal Act*.

No votes were taken, except for procedural votes such as to adjourn etc.

November 13, 2023

The motion to move into closed session contained the following information:

THAT a Closed Meeting of Council be held on November 13, 2023, at 5:30 p.m. in

accordance with Sections 239 (2) (b), (c), (f), (h), and (i) to consider the following:

1. Confidential Information Supplied in Confidence from the Province of Ontario – Section 239(2)(f).

Advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

Section 239 (2)(h) – Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item, and

Section 239 (2)(i) - a trade secret or scientific, technical, commercial or financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

In our opinion, this motion was sufficient to meet the requirements of the *Municipal Act*, as it identified the exception being relied upon, and provided some information to identify the subject matter of the discussion.

Having reviewed the minutes, we are of the opinion that the subject matter of this discussion concerned information supplied to the Township in confidence. As such, we find that this meeting was properly held in closed session.

No votes were taken at this meeting, other than standard procedural votes to approve the agenda and adjournment.

December 11, 2023

The motion to move into closed session contained the following information:

Information Supplied in Confidence from the Province of Ontario - Section 239 (2)(h)

- Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item, and Section 239 (2)(i) - a trade secret or scientific, technical, commercial or financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

In our opinion, this is sufficient to meet the requirements of the *Municipal Act* with respect to moving into closed session.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic which consisted, in whole or in substantial part, of information provided by the Province on condition of confidentiality. Similarly, confidential information supplied by a non-government entity was also discussed. As such, the discussion was properly in closed session. No vote was taken, save for standard procedural votes to approve agendas, adjourn, etc.

Jan 24 2024

The motion to move into closed session contained the following information:

Confidential Information Supplied in Confidence from the Province of Ontario - Section 239 (2)(h) - Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item.

In our opinion, this is sufficient to meet the requirements of the *Municipal Act* with respect to moving into closed session.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic which consisted, in whole or in substantial part, of information provided by the Province on condition of confidentiality. As such, the discussion was properly in closed session. No vote was taken, save for standard procedural votes to approve agendas, adjourn, etc.

March 4, 2024

The motion to move into closed session contained the following information:

Confidential Information Supplied in Confidence from the Province of Ontario - Section 239 (2)(h) - Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item.

In our opinion, this motion was sufficient to meet the requirements of the *Municipal Act*, as it identified the exception being relied upon, and provided some information to identify the subject matter of the discussion.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic which consisted, in whole or in substantial part, of information provided by the Province on condition of confidentiality. As such, the discussion was properly in closed session. No vote was taken, save for standard procedural votes to approve agendas, adjourn, etc.

March 25, 2024

The motion to move into closed session contained the following information:

Confidential Information Supplied in Confidence from the Province of Ontario Section 239(2)(f) - Advice that is subject to solicitor-client privilege, including

communications necessary for that purpose. Section 239 (2)(h) - Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item.

In our opinion, this motion was sufficient to meet the requirements of the *Municipal Act*, as it identified the exception being relied upon, and provided some information to identify the subject matter of the discussion.

We reviewed the minutes of this portion of the meeting. Council received and discussed legal advice, and otherwise discussed a topic which consisted, in whole or substantial part, of information provided in confidence by the Province. As such, the discussion was properly in closed session. No vote was taken, save for standard procedural votes to approve agendas, adjourn, etc.

April 8 2024

The motion to move into closed session contained the following information:

In our opinion, this motion was sufficient to meet the requirements of the *Municipal Act*, as it identified the exception being relied upon, and provided some information to identify the subject matter of the discussion.

The minutes indicate that Council discussed a matter which was subject to a Non-Disclosure Agreement, one party to which was the Province of Ontario.

It is unclear if a vote was taken – the Minutes indicate only that direction was given, “by consensus”. However, even if a vote was taken, we find that it was administrative in nature, as it concerned only instructions provided to certain staff and to the Mayor.

April 22, 2024

The motion to move into closed session contained the following information:

Confidential Information Supplied in Confidence from the Province of Ontario - Section 239 (2)(h) - Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any item.

In our opinion, this is sufficient to meet the requirements of the *Municipal Act* with respect to moving into closed session.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic which consisted, in whole or in substantial part, of information provided by the Province on condition of confidentiality. As such, the discussion was properly in closed session.

Instruction was given to staff. Although identified as a “consensus”, we consider this to be a vote. However, such a vote is permitted in closed session, as it pertained to subject matter properly in closed session, and consisted solely of providing instruction.

May 6 2024

The motion to move into closed session contained the following information:

Confidential Information Supplied in Confidence from the Province of Ontario -
Section 239 (2)(h) - Information explicitly supplied in confidence to the municipality
or local board by Canada, a province or territory or a Crown agency of any item.

In our opinion, this is sufficient to meet the requirements of the *Municipal Act* with respect
to moving into closed session.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic
which consisted, in whole or in substantial part, of information provided by the Province on
condition of confidentiality. As such, the discussion was properly in closed session. No vote
was taken, save for standard procedural votes to approve agendas, adjourn, etc.

June 10, 2024

The motion to move into closed session contained the following information:

Confidential Information Supplied in Confidence from the Province of Ontario -
Section 239 (2)(h) - Information explicitly supplied in confidence to the municipality
or local board by Canada, a province or territory or a Crown agency of any item.

In our opinion, this is sufficient to meet the requirements of the *Municipal Act* with respect
to moving into closed session.

We reviewed the minutes of this meeting. The discussion remained exclusively on a topic
which consisted, in whole or in substantial part, of information provided by the Province on
condition of confidentiality. As such, the discussion was properly in closed session. No vote
was taken, save for standard procedural votes to approve agendas, adjourn, etc.

Recommendations

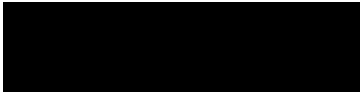
As noted above, our office found that the meetings which formed the subject of this
complaint were, with one exception, compliant with the requirements of the *Municipal Act*.
The sole exception was the meeting of October 30, 2023, where most of the subject matter
of the meeting did not fall within the closed meeting exception cited in the resolution.
However, this issue was minor, as the subject matter would have been appropriate for closed
session under the exception for information supplied in confidence.

The *Municipal Act* requires our office to report on our findings where a meeting was held in
closed session contrary to the *Act*, and states that we may make recommendations as a result
of such a finding. In the circumstances, we do not find it necessary to make any
recommendations: the results of our investigation do not reveal any pattern of impropriety
or any obvious misunderstanding of the correct processes. The meeting in question where
we note a discrepancy in the resolution was a minor violation of the *Act's* requirements, and

one which can be remedied simply with a caution to be more careful with the selection of exceptions relied upon in the future.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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