Open Meeting Investigation: Request to Investigate
January 19, 2011 Public Budget Consultation

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**SUMMARY**

This Report arises from a request to investigate into the Public Budget Consultation held on January 19, 2011, which was alleged to include an improperly closed portion of the meeting under the terms of the *City of Toronto Act* ("COTA" or the "Act"). Based on my investigation, and applying the definition of the term “meeting” under *COTA*, I conclude that brief period of the public budget consultation in question constituted a closed meeting, but that the circumstances of the closed meeting, in my view, do not necessitate further action to remedy.

**RECOMMENDATIONS**

The Open Meeting Investigator recommends that City Council ensure that all those Members Chairing committee meetings be reminded of the open meeting requirements of *COTA* and the *Procedures By-Law*.

**Financial Impact**

There are no financial implications arising from the adoption of this report.

**DECISION HISTORY**

On January 1, 2008, I was appointed as the City of Toronto’s Open Meeting Investigator under *COTA*. This is the second Report to Council involving a request to investigate
under COTA’s open meeting requirements. COTA provides that a person may request that an investigation of whether the City or a local board of the City has complied with the Act in respect of a meeting that was closed to the public be undertaken. Both the powers and investigation protocol of the Open Meeting Investigator may be found at http://www.toronto.ca/committees/open-closed-meetings/index.htm#open

On January 20, 2011, I received a request from a member of the public to investigate a three-minute recess during the Public Budget Consultation held on January 19, 2011, during which the Chair of the Budget Committee was alleged to have called a recess during a public meeting in order to discuss an issue of speaking time with other sub-committee members in private. The requester believes that this recess constituted a closed meeting in violation of s.190 of the Act.

Between January and March, 2011, I spoke to the requester, City Staff, and the Chair of the Budget Committee sub-committee, received information from another councillor on the sub-committee, and reviewed a video recording of the January 19, 2011 consultation. All those who provided information in support of this investigation did so willingly and cooperatively.

**ISSUE BACKGROUND**

In order to decide whether the brief period of recess during the public budget consultation constituted a closed meeting, it is important to provide a brief chronology of creation of the Budget sub-committees and the unfolding of the consultation session on January 19, 2011.

On December 16, 2010, the Budget Committee passed a motion to establish two sub-committees for the purpose of holding consultations on the budget (2011.BU2.1). The motion set out the structure and mandate of the sub-committee in the following terms:

The Budget Committee:

1. Established two-sub-committees of the Budget Committee named:
   a. Budget Sub-Committee for Scarborough and North York Consultation; and
   b. Budget Sub-Committee for Etobicoke York and Toronto & East York Consultation.

2. Adopted the following terms of reference for the Sub-Committees:
a. to consult with the public on the 2011 budgets; and  
b. to report on its activities to the Budget Committee.

3. Approved the membership of the Sub-Committees as follows:

   a. Budget Sub-Committee for Scarborough and North York Consultation  
      - Councillors Di Giorgio, Ford, Milczyn and Parker

   b. Budget Sub-Committee for Etobicoke York, and Toronto and East York Consultation  
      - Councillors Del Grande, Berardinetti and Lee

   c. The Chair of the Scarborough and North York Consultation Sub-Committee be the Vice-Chair of Budget Committee, and the Chair of the Toronto East York and Etobicoke York Consultation Sub-Committee be the Chair of Budget Committee.

4. Directed the City Clerk to schedule meetings of the Sub-Committees as follows:

   a. Budget Sub-Committee for Scarborough and North York Consultation:  
      - January 19, 2011, at 6:00 p.m., in the Council Chamber, North York Civic Centre
      - January 20, 2011, at 6:00 p.m., in the Council Chamber, Scarborough Civic Centre

   b. Budget Sub-Committee for Etobicoke York, and Toronto and East York Consultation:
- January 19, 2011, at 6:00 p.m., in the Council Chamber, East York Civic Centre

- January 20, 2011, at 6:00 p.m., in the Council Chamber, York Civic Centre

5. Directed the City Clerk to give notice of the Sub-Committee Public Meetings.

As set out above, the members of the sub-committee which were assigned to hold the budget consultation in East York on January 19, 2011, were Michelle Berardinetti, Mike Del Grande (Chair), and Chin Lee

The public budget consultation meeting held in East York on January 19, 2011, began at 6:00pm and continued on until 12:15am. In addition to the sub-committee members, councillors present for portions of the meeting included Councillors Davis, Fletcher, Fragedakis, McConnell, McMahon, Perks, Vaughan, Wong-Tam, as well as Mayor Ford. Those making deputations were informed that they each had 5 minutes to do so. The time for deputations could only be extended beyond 5 minutes with the approval of the sub-committee.

At approximately 7:45pm, a group from the Toronto International Film Festival (TIFF) was presenting a deputation, which was to include the stories of young people using a TIFF program which receives City of Toronto funding. A young person sharing his experience under this program was cut off by the subcommittee Chair because the 5 minutes allotted to TIFF had expired. This action resulted in vocal opposition from many of those attending the consultation, including other councillors.

At this point, Chair Del Grande declared a recess. There did not appear to be any vote on this issue. The Chair and other councillors on the sub-committee retired to a room behind the council chambers, out of view of the public, and without City Staff. The recess lasted approximately three minutes (7:45-7:48pm). When the sub-committee returned, Chair Del Grande indicated that the sub-committee had reached a “decision” to allow the young person to finish telling his story as part of the TIFF deputation, but that further time extensions would not be granted.

A member of the public who attended the consultation submitted a request the following day for an investigation into whether the sub-committee’s private recess constituted a closed meeting not authorized under s.190 of the Act.

Analysis

In my earlier 2010 Report on the Investigation of the 2008-2009 Budget Committee Process, I discuss the purpose of section 190 of the City of Toronto Act, 2006 and the
role of the City of Toronto Open Meeting Investigator in more detail. In short, the purpose of this section of COTA is to ensure transparency in the conduct of City decision-making. While recognizing that certain specified kinds of decisions require confidentiality, even in such settings (and perhaps especially in such settings), City Council and its committees must be accountable for the decision to hold a meeting in closed session.

Section 190(1) of COTA provides that “all meetings shall be open to the public” subject to specific listed exceptions. The exceptions set out are as follows:

Exception
(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,
(a) the security of the property of the City or local board;
(b) personal matters about an identifiable individual, including a city employee or a local board employee;
(c) a proposed or pending acquisition or disposition of land by the City or local board;
(d) labour relations or employee negotiations;
(e) litigation or potential litigation, including matters before administrative tribunals, affecting the City or local board;
(f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose; or
(g) a matter in respect of which the city council, board, committee or other body may hold a closed meeting under another Act. 2006, c. 11, Sched. A, s. 190 (2).

The role of the Investigator is to receive requests for investigation into meetings which the requester believes did not comply with the open meeting provisions in COTA.

In this case, the closed meeting I have been asked to investigate lasted only three minutes. The open meeting provisions of the Act, however, do not include a temporal dimension. In other words, whether a closed meeting is one minute or one hour, it may infringe the open meeting requirements. Similarly, the fact that the issue may appear to be minor – e.g. whether a young person has 5 minutes or 8 minutes to tell a story of a City funded arts program – also does not have a bearing on the question of whether the requirements of the Act were observed.

The Chair’s rationale in calling the recess during the budget consultation of January 19, 2011 is easily understood. The budget consultation meeting was becoming increasingly noisy and both the Chair of the sub-committee and a councillor member of the sub-committee had hearing impairments. In these circumstances, with tensions running high, it is clear why Councillor Del Grande’s called a brief recess. Councillor Del Grande asserted that this was the only question discussed. While there is no basis on which to challenge this account, and it is supported by the brief duration of the recess, there is no
way to verify the content of the discussion. Where a meeting is closed according to the process set out in the Act and the Procedures By-Law, City staff are present, so it is usually possible to confirm that the only matters discussed are those for which the meeting was properly closed. In this case, when the budget sub-committee met during the recess, no other person was present to verify what the Chair and the councillors on the sub-committee discussed.

While the recess was held in private, I find no basis to conclude that the sub-committee of Councillor Del Grande intentionally disregarded the open meeting requirements. Indeed, there is evidence that the sub-committee was well aware of the requirements and sought to conduct the consultation in accordance with those provisions. The sub-committee’s agenda for the consultation of January 19, 2011 included the following provision:

If the Budget Sub-Committee for Etobicoke York and Toronto and East York Consultation wants to meet in closed session (privately), a member of the committee must make a motion to do so and give the reason why the Committee has to meet privately (City of Toronto Act, 2006).

The sub-committee did not attempt to meet in a properly closed session in order to discuss the time extension. Even if they had so attempted, it would not have been proper, as a discussion of extending time for a speaker is not one of the grounds set out in the Act which would justify a closed meeting.

In these circumstances, it would have been both possible and preferable for the sub-committee to have reached a determination on the extension of time for the deputation in open session. There did not appear to be a compelling reason why this could not have been done, though the video recording of the consultation confirms the noisy and at times hostile nature of the budget consultations. While the environment and the hearing impairments suffered by two of the sub-committee members may explain why a recess was called, these factors do not justify non-compliance with the open meeting provisions of the Act. Whether or not the Chair or sub-committee members intended to hold a closed meeting for purposes of deciding whether to extend time, the accounts provided by the requester, City staff, the Chair of the sub-committee and confirmed by the video recording, all lead to the conclusion that this is what occurred.

The circumstances of the budget consultation mitigate the seriousness of this breach of the open meeting requirements, and lead me to conclude that no further or systemic recommendations need flow from this investigation, beyond the reminder that the open meeting requirements govern all decision-making by City Council and its committees, no matter how long the meeting or how significant the matter at issue.

Conclusion

- Based on my investigation, and for the reasons set out in this Report, I find that the discussion held during the three minute recess of the Public Budget
Consultation constituted a closed meeting. While this conduct was not consistent with the provisions of \textit{COTA}, the decision at issue (to permit extra time for a deputation) did not prejudice the overall openness and transparency of the consultation.

Rather, this incident provides an important occasion for which to reiterate the significance of an open process, including procedural as well as substantive business of City committees. The requester was motivated to make this request because of a concern of "backroom decision-making." Respecting the provisions of \textit{COTA} and the \textit{Procedures By-Law} ensures that public confidence is enhanced and that the Committees of City Council are able to advance the public interest.

**Recommendation**

The Open Meeting Investigator recommends that City Council ensure all those members Chairing committee meetings be reminded of the open meeting requirements of \textit{COTA} and the \textit{Procedures By-Law}.

**CONTACT**

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**SIGNATURE**

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Lorne Sossin  
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