

Integrity Commissioner and Meetings Investigator

Report to Council on an Inquiry by the Meetings
Investigator: Budget Review Board

April 11, 2018

REQUEST FOR INVESTIGATION

On January 8, 2018, I received a Request for Investigation (the “Request”) from two Councillors (the “Complainants”) regarding the meeting practices of the Budget Review Board (the “BRB”), a group of City staff and Members of Council established by City Council during the 2016 Budget process to provide a budget challenge function to the annual budget process.

The Request specifically called into question “the process in which the meetings are held and the information discussed may not be appropriately transparent to full Council or the general public.”

The Request also referenced statements made on a local radio program by a member of the BRB suggesting unreported information had been shared with the BRB and an unreported meeting took place a month prior to Council’s consideration of the 2018 Operating and Capital Budgets, which was not reflected in the BRB’s confidential minutes obtained by the complainant.

MEETING INVESTIGATOR JURISDICTION

The *Municipal Act, 2001* (the “Act”) requires that all meetings of Council, its committees or local boards shall be open to the public, except as permitted by several specific, discretionary exceptions:

239 (1) *Except as provided in this section, all meetings shall be open to the public.*

Exceptions

(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 municipality or local board;*
- (b) *personal matters about an identifiable individual, including municipal or local board employees;*
- (c) *a proposed or pending acquisition or disposition of land by the municipality or local board;*
- (d) *labour relations or employee negotiations;*
- (e) *litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;*

- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;*
- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;*
- (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;*
- (i) a trade secret or scientific, technical, commercial, 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;*
- (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or*
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.*

Other criteria

- (3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,*
- (a) a request under the Municipal Freedom of Information and Protection of Privacy Act, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or*
 - (b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the Ombudsman Act, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1).*

Educational or training sessions

(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

- 1. The meeting is held for the purpose of educating or training the members.*
- 2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.*

Anyone who wishes to question the appropriateness of a meeting of Council, its committees or local boards (not including police services boards and public library boards) that was closed in full or in part, may request an investigation.

Section 239.2 of the *Act* outlines my authority as Council-approved Meetings Investigator:

239.2 (1) *Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation.*

In carrying out this function, I may exercise such powers and perform such duties as may be assigned to me by Council. As required by subsection 239.2(5) of the *Act*, I operate with regard to the importance of:

- My independence and impartiality as investigator;
- Confidentiality with respect to my activities; and
- The credibility of the investigative process.

INQUIRY PROCESS

Upon receipt of the Request, I confirmed my intent to review the Request under my authority as the City of Ottawa's Meetings Investigator.

As a preliminary step, and prior to launching a formal inquiry, I conducted a thorough intake analysis to determine if the Budget Review Board, and the issues raised within the Request, were within my authority as Meetings Investigator.

As part of the intake analysis, I reviewed a significant amount of documentation including:

- Documents relating to the creation, membership and membership changes of the Budget Review Board;
- A chronology of Budget Review Board meetings;
- Terms of Reference for the Budget Review Board;
- Meeting agendas, minutes and presentations of the Budget Review Board; and
- The transcript of a CFRA radio interview ("Rob Snow program") of December 14, 2017.

Based on the issues raised in the Request and my preliminary review of the documentation, I was of the opinion that there continued to be outstanding questions and I opted to proceed with an inquiry into the matter in my capacity as Meetings Investigator, in accordance with the *Municipal Act, 2001*.

On February 20, 2018, I issued formal notice of my intent to initiate an inquiry (the "Inquiry") to the City Clerk and Solicitor, for the purposes of conducting interviews with relevant City staff and Members of Council.

I conducted 14 interviews with members of the Budget Review Board and a number of other Members of Council.

I indicated to all parties, and note for the purposes of this report, that I conducted the Inquiry under a collaborative and cooperative approach. Although subsection 239.2(9) of the *Municipal Act, 2001* provides me with the authority to exercise the investigative powers of a municipal ombudsman (sections 223.14 to 223.18 of the *Act*) to summon relevant persons and examine them under oath, I elected not to exercise such powers unless proven necessary. I received full co-operation from all parties during this Inquiry and was consequently not required to exercise these powers.

BACKGROUND

Annual Budget Process

The City creates its annual Operating and Capital Budget through an intensive process that involves review, consultation and drafting.

The budget process for 2015-2018 tax-supported budgets was initially established as part of the [2014-2018 Governance Review](#) (ACS2014-CMR-CCB-0062) and includes multiple steps.

First, the City Treasurer prepares a proposed timetable and outlines that year's budget directions. The report identifies the recommended budget increases to the City's various Boards and Commissions who then develop their respective draft budgets within those allocations.

Next, the City Manager and the Mayor's Office begin the work of developing the annual draft budgets, consistent with Council's approved budget directions. This stage, to be summarized in more detail below, includes consultation with individual Members of Council and review of each departments' annual budget submissions.

Following the extensive review, a consolidated draft budget is tabled at Council, reflecting all operating and capital pressures and identifying any resulting service implications.

The draft budget is then put up for public consultation, including multi-ward meetings with Members of Council and senior staff, to allow for the response to and development of options based on public feedback.

After the public consultations, each Standing Committee considers the proposed budget and hears public delegations before considering and approving any revisions to the draft budget. After their review, each Standing Committee recommends a budget for their respective service areas for review and adoption by City Council.

Finally, sitting as Committee of the Whole, Council considers and makes amendments to the draft Operating and Capital Budgets, including the budget submissions from the Commissions and Boards. After completing its review, City Council formally adopts the annual operating and capital budgets.

Budget Challenge Process

As noted above, at the outset of each budget cycle, the City Treasurer releases a report that details the budget timetable and provides budget directions through the Finance and Economic Development Committee, and Council. Submissions for the Draft Operating and Capital Budget are then collected for a *budget challenge* process that reviews departmental plans and annual budget submissions.

As outlined in the report titled, "[Budget Challenge and Service Reviews](#)" (ACS2015-CMR-OCM-0032), the budget challenge process originally comprised four stages. The report proposed the establishment of the Budget Review Board to be included in the existing budget challenge process as follows:

1. The **Finance Department Budget Challenge**, where Finance staff reviews departmental budgetary estimates for revision or confirmation;
2. The second stage includes the following two elements:
 - a. The **Portfolio Budget Challenge**, where the City Manager and Deputy City Managers meet with each department head to review their budgets against legislative requirements and Council priorities, applicable directions and budget guidelines;

- b. The **Ward Councillor Consultation**, where the Mayor and City Manager meet with each Councillor to solicit input on priorities and efficiency savings;
3. A review by the **Budget Review Board**, which provides a further level of evaluation and analysis of departmental budgetary estimates;
4. A **Corporate Review**, where the Mayor and the Executive Management Committee assess *all* submissions; and,
5. A **Final Review** by Mayor, City Manager and Treasurer prior to the finalization of the draft Operating and Capital Budgets.

Creation of the Budget Review Board

In December 2015, the Budget Review Board, a working group of senior City staff and Members of Council, was established to enhance the existing four-stage budget challenge process, summarized above, and provide for the systematic tracking and reporting of budget risks.

According to the Board's Terms of Reference, the mandate of the Board is "to provide a review of the annual draft operating budget estimates focusing on critical budget assumptions to ensure that budget numbers have been sufficiently analyzed, challenged and vetted and to review the quarterly budget-to-actual reports prepared by staff."

The Terms of Reference further define the Board's three principal roles:

- To review the draft operating and capital budget, including a review of each department's budget estimates;
- To review non-departmental, capital formation, common revenues, taxation estimates, as well as the format and presentation of the budget; and
- To conduct quarterly reviews on the status of the budgeted versus actual results before the quarterly and year-end Operating and Capital Budget Status reports are finalized and issued to Council for their consideration.

The Board is composed of a combination of senior City staff and Members of Council.

Timeline

The Budget Review Board was established in December 2015, as part of the 2016 Budget deliberations.

2017 Budget

In its first year, the Budget Review Board met four times outside of the annual budget process: February 10, 2016, April 12, 2016, May 18, 2016, and August 19, 2016.

In June 2016, Council approved the "[Proposed 2017 Budget Timeline and Consultation Process](#)" report (ACS2016-CMR-FIN-0018). As part of the budget timetable, the report proposed separate meetings of the Budget Review Board (October 24-28th, 2016) to review the draft budget for each Standing Committee and that these meetings include the Chairs and Vice-Chairs of the respective Committee. It was further proposed that the review would take place prior to the actual tabling of the draft budget in November 2016.

The Budget Review Board met once, on November 7, 2016, before the tabling of the draft budgets. The Budget Review Board meetings were scheduled for October 24-28, 2016, however, they were rescheduled at the request of Financial Services, as work was still underway on the preparation of the 2017 draft budget.

It is my understanding that the proposed Budget Review Board meetings with Standing Committee Chairs and Vice-Chairs did not occur as originally intended. In an email to all Members of Council prior to the tabling of the 2017 draft budgets, the City Manager confirmed that his Office, the City Treasurer, the Mayor's Office had held individual meetings with the Standing Committee Chairs and Vice-Chairs early in September to discuss priorities. However, due to a number of issues, the Budget Review Board meetings with Standing Committee Chairs and Vice-Chairs prior to the tabling of the draft budgets did not occur. The meetings occurred subsequent to the tabling of the draft budget but prior to Standing Committee consideration of their respective Committee's 2017 Draft Budget as follows: November 14, 2016 Information Technology Sub-Committee (ITSC) and Environment Committee (EC); November 18, 2016 Agriculture and Rural Affairs Committee (ARAC); November 22, 2016 Finance and Economic Development Committee (FEDCO); November 25, 2016 Transportation Committee (TRC); and, November 29 Community & Protective Services Committee (CPSC) (quorum was not achieved for the CPSC meeting).

The draft budgets were tabled on November 9, 2016 and Council formally adopted the 2017 Operating and Capital Budgets on December 14, 2016.

2018 Budget

In 2017, the Budget Review Board met three times outside of the annual budget process: February 24, 2017, May 26, 2017 and August 18, 2017.

On June 14, 2017, Council approved the "[Proposed 2018 Budget Timeline and Consultation Process](#)" report (ACS2017-CSD-FIN-0013) which proposed a single Budget Review Board meeting to review budgetary information with "a particular emphasis on operational, economic, legislative and strategic adjustments; and any efficiency savings or revenue enhancements included in the proposed 2018 draft budget." It was further proposed that Committee Chair consultation, to discuss individual Committee priorities, would occur between October 9–18, 2017, in advance of the BRB's meeting. Standing Committee Chairs and Vice-Chairs would have an additional opportunity to review their respective draft operating and capital budget documents as part of the agenda clearing meetings, with input from the relevant department head(s).

Between September 14, 2017 and October 18, 2017, the Mayor's Office along with the City Manager, held individual meetings with Councillors to review Ward priorities and receive input prior to the tabling of the draft budgets.

The Complainants also indicated that Standing Committee Chairs were once again not included in the BRB's review of the draft budgets and drew this fact to my attention for my consideration. The City Manager, in his interview, explained that such consultations are not compulsory but that they can take place on an as needed basis. He stated that none were needed in the 2017 Budget Review Board context.

After review of this particular matter, I have concluded that the involvement of Standing Committee Chairs in the BRB's review of the draft budgets, and whether or not they occur, is a matter of policy and therefore not within my jurisdiction. Members of Council who consider the BRB consultations with Committee Chairs to be a budget process issue may wish to pursue the matter at FEDCO or with Council itself.

The Budget Review Board meeting took place on November 3, 2017. This was the final meeting of the Budget Review Board before the tabling and adoption of the 2018 Operating and Capital Budgets.

At this meeting, the Treasurer provided the Board with an overview of the 2018 Draft Operating and Capital Budgets. The Treasurer advised the Board that, at that point in

time, staff were forecasting a small deficit for the City. The Treasurer further advised there were some outstanding matters that could positively affect the budget, by either offsetting the small deficit or resulting in a small surplus.

The 2018 Draft Operating and Capital budgets were tabled with Council on November 8, 2017. Between November 9 and December 12, 2017 all Standing Committees along with the Transit Commission, Ottawa Police Services Board, Ottawa Public Library Board, Ottawa Board of Health and Advisory Committees held meetings to consider the 2018 draft budgets for their respective areas and receive public delegations.

On December 7, 2017, a group of eight Councillors announced, via Twitter, their intention to introduce a motion as part of Council's budget deliberations of December 13 2017. The draft motion proposed a "one-time dedicated infrastructure levy set at 0.5 percent to be added to the citywide property tax bill with all revenues directed towards tax-supported capital asset renewal."

The following day, the Treasurer was advised that the City had received the final supplementary tax assessment from the Municipal Property Assessment Corporation (the "MPAC assessment"). The Treasurer alerted the City Manager and the Mayor's Office that there was now a likely surplus as a consequence of this development, though no number had been yet confirmed. She advised that staff would be working over the weekend to confirm the number. Late in the day on Monday, December 11, 2017, the Treasurer confirmed the amount of the surplus to the City Manager and the Mayor's Office. Between Monday evening and Wednesday morning, another motion, targeting infrastructure spending, was drafted by the Mayor's Office and the information was shared by the Mayor's Office with a select number of Councillors.

On December 13, 2017, City Council considered the final budget recommendations and adopted the 2018 Operating and Capital Budgets. At the beginning of Council's consideration of the annual budget, the Mayor began with introductory remarks and proceeded to ask the Treasurer, as has been past practice, whether there were any material changes that should be brought to Council's attention prior to beginning deliberations. In response, the Treasurer advised Council that there had been some developments since the draft budgets had been tabled on November 8, 2017, and staff were now forecasting a surplus for 2017. This surplus was attributed to a better than expected November month-end, the MPAC assessment and payment-in-lieu-of-taxes for several federal government properties. The Treasurer confirmed that these additional funds were available for Council's use within the 2018 Budget.

The Mayor then introduced a motion, moved by himself and seconded by Councillor Cloutier, to allocate \$10 million of the surplus funds to general infrastructure renewal in the 2018 Budget. Members of Council were then asked to introduce any other motions for consideration during the budget deliberations. Councillor Leiper introduced the competing infrastructure motion, which he later withdrew. Ultimately, the Mayor's motion was carried unanimously.

On December 14, 2017, a few City Councillors appeared as guests on the Rob Snow program to discuss the City Budget. When asked when he became aware of the surplus, Councillor Hubley responded that, as a member of the BRB, he was aware, a month prior to Council's consideration of the budget, that the City was "tracking into the plus and well into the plus."

These statements led the Complainants to request the meeting minutes of the Budget Review Board, and in particular the minutes of the meeting of the BRB where the matter of the MPAC assessment was discussed as suggested by the Councillor's comments on the radio. The confidential minutes supplied to the Complainants did not reflect the information referenced during the Rob Snow program. Consequently, the Request for Investigation was filed on January 8, 2018.

ANALYSIS

Of primary interest during my intake analysis was determining if the open meeting provisions of the *Municipal Act, 2001*, and ultimately my jurisdiction as Meetings Investigator, applied to meetings of the Budget Review Board.

The Act requires that all meetings of a council, of a local board or of a committee of either, shall be open to the public, except for particular circumstances set out in the Act, referenced above.

Definition of a "Committee"

The first step in assessing the applicability of my jurisdiction was to determine if the Budget Review Board qualifies as a body that is subject to the open meeting provisions of the *Municipal Act, 2001*. Section 238 of the *Act* sets out definitions which apply to the open meeting provisions. Specifically, a "committee" is defined as (emphasis added):

*any advisory or other committee, subcommittee or similar entity **of which at least 50 per cent of the members are also members of one or more councils or local boards***

The City's Procedure By-law defines a "Committee/Commission" as, "a committee of Council and includes Standing Committees, Transit Commission, special committees and sub-committees." The Procedure By-law further provides that:

"Only Members of the Council shall be appointed to the Standing Committees, Commissions and Sub-Committees of Council save and except the Transit Commission which shall consist of eight Members of Council and four Citizen Members and the Built Heritage Sub-Committee which shall consist of four Members of Council and three Citizen Members."

The proposed composition of the Budget Review Board as set out in the "Budget Challenge and Service Reviews" report (ACS2015-CMR-OCM-0032), included the following members:

- Mayor
- City Manager
- Treasurer
- Deputy Treasurer
- Manager of Budget and Financial Planning
- City Clerk and Solicitor
- Two Deputy City Managers
- Chair of Audit Committee

During consideration of the staff report, the Finance and Economic Development Committee directed that the composition of the Budget Review Board be amended to include the Vice-Chair of the Audit Committee.

The final composition of the Budget Review Board included three Members of Council and seven City staff. According to the Terms of Reference for the BRB, Standing Committee Chairs may be invited to participate in the activities of the BRB, as required, but are not considered official members of the BRB.

In 2016, the Organizational Alignment resulted in changes to the staff membership of the Budget Review Board. Specifically, the two former Deputy City Manager positions were removed from the membership. The new membership now included three Members of Council and five City staff.

Despite the changes to the Budget Review Board's composition since its inception, the number of elected officials has never exceeded the fifty percent threshold required under the Act's definition of a committee.

Beyond composition, the Ontario Ombudsman has determined that the role and function of a group must also be examined when considering whether a body qualifies as a committee under the Act. Over the course of numerous reports, the Ombudsman has settled on the following distinction for determining if an entity is carrying out the functions of a committee or similar body:

“[W]hen groups primarily exchange information or advance positions a municipality has already decided upon without laying the groundwork for decision-making by council, the body will not constitute a committee. However, if groups have their own authority to make decisions or provide recommendations to council, they may be functioning as a committee.”¹

As clearly stated in the Terms of Reference, the Budget Review Board does not make policy decisions affecting the City’s programs. Rather, the Budget Review Board was established as a means of providing a supplemental challenge function to staff’s existing budget challenge process. Specifically, the BRB was tasked with analyzing, challenging and vetting departmental budget estimates, created in line with Council’s budget directions. The BRB has not been delegated any decision-making authority and does not make recommendations to Committee or Council.

Through the course of my documentation review, including action summaries and interviews with members of the BRB, I have found no evidence to suggest the BRB has strayed from its core function of challenging budget assumptions and reviewing departmental budget estimates.

As the Budget Review Board meets neither the composition nor function tests described above, the BRB is therefore not a committee of Council under the *Municipal Act, 2001* or the Procedure By-law. Consequently, the BRB is neither subject to the open meetings provisions of the Act nor my jurisdiction as Meetings Investigator.

Nonetheless, after reviewing the action summaries of the Budget Review Board, I did make suggestions to the Secretary of the BRB on ways to improve the record keeping for the BRB. Specifically, the action summaries list all those in attendance, without specifying whether an individual is a formal member of the BRB. To avoid any future confusion respecting the official composition of the BRB, I recommended that the meeting minutes should clearly and distinctly record the members of the BRB in

¹ Ombudsman of Ontario, *Investigation into whether the Recreation Committee for the Town of Kirkland Lake violated the Municipal Act’s open meeting requirements* (November 2017) at 21, online: <<https://ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2017/town-of-kirkland-lake>>

attendance, those members who are absent or have sent regrets and list separately all others in attendance, including delegates or Standing Committee Chairs/Vice-Chairs. In response to these suggested, best practices, the Secretary of the Budget Review Board and the City Clerk and Solicitor have agreed to recommend these matters for the BRB to formally consider such revisions to its current, minute-taking process.

Additional Concerns

As noted above, the Request called into question the meeting practices of the Budget Review Board, but also focused on statements made by a member of the BRB which suggested unreported information had been shared with the BRB and unreported meetings may have taken place prior to Council's consideration of the 2018 Operating and Capital Budgets.

While the initial intake analysis confirmed the Budget Review Board was not a committee that was subject to the open meeting provisions, there continued to be outstanding concerns of potential open meeting violations. I determined that interviews with relevant City staff and Members of Council were required to resolve the outstanding concerns and I subsequently initiated the formal inquiry.

Councillor Hubley's Public Statements

The allegations of unreported information and meetings in the Request were largely based on comments made by Councillor Hubley when he appeared as a guest on the Rob Snow program (CFRA radio) on December 14, 2017:

“Rob, I'm actually on the Budget Review Committee along with the Mayor and Councillor Cloutier and the City Manager. So, we had an indication that we were doing very well this year because we meet on a monthly basis and we're tracking the pluses and the minuses so the actual number I don't think anybody really knew for sure until Monday because the City Manager had asked staff to triple-check that number -- he did not want it coming out until we were solid on the number. But, certainly, a month ago we knew we were tracking into the plus and well into the plus.”

Over the course of the Inquiry, it became evident that Councillor Hubley's public statements did not accurately reflect the activities of the Budget Review Board.

During his interview with me, Councillor Hubley explained the context and content of his remarks during the radio interview. First, he stated that his intention was to speak

strictly on his own behalf and not the BRB. He further added that by saying: “*we meet on a monthly basis...*” and “*certainly, we knew a month ago*”, he was in fact referring to only four meetings of the BRB and the more specific date of November 3, 2017, which was the last meeting of the BRB. He stated that there were no other meetings of the BRB than those reported and none after November 3, 2017. Councillor Hubley acknowledged that his comments as expressed could lead a reasonable person to conclude that several other meetings could have taken place prior to the last meeting of November 3, 2017 and a subsequent one on or about November 14, 2017.

The Councillor also explained that the words: “*we knew we were tracking into the plus and well into the plus,*” pertained only to his own and individual judgment and prediction. He confirmed that the MPAC property assessment issue was not specifically discussed at the BRB November 3, 2017 meeting. He personally noted however, in the supporting documents provided by the City Treasurer that the federal cash-in-lieu of property taxes was listed as an outstanding revenue issue. He subsequently concluded, that if that issue was resolved before the Council Budget meeting of December 13, 2017, the City would ultimately end the year with a considerable surplus. He also confirmed that he did not share that view with colleagues at the last BRB meeting and that he in fact learned of the specific surplus number from the Mayor’s Office a day or two before the Council meeting of Wednesday, December 13, 2017.

Based on my interviews, it is my understanding the Treasurer advised the BRB, on November 3, 2017, that City staff was indeed forecasting a small deficit for 2017, and that a few outstanding matters could help offset the deficit or result in a small surplus.

Councillor Hubley’s explanation about the number of meetings is consistent with the evidence gathered in the BRB documentation and the interviews.

I therefore accept Councillor Hubley’s clarification of his statements made on the Rob Snow program and find no evidence to support the allegation that the Budget Review Board held unreported meetings and was privy to unreported information regarding the 2017 deficit or surplus prior to the December 13, 2017 Council meeting.

Other Potential Meetings

Interviews with the Complainants and other Members of Council revealed concerns regarding other informal, private meetings that may have taken place leading up to Council’s budget deliberations on December 13, 2017, potentially in violation of the Act.

As summarized in the background, there were two motions before Council on December 13, 2017, both prepared and discussed among Members of Council before the meeting. With respect to the first motion, eight Councillors publicly confirmed their intention to support the motion when it was announced and circulated on Twitter, six days before the Council meeting. The second motion, introduced by the Mayor immediately following the Treasurer's update at the Council meeting, appeared to have the necessary votes lined up before the meeting began. I understand this speculation was reinforced through private and public statements in the day or two following the Council meeting. In both cases, concerns that informal gatherings of Members of Council may have taken place were raised.

Up until recently, the definition of a "meeting" in the Act has simply been:

"any regular, special or other meeting of a council, of a local board or of a committee of either of them."

This definition, described by the Ontario Ombudsman as "uninstructive and circular"², did not provide a great deal of nuance to address other types of gatherings that may be in violation of the open meeting provisions.

As Meetings Investigator for the City of Ottawa, I have been regularly called upon to provide guidance on how the open meeting provisions might apply in varying circumstances. Guided by positions taken by my fellow provincial colleagues, including the Ontario Ombudsman, the criteria I have relied upon in determining whether the open meeting provisions apply are as follows:

- 1) Does the gathering involve a quorum of members of Council or a Committee of Council?
- 2) If so, does the discussion or purpose of the gathering materially advance the business of Council?
- 3) Do any of the exceptions referenced in Section 239 apply?

This working definition closely resembles a new definition of a "meeting", formally incorporated into the *Municipal Act, 2001* as part of changes introduced in Bill 68 (*Modernizing Ontario's Municipal Legislation Act, 2017*).

² Ontario Ombudsman, Submission to the Standing Committee on Social Policy on Bill 68 Modernizing Ontario's Municipal Legislation Act, 2017, at 6, online < <https://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Ombudsman-Bill68-EN-accessible.pdf>

Effective January 1, 2018, Section 238 of the *Act* now defines a “meeting” as (emphasis added):

“any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

(a) a quorum of members is present, and

(b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Over the course of my interviews with Members of Council and City staff, I did not find any evidence of unreported formal or informal meetings between Members of Council leading up to Council’s budget deliberations on December 13, 2017, either by the group of Councillors supporting the Leiper motion which was withdrawn, or the group of Councillors supporting the Mayor’s motion which was adopted, that would meet the test described above.

I would like to take this opportunity to confirm that the open meeting provisions do not prevent Members of Council from having discussions, to gather informally or to seek support for a particular motion or initiative. That is the natural political process of municipal politics. Nevertheless, Members are cautioned to be mindful that these informal gatherings can have the potential to materially advance the business or decision-making of Council outside of the public domain, particularly if a quorum of Council or of a committee of Council is formed inadvertently.

Information Sharing

Finally, the matter of information sharing during the budget development process was raised for my consideration as part of interviews with several Members of Council. I conveyed to those interviewed, and I note for the purposes of this report, that how and when City staff or the Mayor report out information from the Budget Review Board or on the budgetary process generally, is a matter of policy that is not within my jurisdiction as Meetings Investigator. It is entirely up to Council to decide what information ought to be brought to the attention of Council as a whole, including how and when that information is disseminated.

FINDINGS AND CONCLUSIONS

The Request for Investigation not only called into question the meeting practices of the Budget Review Board, but also questioned public statements made by a member of the Budget Review Board which suggested unreported information had been shared with the BRB and unreported meetings may have taken place prior to Council's consideration of the 2018 Operating and Capital Budgets. As indicated in my analysis above, additional claims of informal meetings that may have been in violation of the open meeting provisions were raised with me throughout the Inquiry.

I conclude that the Budget Review Board does not qualify as a committee under the *Municipal Act, 2001* or the City's Procedure By-law. For this reason, the Budget Review Board is not subject to the open meeting provisions nor my jurisdiction as the City's Meetings Investigator.

As noted in the report, the matter of Standing Committee Chair involvement in the activities of the Budget Review Board was brought to my attention for my consideration. I have concluded that the involvement of Standing Committee Chairs in the BRB's review of the draft budgets, and whether or not they occur, is a matter of policy and therefore not within my jurisdiction.

I further conclude there is no evidence to substantiate claims that formal or informal, unreported meetings of Members of Council occurred leading up to Council's budget deliberations on December 13, 2017 that were in violation of the open meeting provisions.

Finally, I was asked to consider and rule on the responsibility of City staff and the Mayor to share information during the budgetary process. I have concluded that the dissemination of budget information is also a matter of policy for Council to consider and not within my jurisdiction.

I have no recommendations for Council in this regard.

REPORT

While my investigation found no violations of the open meeting rules set out in the *Municipal Act, 2001*, there was considerable public discourse on this issue and the Request for Investigation was made public by one of the complainants.

I believe it is in the public interest that I file this report with City Council and provide guidance on the evolution of the open meeting rules as well as to elucidate my jurisdiction as Meetings Investigator.

No response is required by Council to this report.

Respectfully submitted,

Robert Marleau C.M.

Meeting Investigator