

Town of Newmarket FOI Request A17-15-31

Information and Privacy Commissioner Appeal and Order

Enclosed please find a timeline of events, which can be confirmed by Town of Newmarket documents:

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| 2000 – 2003 | Councillor was elected as a Town Councillor for the municipality of Newmarket. |
| 2003 – 2006 | Councillor did not serve on Council |
| July 2005 | Councillor’s spouse purchased a parcel of property, 366 Silken Laumann Drive, from the Town of Newmarket. |
| January 2006 | <p>The lawyer representing Councillor and spouse sent correspondence to the Town of Newmarket, and gave a deputation to Newmarket Town Council, requesting, “that the Town take back the lot and return the purchase price.” [Council Minutes – Monday, January 23, 2006].</p> <p>Town Council voted not to grant the request. [Council Minutes – Monday, January 23, 2006].</p> |
| October 2006 | Councillor was re-elected to Newmarket Town Council in the capacity of Councillor – Ward 1. |
| December 2006 | Councillor’s spouse files a statement of claim with the Ontario Superior Court of Justice on against the Town of Newmarket. The lawsuit asserted that the property could not be developed as planned due to a storm water easement. Schedule A of the Agreement of Purchase and Sale, signed, initialled, and dated, by the Councillor’s spouse on June 7, 2005, states “ <i>The Purchaser acknowledges that the Town of Newmarket is to retain a 4.5 metre wide easement along the westerly side of the property for storm sewer purposes.</i> ” [Agreement of Purchase and Sale] |

Although the spouse was named as the litigant in the lawsuit against the Town of Newmarket, the Councillor declared a conflict of interest during a two-year period *“regarding a Litigation Matter located in Ward 1 because he and his wife own the subject property. Councillor Vegh advised that he would take no part in the discussion or voting on the foregoing matter.”*

[Committee of the Whole Minutes – Monday, October 20, 2008;
Council Minutes – Monday, October 27, 2008;
Committee of the Whole Minutes – Monday, November 3, 2008;
Council Minutes – Monday, November 10, 2008]

2007 – 2009 During the two-year litigation, several senior staff members from the Town of Newmarket were subpoenaed to attend examinations and discoveries in Toronto. This included then Town Solicitor, Susan Plamondon, and then Director, Engineering, Jim Koutroubis.

April 2009 The Town of Newmarket settled the legal matter with the Councillor and spouse. The Town of Newmarket re-acquired the property at 366 Silken Laumann Drive, Newmarket, and returned the full purchase price to the Councillor and spouse.

The settlement provided that the Town of Newmarket pay all legal fees, both the litigant and the Town’s.

For the duration of the litigation, the Councillor was an elected member of Newmarket Town Council.

NTAG had requested the following information in a Freedom of Information request to the Town of Newmarket:

1. Total legal costs by the Town of Newmarket to defend this litigation;
2. Total legal costs accrued by the Councillor and his spouse, which were subsequently paid by the Town of Newmarket as part of the legal settlement;
3. Total staff costs in preparing for litigation (we understand that several senior staff members attended examinations and discoveries in Toronto – what was the cost of their time).
4. The rationale, or reasoning, for settling this lawsuit. This information can be found in the Minutes of Settlement.

The Town of Newmarket insurer paid \$41,860.90 in legal costs from March 2007 – June 2009.

The Town of Newmarket insurer paid the legal costs for the plaintiff (Councillor and spouse). However, the Town will not disclose the amount of these legal fees.

The Town of Newmarket reimbursed the Councillor and his wife \$175,000 for the property at 366 Silken Laumann Drive.

NTAG appealed this Freedom of Information (FOI) request to the Information and Privacy Commissioner of Ontario (IPC). We participated in mediation, and when there were still several outstanding issues, had the matter filed for adjudication. We wanted to understand the rationale for settling this lawsuit, particularly when a former Town Council, in 2006, denied requests for reimbursement or negotiation. NTAG was denied the Minutes of Settlement by the IPC, for the sole reason as it is protected under solicitor-client privilege.

We assert that the Town has an obligation to share with the public the rationale for settling a lawsuit with a current member of Council. NTAG is not suggesting anything untoward. However, in the absence of transparency and public knowledge, it remains unknown why the current Town Council chose to settle a lawsuit with a current Councillor, when a previous Town Council did not.

Furthermore, the Councillor was duly elected to represent the constituents of Newmarket, as well as the Corporation of Newmarket. The fact that the Councillor chose to sue the very entity they were elected to represent is concerning. It is unknown, at this time, if this constitutes a Conflict of Interest under the Municipal Act.

The Adjudicator in this case was clear that he was *“unable to substitute his discretion for the Town’s”* or comment on the Councillor’s conduct. The Adjudicator can only determine whether documents have/have not been fairly shared with the public. [Information and Privacy Commissioner Order MO-3389].

The only entity that can waive privilege concerning the Minutes of Settlement is the current Town Council. Sarah Niezen, Records and Projects Coordinator, Legislative Services, wrote to the IPC Adjudicator in the Representations of the Town of Newmarket: *“...Council as the ‘head’ of the institution would need to explicitly waive their privilege.”* The letter further stated *“The disclosure of the requested records to the advocacy group would not increase public confidence in the operations of the Town.”* [Representations of the Town of Newmarket, Appeal Number MA16-56, November 3, 2016]

NTAG did request that Town of Newmarket Council waive privilege to gain access to the Minutes of Settlement, to no avail.



NTAG investigated this issue as we continue to be concerned with decisions made *in camera*, without public knowledge or consultation, that financially affect the taxpayers. We will continue to review decisions made *in camera* that do, or have the potential, to cost taxpayers. Taxpayers have the right to full accountability and transparency in financial decisions.

The Town insurance company paid the settlement fees (consisting of legal fees, costs, disbursements, damages, etc.). The taxpayers, vis-à-vis the Town, pay the insurance policy. Insurance premiums are known to increase after claims.

January 19, 2017.