

Ontario Ombudsman Closed Meeting Complaint Form  
Re: Niagara Falls City Council  
October 23, 2014

Andre Marin  
Office of the Ombudsman of Ontario  
Bell Trinity Square  
483 Bay Street, 10th Floor, South Tower  
Toronto, ON  
M5G 2C9

**1. Which municipal council, committee or local board is your complaint about?**

Niagara Falls City Council 2010-2014

**2. Please provide details of the closed meeting that you are complaining about, including the date, location, subject matter and voting outcome (if known).**

There are numerous closed meetings referred to through FOIA emails that included, at the very least, Niagara Falls Mayor Jim Diodati and Staff, City Clerk Dean Iorfida, Councillor Wayne Thomson, Niagara Falls By Law Officers, Niagara Regional Police and Marineland Canada between 2011-2014. As the City refuses to disclose meeting notes we do not have specifics of a) how many closed meetings took place b) who was present and how that process was decided c) the notes, discussion, or outcomes of the meetings d) the exact date, time, location and subject matter.

The first reference to a closed meeting comes in a August 3, 2011 email from Dean Iorfida to Niagara Regional Police Sgt. Geoffrey Skafffeld, By Law Franco Piscitelli, Mayor Jim Diodati, Ken Beaman, and Councillor Wayne Thomson, "I understand last week there was a meeting with yourself and City officials regarding the Marineland protests." [1]

The next reference of a closed meeting comes in a September 13, 2011 email from Niagara Falls City Clerk Dean Iorfida, "Councillor Thomson contacted me yesterday. Mr. Holer would like another meeting with the Mayor and the Police on the protestor issues." [2]

On October 6, 2011 another request was referred to in an email from Executive Secretary Cathy Crabbe to the Niagara Regional Police, City Clerk Dean Iorfida, By Law Officer Frank Piscitelli and Mayor Jim Diodati, "Councillor Wayne Thomson, on behalf of John Holer, Owner, Marineland has requested a meeting with staff and the NRP regarding the ongoing protestor issue at Marineland." [3]

The next reference comes in an exchange between Secretary Cathy Crabbe to City Clerk Dean Iorfida between March 8-13, 2012, "Dean: Need a little direction please. Wayne T called this morning to book an appt for John Holer with Jim to discuss his

“protestor” issue again before the season starts. John wants to discuss a suggestion that come out of the meeting held last fall (?) where their might be a possibility for Marineland leasing some of the City’s land at the entrance thereby making them responsible for the property and who (not the protestors), can stand in the area. I think I need to have some staff at the meeting with the Mayor. Because you were at the last meeting, beside yourself who would you suggest should attend....Planning, Legal???” Response from Dean Iorfida, “The more I think about it the more more I think there shouldn’t be any staff at the initial meeting. Knowing how Wayne operates and Mr. Holer’s past, staff will be forced into doing the legwork on matters the private property owner should be doing i.e. legal surveys, financial offer for the land, written proposal, etc. The more staff in the meeting, the more expectations that staff will be taking the lead.” [4]

Cathy Crabbe to Dean Iorfida, Jim Diodati, Ken Todd March 19, 2012, “Further to a request from John Holer to Councillor Thomson a meeting, scheduled for March 28, has been arranged for them to meet with the Mayor and City Clerk to discuss a suggestion that came out of the meeting last fall where the might be a possibility of Marineland leasing some of the City’s land at the entrance to their property. This would be the area where the “protestors” gather when picketing the Marineland attraction. It was thought at that time if Marineland controlled the property through a leasing arraignment, they would have the right to have protestors removed from their property.” [5]

On May 30, 2012 City Clerk Dean Iorfida contacted Georgina Allan of the Niagara Regional Police, “You may recall we had a meeting last fall with Mr. Holer, the Mayor et al related to the protests. There was some discussion in that meeting about the possibility of Marineland leasing the City-owned land in the vicinity of the entrance to the parking lot. To attempt to justify this lease, we need to demonstrate that there are safety concerns.” [6]

From emails obtained through FOIA It appears that at least 3 closed door meetings occurred between August 2011 and May 2012 and that at these meetings the Mayor, Mayor’s staff, and Councillors were present as were Marineland and the Niagara Regional Police. All of these meetings reference leasing of public land to Marineland as a way to criminalize demonstrations taking place on public property out front of the facility and all of these meetings occurred in a closed setting, wherein the City Clerk and the Mayor’s staff explicitly limited and selectively controlled involvement of City Staff and Council.

Before verification of these meetings through FOIA emails (May 2014), requests were made to City Clerk Dean Iorfida to release meeting notes from these closed meetings and also an ask to City and Staff to no longer continue the practice of closed meetings on issues that clearly impact constituents and that should be discussed in open meeting, his response on July 16, 2013 was, “The meeting on June 18, 2013 was a meeting called by the Mayor’s Office at the request of Marineland. It was not a meeting of Council and the Council, as a whole, were not invited to the meeting, therefore, it does not meet the requirements under the Act to be advertised or minutes of the

proceedings to be recorded.” Iorfida did not mention previous closed door meetings, but acknowledged that another closed door meeting occurred on June 18, 2013. [7]

### **3. Why do you believe that this meeting should not have been closed to the public?**

The discussion at these meetings directly effects constituents, Charter Rights, and the lease of public lands to a private corporation. City Staff selectively controlled who would be invited to such meetings as a way to try and get around Municipal Act regulations on meeting procedure and still refuse to release notes, or to agree to discontinue this practice on this issue.

In the Ombudsman decision on October 3, 2013 “Re: Closed Meeting Complaint - January 25, 2012 Meeting with wpd Canada” the Ombudsman laid out that, “the fact that a meeting was arranged and hosted by a third party does not relieve Council of its obligation under the Act” and further, “...Council came together for the purpose of laying the ground work for future Council decision-making.” In the ruling the Ombudsman claimed these meetings were, “held in contravention of the open meeting requirements.”

In the Ombudsman ruling on January 24, 2014 “Re: Closing Meeting Complaint - September 9, 2013 Closed Session” the Ombudsman referenced a previous “litigation or potential litigation” exemption ruling that outlined, “there is no exception under the Act that allows Council to meet behind closed doors to negotiate agreements with third parties.”

Further with that ruling, the Ombudsman lays out the “acquisition and disposition of land” exemption, “A review of the history and the case law concerning this exception confirms that its primary purpose is to protect the municipality’s bargaining position in property negotiations. Discussing the Town’s position on the proposed terms of the lease with the other party defeats this purpose; therefore, this exception does not apply.”

Last, the issue of quorum is impossible for us to present as City Clerk Dean Iorfida has refused to disclose notes or attendance at these meetings. Regardless, as noted in the July 25, 2014 ruling “Re: Complaints re: Closed Meetings of Council on or about May 21 and September 3, 2013” the Ombudsman clearly laid out that having quorum present “is not determinative” as to whether or not a meeting took place, or whether or not an open meeting should have taken place.

We believe these meetings should have been public as there is no exception for them to be closed.

**From:** Dean Iorfida  
**To:** GEOFFREY SKAFTFELD  
**CC:** Franco Piscitelli; Jim Diodati; Ken Beaman; Wayne Thomson  
**Date:** 8/3/2011 10:39 AM  
**Subject:** On Street Activities  
**Attachments:** By-law 1977-169.pdf

Superintendent Skaftfeld:

I understand last week there was a meeting with yourself and City officials regarding the Marineland protests.

Councillor Thomson asked me to forward a copy of what is known as the City's "Importuning" By-law. The by-law is from the 1970's and was enacted when various tourist related establishments were soliciting on the public sidewalks and roadways. Despite the vintage of the by-law, we still use it as an enforcement tool to deal with over-solicitous activities on the public realm.

The City appreciates that there is a fine balance between freedoms of speech and assembly, public safety and solicitous activities. Nonetheless, the by-law is attached for your consideration. Also, as you are probably aware, the Province passed the Safe Streets Act a few years ago. Although the main purpose behind the legislation was to deal with the squeegee kid issue in Toronto, there could be some applicability for over zealous protestors aggressively giving out pamphlets/ literature etc.

[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_99s08\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_99s08_e.htm)

Feel free to give me a call.

Thanks  
Dean

Dean Iorfida, City Clerk  
Niagara Falls  
905-356-7521, Ext. 4271  
905-356-9083 (Fax)

**From:** Dean Iorfida  
**To:** Carey Campbell; Cathy Crabbe  
**Date:** 9/13/2011 11:32 AM  
**Subject:** Fwd: Re: Marineland re: Animal Rights Group Protestors

Councillor Thomson contacted me yesterday. Mr. Holer would like another meeting with the Mayor and the Police on the protestor issues.

The next protests are scheduled for October 9th, the Sunday of Thanksgiving weekend.

From City staff, myself, Franco and Ken Beaman should be invited to attend.

Thanks  
Dean

>>> Dean Iorfida 9/2/2011 4:14 PM >>>  
Just spoke to Wayne and he was going to relay this to Mr. Holer.

-----Original Message-----

From: Carey Campbell  
To: <[johnholer@marinelandcanada.com](mailto:johnholer@marinelandcanada.com)>  
Cc: Cathy Crabbe <[ccrabbe@niagarafalls.ca](mailto:ccrabbe@niagarafalls.ca)>  
To: Dean Iorfida <[diorfida@niagarafalls.ca](mailto:diorfida@niagarafalls.ca)>  
To: Franco Piscitelli <[FPiscitelli@niagarafalls.ca](mailto:FPiscitelli@niagarafalls.ca)>  
Cc: Jim Diodati <[jdiodati@niagarafalls.ca](mailto:jdiodati@niagarafalls.ca)>  
Cc: Ken Todd <[KTodd@niagarafalls.ca](mailto:KTodd@niagarafalls.ca)>  
To: Nick Pietrangelo <[npietrangelo@niagarafalls.ca](mailto:npietrangelo@niagarafalls.ca)>  
Cc: Serge Felicetti <[sfelicetti@niagarafalls.ca](mailto:sfelicetti@niagarafalls.ca)>  
To: Wendy Canavan <[wcanavan@niagarafalls.ca](mailto:wcanavan@niagarafalls.ca)>  
Cc: <[skaft@nrps.on.ca](mailto:skaft@nrps.on.ca)>

Sent: 9/2/2011 4:11:37 PM  
Subject: Re: Marineland re: Animal Rights Group Protestors this weekend

Great. Thank you. We did relay the service centre phone number and will reiterate this to Mr. Holer.

>>> Dean Iorfida 9/2/2011 4:09 PM >>>  
Franco provided it. He's to call the Service Centre and the shift foreman will contact Nick.

Although it is really not necessary as Nick will be on site and in the vicinity of the protests for their entire scheduled time I.e. He will not be anywhere else on Monday.

-----Original Message-----

From: Carey Campbell  
To: John Holer <[johnholer@marinelandcanada.com](mailto:johnholer@marinelandcanada.com)>  
Cc: Cathy Crabbe <[ccrabbe@niagarafalls.ca](mailto:ccrabbe@niagarafalls.ca)>  
Cc: Carey Campbell <[ccampbell@niagarafalls.ca](mailto:ccampbell@niagarafalls.ca)>  
To: Dean Iorfida <[diorfida@niagarafalls.ca](mailto:diorfida@niagarafalls.ca)>  
To: Franco Piscitelli <[FPiscitelli@niagarafalls.ca](mailto:FPiscitelli@niagarafalls.ca)>  
Cc: Jim Diodati <[jdiodati@niagarafalls.ca](mailto:jdiodati@niagarafalls.ca)>  
Cc: Ken Todd <[KTodd@niagarafalls.ca](mailto:KTodd@niagarafalls.ca)>  
To: Nick Pietrangelo <[npietrangelo@niagarafalls.ca](mailto:npietrangelo@niagarafalls.ca)>  
Cc: Serge Felicetti <[sfelicetti@niagarafalls.ca](mailto:sfelicetti@niagarafalls.ca)>  
To: Wendy Canavan <[wcanavan@niagarafalls.ca](mailto:wcanavan@niagarafalls.ca)>

**From:** Cathy Crabbe  
**To:** 1197@nrps.on.ca; CROOM1; Dean Iorfida; Franco Piscitelli; Jim Diodat...  
**Date:** 10/6/2011  
**Time:** 2:30 PM - 3:00 PM  
**Subject:** Marineland - Animal Rights Group Protestors  
**Place:** CROOM1

Councillor Wayne Thomson, on behalf of John Holer, Owner, Marineland has requested a meeting with staff and the NRP regarding the ongoing protestor issue at Marineland.

The next protest is scheduled for Sunday, October 9.

Cathy Crabbe  
Executive Secretary to  
Mayor Jim Diodati  
City of Niagara Falls  
Tel: 905-356-7521, Ext.4202  
Fax: 905-374-3557  
[ccrabbe@niagarafalls.ca](mailto:ccrabbe@niagarafalls.ca)

**From:** Dean Iorfida  
**To:** Cathy Crabbe  
**Date:** 3/13/2012 10:02 AM  
**Subject:** Re: Fwd: Re: Marineland

The more I think about it the more I think there shouldn't be any staff at the initial meeting. Knowing how Wayne operates and Mr. Holer's past, staff will be forced into doing the legwork on matters that the private property owner should be doing: i.e., legal surveys, financial offer for land, written proposal etc.

The more staff in the meeting, the more expectations that staff will be taking the lead.

Maybe Jim, myself and Ken Todd can talk about this in more detail when I'm back next week.

Thanks  
Dean

-----Original Message-----  
**From:** Cathy Crabbe  
**To:** Dean Iorfida <diorfida@niagarafalls.ca>

**Sent:** 3/12/2012 5:04:30 PM  
**Subject:** Fwd: Re: Marineland

Dean...sorry to bother you, but I was wondering if you had suggestions as to which staff should be involved...thanks, Cathy

>>> Cathy Crabbe 3/8/2012 3:02 PM >>>  
March 28 at 2:00 p.m.

>>> Dean Iorfida 3/8/2012 1:43 PM >>>  
When is the tentative date of the meeting?

-----Original Message-----  
**From:** Cathy Crabbe  
**To:** Dean Iorfida <diorfida@niagarafalls.ca >

**Sent:** 3/8/2012 12:51:22 PM  
**Subject:** Marineland

Dean:

Need a little direction please. Wayne T called this morning to book an appt for John Holer with Jim to discuss his "protestor" issue again before the season starts. John wants to discuss a suggestion that came out of the meeting held last fall (?) where their might be a possibility of Marineland leasing some of the City's land at the entrance thereby making them responsible for the property and who (not the protestors), can stand in that area.

I think I need to have some staff at the meeting with the Mayor. Because you were at that last meeting, beside yourself who would you suggest should attend...Planning, Legal,????

Please let me know. I have the meeting set for a time when senior staff is meeting. Based on your suggestions, I will probably need to re-schedule the Holer meeting.

Thanks....hope the weather's hot and sunny where you are.

Cathy

**From:** Cathy Crabbe  
**To:** Dean Iorfida; Jim Diodati; Ken Todd  
**Date:** 3/19/2012  
**Time:** 3:00 PM - 3:30 PM  
**Subject:** Marineland  
**Place:** Mayor's office

Further to a request from John Holer to Councillor Thomson a meeting, scheduled for March 28, has been arranged for them to meet with the Mayor and City Clerk to discuss a suggestion that came out of the meeting last fall where there might be a possibility of Marineland leasing some of the City's land at the entrance to their property. This would be the area where the "protestors" gather when picketing the Marineland attraction. It was thought at that time if Marineland controlled the property through a leasing arrangement, they would have the right to have protestors removed from their property.

The purpose of this meeting is to discuss the merits and possibilities in advance of the March 28 meeting.

**From:** Dean Iorfida  
**To:** GEORGINA ALLAN (CST)  
**Date:** 5/30/2012 4:07 PM  
**Subject:** Re: Traffic Incident Reports Related to Marineland Protests

Thanks Gina. Our lawyer indicates the following:

"anything you can get may be helpful. Incident reports are marvelous of course, but any evidence of any on-going expense or hardship to the Police in regularly dealing with the protesters would also be helpful."

Thanks again  
Dean

>>> "GEORGINA ALLAN (CST)" <1852@nrps.on.ca> 5/30/2012 2:56 PM >>>

I am out of the office this afternoon but will check on that tomorrow when I return to work. I will let you know soon.

----- Original Message -----

From: Dean Iorfida [<mailto:diorfida@niagarafalls.ca>]  
Sent: Wednesday, May 30, 2012 12:00 PM  
To: GEORGINA ALLAN (CST)  
Cc: Ken Beaman <[kbeaman@niagarafalls.ca](mailto:kbeaman@niagarafalls.ca)>  
Subject: Traffic Incident Reports Related to Marineland Protests

Hi Gina:

Hope all is well.

You may recall we had a meeting last fall with Mr. Holer, the Mayor et al related to the protests. There was some discussion at that meeting about the possibility of Marineland leasing the City-owned land in the vicinity of the entrance to the parking lot.

To attempt to justify this lease, we need to demonstrate that there are safety concerns.

Would it be possible to get any police incident reports related to any of the protests. I had heard that there had been an incident with a cyclist at the July protest but any information would be helpful.

Call me if you have any questions.

Thanks  
Dean

Dean Iorfida, City Clerk  
Niagara Falls  
905-356-7521, Ext. 4271  
905-356-9083 (Fax)

The City of Niagara Falls Confidentiality Notice

Re: Marineland and Marineland Animal Defense #legalproblems



 **Arthur Miller** <marinelandanimaldefense@gmail.com>  
to WILLIAM, Dean, wgates

7/16/13 ☆ ↩

Hey all,

This is an official request RE: Niagara Falls City Council July 9, 2013. At that council meeting the idea was presented that Marineland Animal Defense does not have a protocol for demonstrating, does not have follow established legal guidelines, and does not respect the legal right of Mr. Hoier and Marineland Canada to carry out his business. At no point was any evidence brought forward to support these claims.

We would like to meet with a representative of City Council - Councillor Wayne Gates, as well Sgt. Schoenals to direct them to the protocols which we have in place, the legal guidelines that we follow and agreements that have been reached between these two parties. It is our hope that through Councillor Gates this information can be directed back to Council.

Both City Clerk Dean Iorfida and Mayor Jim Diodati have continued to refuse to listen to public concern on this issue relaying that we have not "asked" them for a meeting. This is disingenuous as their actions at Council illustrate their bias.

In response to this ask for this meeting - we are also requesting that City staff provide all meeting minutes for all previous closed door meetings with Marineland Canada Inc, the City of Niagara Falls and the Niagara Regional Police and also place the ask that these closed door meetings no longer take place. This is an issue of public concern and should be treated as such - whether or not the City of Niagara Falls wants to directly invite Marineland Animal Defense or not.

Please advise on dates and times to meet.

Sincerely,  
Dylan Powell

...

Dean Iorfida <diorfida@niagarafalls.ca>  
to twall, Carey, me, WILLIAM, Wayne ▾

7/18/13 ☆ ↶ ▾

Dylan:

Clearly, you did not actually see the most recent Niagara Falls Council meeting. If you had, you would have heard me confirm that the NRP and Marineland Animal Defense do communicate prior to, and at, the protests on the "protocol, rules and terms of engagement."

In response to a question from Councillor Gates, I indicated that I did not see the value in the City facilitating a meeting with the various parties, including MAD, as long as you were committed to handing out your literature/brochures and subjecting families with young children to your vitriol, practices which a number of Councillors indicated their opposition to. If you are now telling me that you are open to consider ceasing those activities I'd be happy to facilitate such a meeting. I assumed those requests would be non-starters for you.

Niagara Falls City Council, as an entity, is subject to the meeting provisions outlined under s. 239 of the *Municipal Act*. All meetings are open to the public unless one of the exceptions under 239(2) has been fulfilled. I can tell you that only on one occasion did Council go into a closed meeting related to anything to do with Marineland and that was, last year, to received legal advice from the City Solicitor with regard to the proposed lease and, as per the provisions of the Act, a related resolution was approved and part of the Council package for May 29, 2012. Marineland would not be a participant or privy to any In Camera meeting of Council, which are strictly Council and pertinent Senior Staff.

The meeting on June 18, 2013 was a meeting called by the Mayor's Office at the request of Marineland. It was not a meeting of Council and the Council, as a whole, were not invited to the meeting, therefore, it does not meet the requirements under the Act to be advertised or minutes of the proceedings to be recorded. Similarly, if representatives of your organization were to meet with the Mayor or City staff on an operational issue, there is no requirement for such a meeting to be advertised etc.

Finally, my bias is to the Corporation of the City of Niagara Falls and the wishes of the Council as passed by motion and resolution.

Thanks  
Dean



Arthur Miller <marinelandanimaldefense@gmail.com>

to Jan, Dean, WILLIAM, Wayne, twall, Carey ▾

7/18/13 ☆



Mr. Iorfida,

As City Staff, including yourself, continue to misrepresent our organization you clearly are not aware of the guidelines and protocols which we follow. As has been, and can be repeated to you, **offering leaflets to the public is a protected activity**. As City Clerk you are well aware of this fact. To refuse to meet on the basis of our organization engaging in protected, lawful speech is another **serious breach of your duties as City Clerk**.

More importantly, City staff have defamed our organization claiming, as you have above, that we "subject young children to vtrol." Doing so would be considered a criminal offense and at no time has the M.A.D. organization received complaint from the NRP on this point, nor has either Marineland Canada or any of the Councillors you speak of relayed any documented evidence of such incidents. Repeating this false claim in your email, and then forcing us to restrict protected speech activity in order to meet with the City is entirely disingenuous and unbecoming of someone in your position.

Thank you for clarifying that the City of Niagara Falls will continue with the practice of meeting privately with Marineland Canada and not taking or disclosing notes. As substantive decisions have come out of those meetings we have made the ask of the Niagara Regional Police that they either cease their involvement in such meetings or disclose their meeting minutes and any future meeting minutes. Our issue is not that these meetings are not "advertised," but that substantive decisions are being made at these closed door meetings in regards to issues of public concern and there is no public record of them.

I, and others, look forward to speaking on that motion on August 13th.

Dylan Powell

...