

**BY EMAIL**

May 17, 2023

Council for the Town of Amherstburg  
c/o Mayor Michael Prue  
271 Sandwich Street South  
Amherstburg, ON N9V 2A5

Dear Council for the Town of Amherstburg:

**Re: Closed meeting complaint**

My Office received a complaint alleging that on June 13, 2022, all members of council for the Town of Amherstburg and some of its administrative staff dined together between a scheduled *in camera* meeting and a scheduled open meeting and that this gathering constituted an improperly closed meeting, contrary to the *Municipal Act, 2001* (the “Act”).<sup>1</sup>

I am writing to share the outcome of my review. For the reasons set out below, I have concluded that council for the Town of Amherstburg did not contravene the open meeting requirements on June 13, 2022.

**Ombudsman’s role and authority**

As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public.<sup>2</sup> Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. My Office is the closed meeting investigator for the Town of Amherstburg.

---

<sup>1</sup> SO 2001, c 25.

<sup>2</sup> *Ibid* at s 239.1.

My Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of open meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting procedures. Summaries of the Ombudsman's previous decisions can be found in the digest: [www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

## Review

My Office reviewed the open and closed meeting materials for two open meetings and a closed meeting held on June 13, 2022, including the agendas, minutes, and staff notes from the closed session. We also reviewed email correspondence, a floor plan of the town hall, and the video recording of the open meetings. Finally, we spoke with members of council and staff.

## The June 13, 2022 meetings

On June 13, 2022, council for the Town of Amherstburg held three meetings that were scheduled back-to-back: A special council meeting about planning at 4 p.m., a special *in camera* council meeting at 5 p.m., and a regular council meeting at 6 p.m. The special planning meeting and the regular council meeting were open to the public and held in council chambers, while the *in camera* meeting was held in a boardroom connected to council chambers by an interior door.

The boardroom also has a door opening onto a hallway. Across the hallway is a room commonly referred to as the "fire hall" or "fire training hall." The hallway between council chambers and the fire training hall is visible from the building's lobby.

## *The complaint*

According to the complaint, many people were gathered and waiting in the lobby of town hall to attend the regular council meeting scheduled to begin at 6 p.m. Shortly before the start of the meeting, some of those gathered in the lobby observed all of council, as well as some members of staff, walking together from the fire training hall to council chambers.

483 Bay Street, 10<sup>th</sup> Floor, South Tower / 483, rue Bay, 10<sup>e</sup> étage, Tour sud  
Toronto, ON M5G 2C9

Tel./Tél. : 416-586-3300 Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

[www.ombudsman.on.ca](http://www.ombudsman.on.ca)

Facebook : [facebook.com/OntarioOmbudsman](https://facebook.com/OntarioOmbudsman) Twitter : [twitter.com/Ont\\_Ombudsman](https://twitter.com/Ont_Ombudsman) YouTube : [youtube.com/OntarioOmbudsman](https://youtube.com/OntarioOmbudsman)



According to the complaint my Office received, this suggested that council had dined together in the fire training hall sometime after the end of the *in camera* meeting and before the start of the regular council meeting. Otherwise, the complaint alleged, council members would have returned to chambers using the interior door connecting it and the boardroom.

The complaint further suggested that council had discussed council business while having dinner in the fire training hall.

The complaint also alleged that the Town’s meeting minutes were inaccurate and that a longer break than what was recorded must have taken place between the end of the *in camera* meeting and the start of the regular council meeting – during which time council members had dinner together.

### *Informal council discussions between meetings on June 13, 2022*

The members of council and staff with whom we spoke told us that they do not hold meetings over dinner and that they did not do so on June 13, 2022. They explained that on days when there are council meetings, staff are served an early pizza dinner, and on days when the meetings start early – as they did on June 13, 2022 – members of council are invited to partake in the pizza dinner as well. The pizza is set out in the fire training hall and the dinner is “drop-in style.”

We were told that if there is a break between meetings, council members may use the break to help themselves to a slice of pizza before moving on to the next meeting, but they are careful not to discuss council business together when doing so. We were told staff members are usually present in the fire training hall at the same time and ensure there is no discussion of council business among council members while they are getting pizza. We were also told that certain members of council do not eat the pizza dinner and may use a break between meetings to do other things, such as refresh themselves, speak with constituents in the lobby, or grab their seat early at the next meeting.

No one with whom we spoke could recall a discussion of council business outside of the three scheduled meetings on June 13, 2022.

## **Analysis**

The definition of “meeting” in section 238(1) of the *Municipal Act, 2001* requires a quorum of council members to be present and that they discuss a matter in a way that “materially advances” council’s business or decision-making.

483 Bay Street, 10<sup>th</sup> Floor, South Tower / 483, rue Bay, 10<sup>e</sup> étage, Tour sud  
Toronto, ON M5G 2C9

Tel./Tél. : 416-586-3300 Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

[www.ombudsman.on.ca](http://www.ombudsman.on.ca)

Facebook : [facebook.com/OntarioOmbudsman](https://facebook.com/OntarioOmbudsman) Twitter : [twitter.com/Ont\\_Ombudsman](https://twitter.com/Ont_Ombudsman) YouTube : [youtube.com/OntarioOmbudsman](https://youtube.com/OntarioOmbudsman)



My Office has previously determined that council will likely be found to have been materially advancing its business or decision-making when it votes, reaches an agreement, provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy.<sup>3</sup> By contrast, updates on recent activities or mere communication of information are not as likely to be considered as materially advancing business or decision-making.<sup>4</sup> Moreover, informal gatherings that are only for social purposes or that focus on social matters are unlikely to be considered “meetings” for the purpose of the Act.<sup>5</sup>

In this case, our review did not find any evidence that a quorum of Amherstburg’s council members materially advanced council business or decision-making outside of the three scheduled meetings on June 13, 2022. We were consistently told that such pizza dinners are drop-in style, that some council members choose to use breaks between meetings to do other things, and that in any event, members of both council and staff are vigilant that council business is not discussed at this time. No one with whom we spoke recalled council members discussing council business other than during the three scheduled meetings on June 13, 2022.

### *The record of the meetings*

According to the minutes, the special planning meeting on June 13, 2022 was called to order at 4:05 p.m. and adjourned at 5:00 p.m. The *in camera* meeting was called to order at 5:02 p.m. Staff notes and the minutes of the closed session indicate that council discussed two topics *in camera*, with the second discussion commencing at 5:40 p.m. The closed session was adjourned at 6:06 p.m., and the regular council meeting was called to order at 6:15 p.m. and adjourned at 8:13 p.m.

Our review did not find support for the complaint’s allegation that the Town’s meeting minutes were inaccurate or that closed session had adjourned significantly earlier than what was recorded. The Town does not make audio or video recordings of its closed meetings, but we were able to review the video recording of the two open meetings on June 13, 2022. The videos support the accuracy of the times recorded in the minutes for those meetings. Moreover, the timing recorded in the closed meeting minutes is consistent with the timing of the open session video recordings. Finally, the council

<sup>3</sup> *Saugeen Shores (Town of) (Re)*, 2020 ONOMBUD 3 at para 48, online: <<https://canlii.ca/t/j93c3>>.

<sup>4</sup> *Ibid.*

<sup>5</sup> Letter from the Ontario Ombudsman to Town of Kearney (January 17, 2011) at 2, online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2011/town-of-kearney>>; *Greater Napanee (Town of) (Re)*, 2021 ONOMBUD 2 at para 48, online: <<https://canlii.ca/t/jctvh>>.



members and staff with whom we spoke told us they had no reason to believe the closed meeting minutes were inaccurate.

While the videos of the open sessions were helpful in my review of this complaint, it would have assisted my review further if the Town had made a video or audio recording of the closed session meeting as well. Audio or video recordings provide a clear and accessible record for closed meeting investigators to review, in addition to assisting in ensuring that officials do not stray from the legal requirements during closed session.

The Clerk advised my Office that the Town has since begun recording closed sessions of council, in addition to open meetings. I commend the Town for adopting this practice.

### Conclusion

My review has determined that council for the Town of Amherstburg did not contravene the open meeting requirements on June 13, 2022. My Office did not find evidence that a quorum of Amherstburg's council members discussed matters over dinner in the fire training hall in a way that materially advanced council business or decision-making. Accordingly, there was no "meeting" within the meaning of the Act, apart from the three scheduled meetings that evening. I also found no basis to believe that the times recorded in the Town's minutes for its June 13, 2022 meetings were incorrect.

I would like to thank the Town of Amherstburg for its co-operation during my review. The Clerk confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,




---

Paul Dubé  
Ombudsman of Ontario

Cc: Kevin Fox, Municipal Clerk, Town of Amherstburg

*Cette lettre est aussi disponible en français*

483 Bay Street, 10<sup>th</sup> Floor, South Tower / 483, rue Bay, 10<sup>e</sup> étage, Tour sud  
Toronto, ON M5G 2C9  
Tel./Tél. : 416-586-3300 Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211  
[www.ombudsman.on.ca](http://www.ombudsman.on.ca)

Facebook : facebook.com/OntarioOmbudsman Twitter : twitter.com/Ont\_Ombudsman YouTube : youtube.com/OntarioOmbudsman

