

BY EMAIL

October 19, 2023

Council for the Town of Deep River
100 Deep River Road
P.O. Box 400
Deep River, ON K0J 1P0

Dear Council for the Town of Deep River:

Re: Complaint regarding April 19, 2023 council meeting

My Office received a complaint about a meeting held by council for the Town of Deep River (the “Town”) on April 19, 2023. The complaint raised concerns that council’s closed session discussion about the Town’s organizational structure did not fit within the exceptions to the open meeting rules.

I am writing to share the outcome of my Office’s review. For the reasons set out below, I have determined that council complied with the open meeting rules when it met in closed session on April 19, 2023 to discuss the Town’s organizational structure.

Ombudsman’s role and authority

As of January 1, 2008, the *Municipal 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.¹ 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 Deep River.

¹ *Municipal Act*, SO 2001, c 25, s 239.1.



Our 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 procedure. Summaries of previous Ombudsman decisions can be found in the digest at: www.ombudsman.on.ca/digest.

Review

My Office reviewed the April 19, 2023 meeting agenda, the open and closed session minutes for the meeting, the video recording of the open session, and the Town’s procedural by-law. We also spoke with the Clerk and Chief Administrative Officer (CAO).

Background

On April 19, 2023, council held an in-person meeting in council chambers. The open session minutes indicate that council resolved to proceed *in camera* under the “personal matters”, “labour relations”, and “negotiations” exceptions to discuss three items, including an item described as “the Town of Deep River Organizational Structure”. Prior to moving *in camera*, council discussed whether the item related to the organizational structure was appropriate for closed session discussion. Council ultimately decided to proceed *in camera*. We were told by staff that the Town relied on the exception for personal matters as the basis for discussing the organizational structure *in camera*.

The Clerk and the CAO told my Office that the *in camera* discussion about the organizational structure consisted of a verbal staff report regarding changes to the Town’s organizational structure. The discussion included information about changing the roles and responsibilities of two management-level employees, and the effect those changes would have on the Town’s organizational structure. The discussion also included information about the performance and salaries of identified employees. Our review of the closed session minutes confirm this description of the closed session discussion.

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Analysis

Application of the “personal matters” exception

Council relied on the exception for personal matters in section 239(2)(b) of the Act to discuss the Town’s organizational structure.

In order for the personal matters exception to apply, the discussion must be about identifiable individuals and the information being discussed must be about an individual in their personal capacity, rather than their professional, official or business capacity. However, this information may still qualify as personal if it reveals something of a personal nature about the individual. My Office has previously found that general information about organizational charts does not fit within the open meeting exceptions. However, as noted in a letter to the Town of Amherstburg, “discussion of staff retention and reorganization as it affects individuals and their roles is permitted in closed session” under the “personal matters” and “labour relations” exceptions.² As such, discussions of an individual employee’s performance and salary may qualify as personal information.³

In this case, the closed session staff report and council’s discussion identified two employees by name, specified potential changes to their roles and responsibilities, and described the impact of those changes on the Town’s organizational structure. The discussion also included information related to the performance and salaries of the two employees. Accordingly, the discussion fit within the exception for personal matters about an identifiable individual in section 239(2)(b) of the Act.

Conclusion

My review has determined that council for the Town of Deep River did not violate the open meeting rules on April 19, 2023 when it met *in camera* to discuss the Town’s organizational structure. I would like to thank the Town for its co-operation during my review.

² Letter from the Ombudsman of Ontario to Town of Amherstburg (9 December 2013), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2013/town-of-amherstburg-en>>.

³ Ombudsman of Ontario, Investigation into whether Council for the Township of Russell held an illegal closed meeting on June 1, 2015 (October 2015), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2015/township-of-russell>>.

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All members of committees and local boards in the municipality are encouraged to familiarize themselves with the open meeting rules. My Office has resources available, including our Open Meeting Guide for Municipalities, which can be accessed on our website here. You can also contact us directly to order copies at info@ombudsman.on.ca.

The Clerk confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario

cc: Jackie Mellon, City Clerk, Town of Deep River

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