



J. Paul Dubé, Ombudsman

BY EMAIL

Council for the Town of Hawkesbury
c/o Mayor Paula Assaly
600 Higginson Street
Hawkesbury, ON K6A 1H1

March 17, 2022

Dear Members of Council for the Town of Hawkesbury:

RE: Closed meeting complaint

My Office received a complaint that council for the Town of Hawkesbury (the “Town”) met in closed session on November 8, 2021, contrary to the *Municipal Act, 2001* (the “Act”).¹ The complainant questioned whether council’s *in camera* discussion should have occurred.

I am writing to advise that my review has determined that council for the Town of Hawkesbury did not contravene the Act’s open meeting requirements on November 8, 2021.

The 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.² 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 Hawkesbury.

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

² *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 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 these previous decisions can be found in the digest: www.ombudsman.on.ca/digest.

Review

My Office reviewed the open and closed meeting agendas, the open and closed meeting minutes, and a recording of the closed session held on November 8, 2021. We also reviewed relevant sections of the Act and the Town's procedure by-law. In addition, we spoke with the Town's Clerk.

Council met at 7:00 p.m. on November 8, 2021. The open session minutes indicate that council proceeded *in camera* at 7:48 p.m. citing the open meeting exception for personal matters about identifiable individuals under section 239(2)(b) of the Act. The resolution indicated that the discussion would "concern information regarding an identifiable individual."

Our review found that once in closed session, council primarily discussed the conduct and performance of a specific individual. Council also briefly discussed the conduct of another individual, the content of a report, the merit of its findings, and whether or not to accept the report.

Following the discussion, council approved minutes from a previous closed session meeting and returned to open session at 8:12 p.m.

Applicability of the exception for personal matters about an identifiable individual

Under section 239(2)(b) of the Act, a meeting or part of a meeting may be closed to the public if the discussion would reveal personal information about an identifiable individual. In order to qualify as "personal information" for the purpose of the exception, the information must usually be about an individual in their personal, rather than professional, capacity.³ However, information about an individual in their professional

³ *Amherstburg (Town of) (Re)*, 2015 ONOMBUD 13 at para 22, online: <<https://canlii.ca/t/gtp5z>>.



capacity can still qualify as personal information if it reveals something of a personal nature or relates to scrutiny of an individual's conduct.⁴ For example, information about an individual's job performance is considered personal information.⁵

Our review found that council primarily discussed the conduct and performance of an identifiable individual during the closed session on November 8, 2021. While council briefly discussed the conduct of another individual, the content of a report, the merit of its findings, and whether or not to accept the report, the discussion remained focused on the main subject matter, which was the conduct and performance of an identifiable individual.

Accordingly, the discussion fit within the exception to the open meeting rules under section 239(2)(b) of the Act.

Conclusion

Council for the Town of Hawkesbury was permitted to rely on the closed meeting exception for personal matters about an identifiable individual under section 239(2)(b) of the *Municipal Act, 2001* when it met in closed session on November 8, 2021.

I would like to thank the Town of Hawkesbury 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: Myriam Longtin, Clerk

⁴ *South Huron (Municipality of) (Re)*, 2015 ONOMBUD 6, online: <<https://canlii.ca/t/gtp80>>.

⁵ *Ibid.*

