



## **Ombudsman Report**

**Investigation into meetings held by Bruce County  
on September 21, 2017, August 2, 2018,  
September 6, 2018, and January 10, 2019**

**Paul Dubé  
Ombudsman of Ontario  
May 2022**

## Complaint

- 1 My Office received a complaint in February 2021 about four meetings of Bruce County's Executive Committee (the "Committee"), which consists of all members of council. The complaint alleged that these four meetings were closed improperly to the public and did not fit within the exceptions in section 239 of the *Municipal Act, 2001* (the Act),<sup>1</sup> and that the Committee failed to report back in open session about its discussions. The meetings in question took place on September 21, 2017, August 2 and September 6, 2018, and January 10, 2019, with the first three meetings occurring under a different council prior to the 2018 municipal election.
- 2 For the reasons set out below, I have concluded that the Executive Committee for Bruce County did not contravene the Act when it went *in camera* on August 2, 2018, because its discussion fit within the closed meeting exception for litigation or potential litigation.
- 3 However, the Committee did contravene the Act on September 21, 2017 and September 6, 2018, as its discussions did not fit within any exception to the Act's open meeting rules. The Committee also contravened the Act when it voted on a matter during the September 21, 2017 meeting that did not fit within any closed meeting exceptions.
- 4 The Committee also contravened the Act on January 10, 2019, as only some of its *in camera* discussion fit within a prescribed exception. Portions of the discussion relating to a new position for a specified individual fit within the exception for personal matters about an identifiable individual. However, this discussion could have been parsed from the rest of the committee's discussion, which was related to an organization that supports growth in the nuclear energy industry. The remainder of the discussion on this date did not fit within any of the closed meeting exceptions.

## Ombudsman jurisdiction

- 5 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 6 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. Municipalities may appoint their own investigator.

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<sup>1</sup> S.O. 2001, c 25.

The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.

- 7 The Ombudsman is the closed meeting investigator for Bruce County.
- 8 When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's governing procedures have been observed.
- 9 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 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).

## **Investigative process**

- 10 In March 2021, my Office advised the County of our intent to investigate this complaint.
- 11 Members of my Office's open meeting team reviewed relevant portions of the County's procedure by-law and the Act. We reviewed the meeting agendas, relevant documents, and the minutes from the open and closed sessions of each meeting.
- 12 We interviewed the seven current members of Bruce County council, as well as the Clerk and Deputy Clerk. Three current council members were not on council for the first three meeting dates, having taken office in December 2018. We also spoke with several former staff to gather further context related to items discussed by council.
- 13 My Office received full co-operation in this matter.

## **Previous closed meeting investigations**

- 14 My Office became the closed meeting investigator for Bruce County on January 1, 2021. Prior to becoming the County's closed meeting investigator, previous closed meeting investigators found a number of closed meetings

held over the last several years to have been improperly closed under the *Municipal Act, 2001*.<sup>2</sup> We were told that as a result of these investigative findings, members of council and County staff received closed meeting training in early 2020. Following this training, the County made changes to its open meeting practices to improve their transparency. The meetings under investigation by my Office occurred prior to this training, and many people we spoke with indicated that the meetings under investigation by my Office do not reflect the County's current meeting practices.

## September 21, 2017 meeting

- 15 The Executive Committee met for a regular meeting on September 21, 2017 at 12:45 p.m. Immediately after calling the meeting to order, the Committee resolved to move into closed session to discuss:
  - 1) The Chief Administrative Officer's (CAO's) 2018 Business Plan, relying on section 239(2)(b), the exception for personal matters about an identifiable individual, and section 239(3.1), the exception for education or training; and
  - 2) The Bruce County Economic Development Strategy, relying on section 239(2)(b), the exception for personal matters about an identifiable individual.
- 16 Regarding the second item, the economic development matter, the closed meeting minutes state that the County received a notice from another municipality indicating that it intended to reach out to other specified municipalities to invite them to begin a dialogue regarding common economic development challenges and opportunities. The minutes on this item provide information about the County's intended response to this request.
- 17 The minutes then indicate that the Executive Committee discussed the "Draft 2018 Business Plan – CAO". However, the minutes are unclear regarding the content of the discussion, and merely indicate that the draft business plan was reviewed and the Executive Committee voted to approve it. The 2018 Bruce County Business Plan was also included in the materials provided to our Office.
- 18 The Executive Committee adjourned the closed session at 1:09 p.m. The report back in open session states: "The Chair reported that there [was] no information to report from the closed meeting." The Executive Committee adjourned the open meeting at 1:10 p.m.

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<sup>2</sup> See for example: <<https://pub-brucecounty.escribemeetings.com/filestream.ashx?DocumentId=7180>>.

- 19 We spoke with the three current councillors who were present at this meeting, as well as the Deputy Clerk who took meeting minutes in the Clerk's absence.<sup>3</sup> None of the interviewees had an independent recollection of the closed meeting discussion or the vote.

## Analysis

### Exception for personal matters about an identifiable individual

- 20 The “personal matters” exception applies to discussions that reveal personal information about an identifiable individual. The *Municipal Act* does not define “personal matters” for the purposes of the Act's open meeting rules. When reviewing the parameters of the open meeting exceptions, my Office has often considered decisions of the Office of the Information and Privacy Commissioner (the IPC) under the *Municipal Freedom of Information and Protection of Privacy Act*. That legislation defines “personal information” as, in part, “recorded information about an identifiable individual, including (g) the views or opinions of another individual about the individual, and (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual”.

### ***Bruce County Economic Development Strategy***

- 21 There is no indication in the closed meeting minutes that personal information about an identifiable individual was discussed while considering the notice related to economic development. Accordingly, the Executive Committee's discussion did not fit within the exception for personal matters about an identifiable individual.

### ***CAO's 2018 Business Plan***

- 22 The closed meeting minutes reveal little about the Executive Committee's actual discussion regarding the CAO's 2018 Business Plan, and those we spoke with had no recollection of this meeting. However, the minutes do not identify any personal information about identifiable individuals and the 2018 Business Plan itself does not contain any personal information about identified individuals. Rather, it identifies the County's strategic priorities, key

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<sup>3</sup> As noted previously, only four of the current members were on Council at the date of this meeting. Only three of those members attended; the fourth sent their regrets.

performance indicators, and major initiatives for the year, as well as the estimated budget for those initiatives.

- 23 Accordingly, I find that the Executive Committee’s discussion of the 2018 Business Plan also did not fit within the exception for personal matters about an identifiable individual.

## Exception for education and training

- 24 The Executive Committee also relied on the “education and training” exception to discuss the 2018 Business Plan *in camera*.
- 25 Section 239(3.1) of the *Municipal Act* states that council may close a meeting to the public if the meeting is held for the purpose of “educating or training” members, and if no member discusses or otherwise deals with a matter in a way that materially advances the business or decision-making of council.
- 26 The exception is to be narrowly construed and my Office has noted the limits of the “education and training” exception. In an April 2015 report regarding closed meetings in the Village of Casselman, my Office stated:

The scope of the “education/training” exception of the Act includes only meetings that are closed to allow council members to receive information that may assist them in better understanding the business of the municipality and/or to acquire skills...<sup>4</sup>

- 27 For example, in a September 2014 letter to the Town of Moosonee, my Office found that the exception did not apply because the information conveyed in closed session was not “general in nature”, but rather related to “matters that directly impacted the business of the municipality”.<sup>5</sup> My Office has also cautioned that the purpose of the open meeting exceptions, including the “education or training” exception, is not to shield “sensitive”, “private” or “confidential” information from the public.<sup>6</sup>
- 28 In the present case, the minutes indicate that the Executive Committee’s discussion of the 2018 Business Plan was not general in nature, but rather concerned the specific priorities and plans of Bruce County for the year. The

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<sup>4</sup> *Casselman (Village of) (Re)*, 2015 ONOMBUD 14, online: <<https://canlii.ca/t/gtp61>>.

<sup>5</sup> Letter from Ombudsman of Ontario to Town of Moosonee (September 9, 2014), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2014/town-of-moosonee>>.

<sup>6</sup> *Welland (City of) (Re)*, 2014 ONOMBUD 7, online: <<https://canlii.ca/t/gtmhx>>.

2018 Business Plan identified strategic priorities, key performance indicators, and major initiatives for the year, as well as the estimated budget for those initiatives. There is no evidence that the meeting was focused on teaching the Executive Committee members the basic principles or vocabulary of a business plan. Accordingly, the discussion did not fit within the “education and training” exception to the closed meeting rules.

- 29 One councillor we spoke with suggested that this matter needed to be discussed in closed session because some of the information in the plan was “sensitive” and had financial implications for the County. However, the exception for education or training is not intended to be used to shield sensitive information from the public.
- 30 While speaking with our Office, a few interviewees indicated that the past practice of the Executive Committee was to rely often on the “education or training” exception to go *in camera*, but that since the County received closed meeting training in early 2020, it no longer does. I applaud the County for its ongoing efforts to improve the accountability and transparency of its meeting practices, and note that the meetings analyzed in this report may not reflect the County’s current approach when deciding whether or not to discuss a matter *in camera*.

## Voting

- 31 Under section 239(6)(a) of the *Municipal Act*, voting is only permitted *in camera* if the subject matter is permitted or required to be discussed in closed session. As the subject did not fit in any of the closed meeting exceptions, the vote to approve the County’s 2018 Business Plan was also contrary to the open meeting rules.

## August 2, 2018 meeting

- 32 The Executive Committee met for a regular meeting on August 2, 2018 at 9:40 a.m. The open meeting minutes indicate that the Committee resolved to proceed *in camera* to discuss a land claim, relying on section 239(2)(e), the exception for litigation or potential litigation. The open meeting agenda indicated that the Executive Committee also intended to discuss a proposed acquisition or disposition of land, but our review determined this matter was deferred to the September 6, 2018 meeting.



- 33 According to the closed meeting minutes, the *in camera* meeting began at 1:16 p.m. and the Executive Committee discussed a legal proceeding against Bruce County related to a land claim. The minutes state that the County Solicitor provided an update on the litigation and the Committee provided direction related to the matters discussed.
- 34 The closed meeting adjourned at 2:42 p.m. The report back in open session was as follows: “The Chair reported that direction was provided during the closed meeting.” The meeting adjourned at 2:43 p.m.
- 35 Four of the current councillors our Office interviewed were on council at the time and present at this meeting. The Clerk and Deputy Clerk were also present. However, none of the interviewees had an independent recollection of the closed meeting discussion.

## Analysis

### Exception for litigation or potential litigation

- 36 My Office has found that discussions pertaining to ongoing litigation are covered by the “litigation or potential litigation” exception.<sup>7</sup>
- 37 At its August 2, 2018 meeting, the Executive Committee discussed the County’s ongoing litigation related to a land claim. The Committee received an update from the County Solicitor, considered several specific issues in relation to the litigation, and provided instructions to the Solicitor. Accordingly, I find that this meeting fell within the “litigation or potential litigation” exception.

### September 6, 2018 meeting

- 38 On September 6, 2018, the Executive Committee commenced its regular open meeting at 9:55 a.m. Shortly thereafter, the Committee resolved to proceed *in camera* to discuss “County Hubs” pursuant to the “acquisition or disposition of land” exception in section 239(2)(c) of Act.
- 39 The closed meeting minutes indicate that the Acting CAO presented a report regarding the development of county hubs in general geographic areas. Our Office received a copy of this report. The Acting CAO explained that Bruce County owned property that had a surplus of space, and that a County

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<sup>7</sup> See e.g. *St.-Charles (Municipality of) (Re)*, 2017 ONOMBUD 13, online: <<https://canlii.ca/t/h69cw>>.



department had expressed an interest in using some of that space. The report noted that this would be in line with the County's desire to use a "hub" service model at the regional level to provide "one-stop" services. The minutes indicate that a team had been established in the fall of 2017 to review these plans for the identified property.

- 40 The minutes also indicate that staff noted that land was also being sought for a different project being undertaken by the same department. The minutes state that there was some discussion about the possibility of securing donated land for the purpose of creating a service hub that would accommodate both departmental goals. The possibility of acquiring similar parcels of land and having hubs in multiple locations was also raised.
- 41 Following this discussion, the Executive Committee directed staff to take various actions to further pursue and consider the options discussed.
- 42 The closed meeting adjourned at 10:43 a.m. The report back in open session states: "The Chair reported that staff were provided direction during the closed meeting." The open meeting adjourned immediately thereafter.
- 43 Again, four of the current councillors our Office interviewed were on council at the time of this meeting. The Clerk and Deputy Clerk were both present. Once again, none of the interviewees had an independent recollection of the closed meeting.

## Analysis

### Exception for the acquisition or disposition of land

- 44 When a municipality is in the process of buying or selling municipal land, holding discussions about the land transaction in an open session could affect the municipality's bargaining position or negotiation strategy. The Ombudsman has found that the purpose of the "acquisition or disposition of land" exception is to protect the municipality's bargaining position during negotiations to purchase or sell land.<sup>8</sup> Because section 239(2)(c) of the Act speaks to a "proposed or pending acquisition or disposition of land *by the municipality*" [emphasis added], the municipality must be either the seller or purchaser of the land in question in order for the exception to apply.<sup>9</sup>

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<sup>8</sup> *Fort Erie (Town of) (Re)*, 2015 ONOMBUD 12, online: <<https://canlii.ca/t/gtp5w>>.

<sup>9</sup> *Port Colborne (City of) (Re)*, 2015 ONOMBUD 32, online: <<https://canlii.ca/t/gtp7c>>.

- 45 Our Office has found that purely speculative discussions about land transactions do not fit within this closed meeting exception. The municipality must have a bargaining position to protect. If no bargaining position yet exists, the exception does not apply.<sup>10</sup>
- 46 In the present case, the Executive Committee’s discussion regarding the development of a “County hub” does not fit within the exception, as it did not concern the acquisition or disposition of land. The County was already the owner of the land in question and was not seeking to sell it, but rather to expand the existing building on the site. While the closed meeting materials referenced the possibility of selling the existing property as one option for the Executive Committee’s consideration, the minutes do not indicate that this was discussed. Even if the committee had discussed this option, the discussion would have been purely speculative as the County was not actually taking steps to sell the land at the time. The County did not have a bargaining position to protect with respect to these properties at the time of this meeting.
- 47 The Executive Committee’s discussion about acquiring land for the other project was also speculative. While the Committee discussed the possibility of acquiring land, no specific parcels of land were identified. To the contrary, the minutes reveal the County still needed to identify and confirm the specific land on which the project would be built, as well as a budget for it. As the potential acquisition of land for the project was a mere possibility and the County did not have a bargaining position to protect at the time, the “acquisition or disposition of land” exception did not apply.

## January 10, 2019 meeting

- 48 On January 10, 2019, the Executive Committee commenced its regular open session at 3:17 p.m. Almost immediately, it moved into closed session to discuss the Nuclear Innovation Institute and a “Bruce Centre of Excellence Initiative Update”, relying on section 239(2)(a), the “security of municipal property” exception, and section 239(3.1), the “education or training” exception.
- 49 According to the closed meeting minutes, the Acting CAO and the Director of Planning and Development presented a report to the Committee titled “Ontario Nuclear Innovation Institute Update.” Our Office has reviewed a copy of this report.

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<sup>10</sup> *Fort Erie (Town of) (Re)*, 2015 ONOMBUD 12, online: <<https://canlii.ca/t/gtp5w>>.

- 50 According to the minutes, Bruce Power had approached the County about a matter related to the location of the Nuclear Innovation Institute (the “Institute”). At the time, the Institute was in development; it officially opened its doors in 2021. The minutes provide details about possible locations for the Institute and describe potential next steps in the decision-making process, including determining square footage requirements and the suitability of a specified location, assessing alternate location options, engaging an architect, and convening a future meeting as required.
- 51 The minutes also include recommendations from Bruce Power to the Executive Committee related to the future of the Institute, including establishing an oversight committee and appointing an identified individual to a specific position at the Institute. The minutes further indicate that staff members raised additional points for the Committee’s consideration, including how the specific position would be administratively structured and the need for a comprehensive business plan.
- 52 Following this discussion, the Committee directed staff to take further actions. The report-back in open session states: “The Chair reported that staff were provided direction in closed session.” The open meeting was adjourned at 4:00 p.m.
- 53 All current councillors were on council at the time of this meeting, although one councillor was not in attendance. The Clerk and Deputy Clerk were both present. Only one of the councillors we interviewed indicated they had a recollection of this meeting, although they later stated that they could have been mixing up this meeting with another and that they mainly recalled their general impression related to this subject. We also spoke with various former staff members to understand the status of the Institute at the time of this meeting.

## Analysis

### Exception for the security of municipal property

- 54 Section 239(2)(a) of the Act allows a municipality or local board to discuss “the security of property of the municipality or local board” in closed session. In a November 2016 report to the Town of Grimsby, my Office described the scope of the exception as follows:

In 2009, the Information and Privacy Commissioner found that “security of the property of the municipality” should be given its plain meaning, in that it applies to protecting property from physical loss or

damage (like vandalism or theft), and the protection of public safety in relation to that property. In 2011, the IPC clarified that the term can apply to both “corporeal” and “incorporeal” property, as long as it is owned by the municipality and the discussion is about preventing its loss or damage.<sup>11</sup>

- 55** In this case, at the January 10, 2019 meeting, the Executive Committee’s discussion concerned potential locations for the Nuclear Innovation Institute, as well as next steps to move forward with the project. The closed meeting minutes do not indicate any discussion of potential threats, loss or damage to the municipality’s property, either corporeal or incorporeal. No one we spoke with mentioned any threat(s) or potential loss or damage to the County’s property. As a result, the Committee’s discussion does not fit within the “security of municipal property” exception.

### Exception for education and training

- 56** As previously described, the “education or training” exception applies only where the purpose of the discussion is to educate or train members of council, and where no member discusses or otherwise deals with a matter in a way that materially advances the business or decision-making of council.
- 57** On January 10, 2019, the Executive Committee discussed potential locations for the Nuclear Innovation Institute, and the next steps involved in choosing a location and moving forward with the project. Ultimately, the Executive Committee voted to provide direction to staff regarding these next steps. This discussion did not relate solely to providing general information to the Executive Committee members, educating them, or teaching them skills. Rather, it was intended to inform and advance their decision-making on the Nuclear Innovation Institute. This discussion did not fit within the exception for education or training.

### Other closed meeting exceptions

- 58** Although the Executive Committee did not cite any additional closed meeting exceptions, those we spoke with identified several further exceptions that they felt might apply to the Committee’s discussion.

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<sup>11</sup> *Grimby (Town of) (Re)*, 2016 ONOMBUD 19, online: <<https://canlii.ca/t/h2st7>>.

### **Exception for personal matters about an identifiable individual**

- 59 One of the councillors we spoke with suggested the discussion needed to occur *in camera* because certain individuals were named in the minutes, including an individual who would be appointed to a new position at the Institute.
- 60 My Office has found that to qualify as “personal information”, information must be about an individual in their personal capacity, rather than their professional, official or business capacity.<sup>12</sup> However, information about an individual in their professional capacity may qualify as personal information if it reveals something of a personal nature about the individual. For example, discussions of employee conduct, performance, and salary can fit within this exception.<sup>13</sup> Discussions regarding information about a particular candidate or candidates for a position may also fit within the exception.<sup>14</sup>
- 61 In the present case, a particular individual is named in the minutes as the suggested candidate for a specific role. The minutes further reflect that the Committee briefly discussed considerations around how the new role would be structured.
- 62 Given that the Executive Committee’s discussion identified a particular individual in connection with changes to their employment status, this portion of the discussion fit within the “personal matters about an identifiable individual” exception.
- 63 However, according to the meeting minutes, this was only a small part of the Committee’s discussion, and our investigation indicates that it could have been parsed from the rest of the discussion about the Nuclear Innovation Institute.
- 64 In *St. Catharines v. IPCO, 2011*, the Divisional Court found that it is unrealistic to expect municipal councils to split up discussions between open and closed sessions where it would “detract from free, open and uninterrupted discussion.”<sup>15</sup> In other words, where it would be unrealistic to expect council to parse intertwined subjects, topics that do not otherwise fit within a closed meeting exception may still be discussed *in camera*.<sup>16</sup> However, if the topics can be separated, council is expected to return to open

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<sup>12</sup> *Lanark Highlands (Township of) (Re)*, 2018 ONOMBUD 1, online: <<https://canlii.ca/t/hvmtf>>.

<sup>13</sup> See e.g. *Greater Sudbury (City of) (Re)*, 2017 ONOMBUD 2, online: <<https://canlii.ca/t/h4rwp>>; and *Russell (Township of) (Re)*, 2015 ONOMBUD 29, online: <<https://canlii.ca/t/gtp73>>.

<sup>14</sup> *Russell (Township of) (Re)*, 2015 ONOMBUD 29, online: <<https://canlii.ca/t/gtp73>>.

<sup>15</sup> *St. Catharines (City) v. IPCO*, 2011 ONSC 2346, at para. 42, online: <<https://canlii.ca/t/fkqfr>>.

<sup>16</sup> *Plympton-Wyoming (Town of) (Re)*, 2021 ONOMBUD 4, online: <<https://canlii.ca/t/jd49k>>.

session for those portions of the discussion that do not fit within an open meeting exception.

- 65 In this case, the brief discussion on appointing the individual to a new position, as well as on how to structure their role, fit within the exception for personal matters about an identifiable individual. Accordingly, it was appropriate to discuss these matters in closed session. However, the larger discussion about the Institute could have been separated from this discussion about an identifiable individual, and therefore could have occurred in open session.

***Exception for information supplied in confidence by a third party***

- 66 A few councillors suggested that the Committee may have been entitled to rely on the closed meeting exception for information supplied in confidence in section 239(2)(i) of the Act. One councillor stated that Bruce Power had a concept or plan and wanted to keep it confidential until such time as it was ready to be announced. Another councillor stated that the discussion on this matter occurred in closed session to protect the interests of Bruce Power. However, that councillor also acknowledged that Bruce Power had not provided the County with any proprietary information, trade secrets or financial information as part of their discussions. Finally, a third councillor suggested the exception for information supplied in confidence by a third party might be appropriate because another municipality and the Nuclear Innovation Institute had conveyed a confidential list of potential locations they were interested in for the Institute.

- 67 My Office has found that this exception applies when:

- 1) the discussion concerns information that falls into one of the listed types (trade secret, scientific, technical, commercial, financial, or labour relations information);
- 2) a third party supplied the information confidentially, whether explicitly or implicitly, to the municipality; and
- 3) if the information were disclosed, it could reasonably be expected to cause harm, either by significantly prejudicing the competitive position or significantly interfering with the contractual or other negotiations of a person, group of persons or organization.<sup>17</sup>

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<sup>17</sup> Letter from Ombudsman of Ontario to Town of South Bruce Peninsula (October 14, 2021), online: <<https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/resources/Municipal-Meetings/Ontario-Ombudsman-letter-South-Bruce-Pensinsula-Oct-2021-accessible.pdf>>.



68 Of the types of information listed in the exception, “commercial” and “financial” were closest to the type of information discussed during the Committee’s meeting. The IPC defines “commercial information” as follows:

[I]nformation that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.<sup>18</sup>

69 “Financial information” has been defined by the IPC as “information relating to money and its use or distribution [that] must contain or refer to specific data. Examples include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.”<sup>19</sup>

70 In this case, the information provided by Bruce Power and the other municipality is not commercial or financial information. The list of potential locations for the Institute concerns real property, and therefore does not relate to the buying, selling or exchange of “merchandise or services”. It is also not “financial information” as defined by the IPC. The other listed categories of information also do not apply.

71 Because none of the information discussed at the January 10, 2019 closed meeting falls into any of the categories listed in s. 239(2)(i), the exception did not apply to the Committee’s discussion and no further consideration of the exception is necessary.

***Exception for information supplied in confidence by another level of government***

72 We also considered the applicability of the exception for information supplied in confidence by another level of government, as several people we spoke with indicated that another municipality supplied the list of possible locations for the Institute.

73 The exception in section 239(2)(h) applies to “information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them.” As the possible locations were supplied by Bruce County or another municipality, rather than Canada, a

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<sup>18</sup> See e.g. Orders PO-4183; PO-3570; PO-2018; PO-2010; P-1621; P-493.

<sup>19</sup> See e.g. Orders PO-4183 and PO-2010.



province or territory, or a Crown agency of any of them, this exception cannot apply to the information discussed by the Committee.

### ***Exception for the acquisition or disposition of land***

- 74 Some councillors we spoke with also suggested that the “acquisition or disposition of land” exception may have been appropriate because the Committee discussed possible locations for the Nuclear Innovation Institute.
- 75 According to one councillor, the County only owned one of the potential locations identified for the Institute. The councillor told us that, in the closed meeting, the Committee discussed the possibility of acquiring land the municipality did not currently own.
- 76 As previously described, purely speculative discussions about land transactions do not fit within the “acquisition or disposition of land” exception. In order for the exception to apply, the discussion must involve an actual land transaction that is currently pending or has been proposed, rather than a speculative land transaction that may or may not happen in future.<sup>20</sup>
- 77 In a 2018 report to the Town of Fort Erie, my Office found that council met *in camera* on two occasions to discuss a potential partnership with a post-secondary institution, relying on the “acquisition or disposition of land” exception.<sup>21</sup> At one of those meetings, council referred to specific sites that might have been of interest for the project. My Office found that the exception did not apply because council had not yet identified a specific property that it wished to purchase or lease, and had taken no practical steps to acquire any property. Accordingly, the Town did not have a bargaining position to protect.
- 78 In this case, the closed meeting minutes identify various possible locations for the Nuclear Innovation Institute, but they also make clear that the County and/or Bruce Power had not yet targeted a specific location that it or they intended to pursue. Further, those we spoke with were unsure what, if any, role Bruce County would have in a possible land acquisition. Our investigation indicates that no land transaction was pending or had been proposed, and no practical steps had been taken to acquire a property or begin negotiations. Accordingly, the County did not yet have a bargaining position to protect and the “acquisition or disposition of land” exception did not apply.

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<sup>20</sup> *Fort Erie (Town of) (Re)*, 2018 ONOMBUD 2 at para 31, online: <<https://canlii.ca/t/hvmtm>>.

<sup>21</sup> *Ibid.*

## Procedural matters

### Adequacy of meeting minutes

- 79** For several of the meetings in question, my Office observed that most of the content of the minutes had been copied verbatim from the related staff reports, and it was unclear to what extent this reflected the content of the Committee's actual *in camera* discussion. As a result, and combined with the lack of witness recollections, my Office struggled to determine what the Executive Committee's actual discussion was in relation to some matters.
- 80** Section 239(7) of the Act requires that all resolutions, decisions and other proceedings that take place during a meeting be recorded without comment. This requirement applies whether the meeting is open or closed.
- 81** While the Act requires minutes to be recorded without "note or comment", the requirement to keep a meeting record should be interpreted in a manner that is consistent with the intent of the municipal meeting provisions, which are directed at enhancing the openness, transparency and accountability of municipal government.
- 82** My Office has found that a proper record of a closed meeting should include:
- where the meeting took place;
  - when the meeting started and adjourned;
  - who chaired the meeting;
  - who was in attendance, with specific reference to the clerk or other designated official responsible for recording the meeting;
  - whether any participants left or arrived while the meeting was in progress and if so, at what time this occurred;
  - a detailed description of the substantive and procedural matters discussed, including reference to any documents considered;
  - any motions, including who introduced the motion and seconders; and
  - all votes taken, and all directions given.<sup>22</sup>
- 83** Further, as a best practice, my Office recommends that all municipalities make audio or video recordings of all meetings – both open and closed – to ensure a thorough record. In addition, this provides a clear and accessible record for closed meeting investigators to review, and assists in ensuring that officials do not stray from the legal requirements during closed meetings.

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<sup>22</sup> *Tehkummah (Township of) (Re)*, 2018 ONOMBUD 3, online: <<https://canlii.ca/t/hvmtpt>>.

- 84 While I acknowledge that the County has changed a number of its closed meeting practices since the meetings examined in this report, the County should be diligent in ensuring that it keeps complete and accurate minutes of all substantive and procedural matters discussed during closed meetings. I also strongly encourage all municipalities to make audio or video recordings of council proceedings, including closed meetings.

## Reporting back

- 85 The reports back in open session for the four dates in question do not provide sufficient detail to give the public any understanding of what was discussed in closed session.
- 86 Some of the interviewees advised us that prior to council's additional training, a statement to the effect that staff were provided with direction was often the extent of the Executive Committee's report back following closed session. However, we were also told that this practice has now changed, and that the County now seeks to provide as much detail as possible when reporting back in open session.
- 87 My Office consistently recommends that municipalities adopt the best practice of reporting back in a meaningful way, when possible, following closed session discussions,<sup>23</sup> and I encourage the County to continue its commitment to improved transparency and openness. While the open meeting rules do not require municipalities to report back following a closed meeting, the County may have been able to prevent some of these complaints had it provided a clearer report back to the public regarding its closed meeting discussions.

## Opinion

- 88 The Executive Committee for Bruce County did not contravene the *Municipal Act, 2001* when it went *in camera* on August 2, 2018, because its discussion fit within the closed meeting exception for litigation or potential litigation.
- 89 The Committee did contravene the *Municipal Act, 2001* on September 21, 2017, and September 6, 2018, as its discussions did not fit within any exception to the Act's open meeting rules. The Committee also contravened

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<sup>23</sup> See e.g. Letter from Ombudsman of Ontario to Township of Carling (October 3, 2019), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2019/township-of-carling>>.

the Act by voting on a matter during the September 21, 2017 meeting that did not fit within any closed meeting exceptions.

- 90 The Committee also contravened the *Municipal Act, 2001* on January 10, 2019, as only some of its *in camera* discussion fit within a prescribed exception to the Act. Portions of the discussion relating to a new position for a specified individual fit within the exception for personal matters about an identifiable individual. However, this discussion could have been parsed from the rest of the committee's discussion about the Nuclear Innovation Institute. The remainder of the discussion on this date did not fit within any of the closed meeting exceptions.

## Recommendations

- 91 I make the following recommendations to assist Bruce County in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

### Recommendation 1

**All members of the Executive Committee for Bruce County should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001* and its procedure by-law.**

### Recommendation 2

**Bruce County's Executive Committee should ensure that no subject is discussed in a closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.**

### Recommendation 3

**Bruce County's Executive Committee should ensure that its closed session votes comply with section 239(6) of the *Municipal Act, 2001*.**

### Recommendation 4

**Bruce County's Executive Committee should take care to cite only the closed meeting exceptions in the Act that apply to the *in camera* discussion.**

### Recommendation 5

**Bruce County's Executive Committee should ensure that meeting records are complete and accurately reflect all of the substantive and procedural items that were discussed.**

### **Recommendation 6**

**As a best practice, Bruce County’s Executive Committee should make audio or video recordings of its proceedings, including closed meetings.**

### **Recommendation 7**

**As a best practice, Bruce County’s Executive Committee should adopt the best practice of reporting back in a meaningful way, when possible, following closed session discussions.**

## **Report**

- 92 Council for Bruce County was given the opportunity to review a preliminary version of this report and provide comments to my Office. Due to restrictions in place related to COVID-19, some adjustments were made to the normal preliminary review process and we thank council and staff for their co-operation and flexibility. The comments we received were considered in the preparation of this final report.
- 93 In its comments, Bruce County council submitted that the Executive Committee’s discussion on January 10, 2019, fit within the closed meeting exception for discussions about plans and instructions for negotiations under s.239(2)(k) of the Act.
- 94 I have previously found that the purpose of this exception is to allow a municipality to protect information that could undermine its bargaining position or give another party an unfair advantage over the municipality during an ongoing negotiation.<sup>24</sup> In order for the exception to apply, the municipality must show that:
- The *in camera* discussion was about positions, plans, procedures, criteria, or instructions;
  - The positions, plans, procedures, criteria, or instructions are intended to be applied to negotiations;
  - The negotiations are being carried on currently, or will be carried on in future; and
  - The negotiations are being conducted by or on behalf of the municipality.<sup>25</sup>

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<sup>24</sup> *St. Catharines (City of) (Re)*, 2019 ONOMBUD 1, at paras 30-31, online: <<https://canlii.ca/t/hxrk5>>.

<sup>25</sup> *Ibid.*

- 95** I have noted that for several of the meetings in question, most of the content of the minutes had been copied verbatim from the related staff reports and witnesses did not have independent recollections of the closed meeting discussions. This was true for the January 10, 2019 meeting. Accordingly, it was unclear to what extent the minutes reflected the content of the Committee’s actual *in camera* discussion or what the Executive Committee’s actual discussion was.
- 96** According to the minutes, staff presented a report to the Committee providing details about possible locations for the Nuclear Innovation Institute, potential next steps in the decision-making process, and recommendations from Bruce Power. The minutes do not indicate to what extent, if at all, the Committee actually discussed positions, plans, procedures, criteria, instructions, or the nature of any ongoing or future negotiations. Due to the passage of time, those who we interviewed did not recall details of what was discussed at this meeting.
- 97** Based on the documentary evidence and interviews we conducted, I find on a balance of probabilities that the Executive Committee did not discuss plans and instructions for negotiations during closed session on January 10, 2019. Accordingly, the “plans and instructions for negotiations” exception did not apply to the Committee’s discussion.
- 98** This report will be published on my Office’s website, and should also be made public by Bruce County. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



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Paul Dubé  
Ombudsman of Ontario