



## **Ombudsman Report**

**Investigation into a complaint about a meeting  
held by council for the Township of Russell  
on July 31, 2017**

**Paul Dubé  
Ontario Ombudsman  
November 2017**

## Complaint

- 1 My Office received a complaint that council for the Township of Russell held a meeting that did not comply with the open meeting rules in the *Municipal Act, 2001* (the “Act”).
- 2 The complaint alleged that the door of Russell Town Hall was locked during a portion of a council meeting on July 31, 2017, which prevented the public from accessing the meeting room.

## Ombudsman jurisdiction

- 3 Under the Act, all meetings of council, local boards, and committees of each of them must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives citizens 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 or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the Township of Russell.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality’s governing procedures have been observed.

## Investigative process

- 7 On August 22, 2017, we advised the Township of Russell of our intent to investigate this complaint.
- 8 My Office obtained and reviewed relevant portions of the township’s procedure by-law, as well as the meeting agenda and minutes for the July 31, 2017 special council meeting. We spoke with the Clerk and Deputy Clerk, and interviewed four members of council. One member of council

declined to be interviewed, but provided information about the July 31, 2017 meeting via e-mail.

## Meeting on July 31, 2017

- 9 On July 31, 2017, a special meeting of council was scheduled for 5:00 p.m. in council chambers at Russell Town Hall. According to the meeting's agenda, the purpose of the special meeting was to approve a by-law that would:
  - A) award a contract to the selected excavating company to install water and sewer systems in Embrun Commercial Park;
  - B) approve the new budget schedule;
  - C) authorize the Mayor and the Clerk to sign the agreement with the selected excavating company.
  
- 10 The minutes indicate that the meeting began at 5:00 p.m. According to those we spoke with and to the minutes, council voted on the items listed in the agenda. No other topics were discussed. The meeting adjourned at 5:05 p.m.

## The locked door

- 11 Russell Town Hall houses the township's offices, council chambers, and a ServiceOntario office. There is one public exterior door – a metal-framed glass double door, which leads to a vestibule – followed by another glass double door. Upon entering the building's lobby area, the township's offices are to the left, ServiceOntario is to the right, and the doors to council chambers are straight ahead, across from the exterior door. The doors to council chambers are opaque wooden double doors that, when open, give a direct line of sight into council chambers from the exterior door. We were told that the Mayor and two councillors that sit beside him have a direct sight line through the public exterior door from their seats in council chambers.
  
- 12 The glass double doors are the only public entrance to the township's building. We were told that members of council usually enter from the parking lot at the back of the building, through a door that requires an access card. Municipal staff can also enter chambers from a door connected to the township office.

- 13** The township's office closes at 4:30 p.m., but the exterior public door remains unlocked until ServiceOntario closes at 5:00 p.m. At 5:00 p.m., a computer automatically locks the public exterior door. Township staff told us that, when a meeting takes place after-hours, staff manually unlock the front door. Staff told us that they manually unlocked the front door prior to 5:00 p.m. on July 31, 2017, allowing some individuals to enter the building before the meeting.
- 14** One member of council told us that they arrived at the July 31 meeting late. The council member told us they entered through the public exterior door approximately one minute after the start of the meeting. The councillor told us that someone exited the building at the same time, holding the door open, so the councillor does not know if the exterior door was locked or unlocked at that time.
- 15** A member of the public also attempted to enter Town Hall to attend the special meeting approximately one minute after the scheduled 5:00 p.m. start time and through the building's public exterior door, after the councillor mentioned above had entered the building. When the member of the public attempted to open the exterior door to the building, it did not open. He shook the door, but it remained locked. While the member of the public stood outside, an individual exited the building from ServiceOntario, allowing him to enter. He was able to enter council chambers approximately two to three minutes after the start of the meeting.
- 16** One member of council told us that they do not think the door was locked because other individuals were able to enter the meeting before 5:00 p.m. However, this council member confirmed that they do not have any evidence that the door was unlocked during the council meeting.
- 17** This council member also told us that, from their seat in council chambers, they did not see anyone waiting by the public exterior door during the meeting. However, we were told by another member of council that there were individuals standing outside the Town Hall building around 5:00 p.m., who looked as though they may have been locked out.
- 18** There is no digital or other record to confirm whether the door was locked or unlocked during the meeting. Members of staff and council told us that, if the doors were locked, it was unintentional and likely due to an error during the manual override of the automatic locking mechanism. Staff told us that they manually unlocked the door prior to 5:00 p.m., and speculated that it was automatically locked again at 5:00 p.m. as the meeting began.

## Analysis

- 19** The right of citizens to attend public meetings and view council proceedings in action is the foundation of the municipal open meeting requirement. As the Supreme Court of Canada determined in *London (City) v. RSJ Holdings Inc.*, the open meeting requirements set out in the *Municipal Act* demonstrate that the public has “the right to observe municipal government in process”.<sup>1</sup>
- 20** Our Office released two reports in 2016 with respect to municipal meetings that were improperly closed due to locked doors. In both the case of the City of London<sup>2</sup> and that of the Town of Fort Erie,<sup>3</sup> the Ombudsman found that the fact that council did not intend to meet in private does not negate the fact that the public was barred from attending a meeting.
- 21** In the City of London case, members of the public were removed from a council meeting by city security after a disruption by protesters. Security staff subsequently locked the building doors and members of the public were unable to re-enter the council meeting. While London city council mistakenly believed that security had unlocked the doors when it resumed the meeting, our Office found that the doors were locked during parts of the open meeting, such that the meeting was not open to the public.
- 22** In the Town of Fort Erie case, town council was found to have held a closed meeting when a locked security door prevented the public from accessing the room where council was holding what it intended to be an open meeting. As a result, the meeting was improperly closed to the public and the public’s right to observe municipal government in process was frustrated.
- 23** In the Township of Russell, a member of the public was unable to open the exterior door to Town Hall during a council meeting. There is no evidence to support the position of one member of council that the door was unlocked during the meeting. When informed that our Office had received a complaint

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<sup>1</sup> *London (City) v RSJ Holdings Inc*, 2007 SCC 29 at para 32.

<sup>2</sup> Ombudsman of Ontario, *Investigation into complaints about a meeting held by Council for the City of London on June 10, 2015* (24 February 2016), online: [https://www.ombudsman.on.ca/Resources/Reports/City-of-London-\(7\).aspx](https://www.ombudsman.on.ca/Resources/Reports/City-of-London-(7).aspx)

<sup>3</sup> Ombudsman of Ontario, *Investigation into the meeting of the Town of Fort Erie held on December 14, 2015* (23 February 2016), online: [https://www.ombudsman.on.ca/Resources/Reports/Town-of-Fort-Erie-\(7\).aspx](https://www.ombudsman.on.ca/Resources/Reports/Town-of-Fort-Erie-(7).aspx)

alleging that a door was locked during the July 31 meeting, township staff speculated that the door may have been locked as a result of an error with the automatic locking system.

- 24 The Township of Russell's July 31, 2017 special meeting started at 5:00 p.m. and was adjourned at 5:05 p.m. While the member of the public was able to enter Town Hall two or three minutes into the meeting, the meeting was so short that he missed at least half of the proceedings.
- 25 Council for the Township of Russell did not intend to hold a closed meeting on July 31, 2017. However, a locked door to the Town Hall, in conjunction with the brevity of the council meeting, prevented the public from observing municipal government in process.

## Opinion

- 26 Albeit unintentionally, council for the Township of Russell contravened the *Municipal Act, 2001*, on July 31, 2017, when it met in council chambers for a special meeting of council. Although the meeting was intended to be open to the public, a locked exterior public door prevented members of the public from accessing council chambers for the first half of the meeting. As a result, the meeting was closed to the public and the public's right to observe municipal government in process was frustrated.

## Recommendations

- 27 I make the following recommendations to assist the township in fulfilling its obligations under the Act and enhancing the transparency of its meetings.

### Recommendation 1

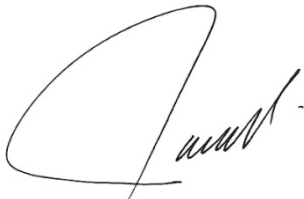
All members of council for the Township of Russell should be vigilant in adhering to their individual and collective obligation to ensure that council complies with its responsibilities under the *Municipal Act, 2001* and its own procedure by-law.

### Recommendation 2

Council for the Township of Russell should ensure that all open meetings are accessible to the public, including by ensuring that access doors are unlocked prior to commencing a meeting.

## Report

- 28** The Township of Russell was given the opportunity to review a preliminary version of this report and provide comments to our Office. Comments received were considered in the preparation of this final report.
- 29** One member of council commented that council should not be held responsible for ensuring that the public doors to Town Hall are unlocked during council meetings, particularly because the township shares the space with Service Ontario.
- 30** Council is required by the *Municipal Act, 2001* to ensure that meetings are open to the public, which includes the obligation to ensure that the public can access the building and meeting room. This obligation applies regardless of arrangements council may make with respect to office space and the location of meetings.
- 31** My report should be shared with council and made available to the public as soon as possible, and no later than the next council meeting.



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Paul Dubé  
Ombudsman of Ontario