



Ombudsman Report

**Investigation into a meeting held by council
for the Municipality of Temagami
on June 20, 2023**

**Paul Dubé
Ombudsman of Ontario**

May 2024

Complaint

- 1 My Office received a complaint that council for the Municipality of Temagami held a meeting on June 20, 2023 that did not fit within the closed meeting exceptions in the *Municipal Act, 2001*¹ (the “Act”). The complainant alleged that three of the topics council discussed in closed session did not fit within any of the exceptions to the Act’s open meeting requirements.
- 2 My investigation determined that the Municipality of Temagami met properly *in camera* on June 20 to discuss several matters: A property previously owned by the municipality under the exception for personal matters about an identifiable individual; a request to sell property under the exception for a proposed or pending acquisition or disposition of land; and an agenda item referred to as the “Au Chateau Matter” under the exception for litigation or potential litigation.

Ombudsman jurisdiction

- 3 Under the Act, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. 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 Municipality of Temagami.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable governing procedures have been observed.
- 7 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

¹ SO 2001, c 25.

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.

- 8 The Ontario Ombudsman also has the authority to conduct impartial reviews and investigations of hundreds of public sector bodies. This includes municipalities, local boards, and municipally-controlled corporations, as well as provincial government organizations, publicly funded universities, and school boards. In addition, the Ombudsman's mandate includes reviewing complaints about the services provided by children's aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*. Read more about the bodies within our jurisdiction here: www.ombudsman.on.ca/have-a-complaint/who-we-oversee.

Investigative process

- 9 My Office notified the municipality of our intent to investigate this complaint on December 7, 2023.
- 10 My Office spoke with the Office Administrator/Interim Clerk, and interviewed the Mayor and the Deputy Clerk. We reviewed the closed meeting recording, the open and closed meeting agendas, the open and closed meeting minutes, the procedural by-law, and other material related to the meeting.
- 11 My Office received full co-operation in this matter.

June 20, 2023 meeting

- 12 On June 20, 2023, council met in council chambers. At 6:39 p.m., council resolved to move *in camera* to discuss five topics. The complaint to my Office raised concerns with three of these topics. The relevant portion of the resolution sets out the exceptions relied upon and topics as follows:

(2)(b) Personal matter about an identifiable individual, including municipal or local board employees **regarding property previously owned by the Municipality;**

(2)(c) A proposed or pending acquisition or disposition of land by the municipality or local board **regarding request to sell property**;

(2)(e) Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality regarding **Au Chateau Matter** [...] [*emphasis added*].

“Property previously owned by the Municipality”

- 13 The closed session minutes and recording establish that council’s *in camera* discussion of “property previously owned by the municipality” had two portions. The Treasurer first provided council with relevant background information regarding two properties that had been sold by the municipality, including the conditions relating to their sale. As a result of these conditions, council had been holding a sum of funds that would be released to the property owner when certain criteria were met. The Mayor then provided an update on the owner’s taxes in relation to the properties, and council briefly discussed how this could affect the funds council had held back.
- 14 The property owner was not identified by name. However, the owner’s identity could have been determined through other information discussed by council.

Analysis

Applicability of the exception for personal matters about an identifiable individual, s. 239(2)(b)

- 15 Council cited the exception for personal matters about an identifiable individual to discuss “property previously owned by the Municipality” on June 20, 2023.
- 16 The “personal matters” exception applies to discussions involving information about an individual in their personal capacity, rather than their professional, official, or business capacity.² However, professional information may qualify if it reveals something of a personal nature about an

² Letter from the Ombudsman of Ontario to Township of Russell (May 5, 2014), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2014/township-of-russell>>.

identifiable individual.³ For the exception to apply, it must be reasonable to expect that an individual could be identified if the information were disclosed publicly.⁴

- 17 In reviewing the scope of the exception for personal matters about an identifiable individual, my Office often considers orders made by the Information and Privacy Commissioner (the “IPC”). Although not binding on my Office, they can provide useful guidance. In the context of access to information legislation, the IPC has found that tax information about an identifiable individual can constitute personal information.⁵
- 18 In this case, council discussed general details regarding two specific properties, including the sale of the properties and conditions relating to that sale, as well as a recent update regarding the taxes of the new property owner. While the property owner was not identified by name, they could have been identified by members of the public based on the content of council’s discussion, and a portion of council’s discussion related to specific tax information about the property owner. This constitutes personal information, and this portion of council’s *in camera* discussion fit within the open meeting exception for personal matters about an identifiable individual.
- 19 However, the earlier portion of council’s discussion which included information about the properties, their sale, and associated conditions of that sale did not reveal personal information about an identifiable individual, and instead revealed only general details about the two properties. My Office has previously found that general information about a property does not amount to personal information.⁶ Therefore, the first portion of council’s discussion does not fit within the open meeting exception for personal matters about an identifiable individual.

³ Letter from the Ombudsman of Ontario to City of Elliot Lake (September 8, 2014), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2014/city-of-elliott-lake-1>>.

⁴ *Ontario (Ministry of Correctional Services) v Goodis* [2008], OJ No 289 at para 69.

⁵ *Red Lake (Corporation of Municipality) (Re)*, Order M0-1627, 2003 CanLII 53725 (ON IPC), online: <<https://canlii.ca/t/1r106>>.

⁶ *Russell (Township of) (Re)*, 2016 ONOMBUD 1, online: <<https://canlii.ca/t/qt6gg>>; *Northern Bruce Peninsula (Municipality of) (Re)*, 2018 ONOMBUD 7, online: <<https://canlii.ca/t/hvmtz>>.

Parsing the discussion

- 20 Having determined that only part of council's *in camera* discussion fit within the exception, I must assess whether council could have parsed its discussion between open and closed session.
- 21 In certain circumstances, it may be unreasonable to expect council to parse its meetings between open and closed sessions. The Ontario Divisional Court has found this to be the case where it would “detract from free, open and uninterrupted discussion”.⁷ My Office has also found it unrealistic to parse a discussion between open and closed session where the topics of the discussion are significantly entwined.⁸
- 22 In this case, I am satisfied that it was unrealistic to expect council to have parsed its discussion of the topic between open and closed session. Council's discussion about the properties and the relevant history of the properties was brief, and this background history was foundational and intertwined with the update regarding tax information.
- 23 Consequently, I am satisfied that all of council's *in camera* discussion about “property previously owned by the Municipality” was permitted within the Act's closed meeting exception for personal matters about an identifiable individual.

“Request to sell property”

- 24 During the closed session, council also reviewed correspondence from a particular individual requesting that council sell a specific piece of municipal property. According to the closed session recording, council considered this request and canvassed interest in selling the identified property. Council discussed a specific condition of sale, and the need for a valuation of the property.

⁷ *St. Catharines (City) v IPCO*, 2011 ONSC 2346 at para 42.

⁸ Letter from the Ombudsman of Ontario to Town of South Frontenac (September 29, 2021), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2021/township-of-south-frontenac>>.

Analysis

Applicability of the exception for acquisition or disposition of land, s. 239(2)(c)

- 25 Council cited the exception for acquisition or disposition of land to discuss a “request to sell property” *in camera* on June 20, 2023.
- 26 The purpose of this exception is to protect a municipality’s bargaining position or negotiation strategy during the process of buying or selling municipal land.⁹ My Office has previously found that the exception does not apply to discussions about land transactions that may or may not happen in the future, since there is no bargaining position to protect in these instances.¹⁰ My Office has also found the exception to apply where council discussed its willingness to dispose of property upon request¹¹, or council discussed potential terms or conditions of sale.¹²
- 27 In this case, council discussed its willingness to sell a specific piece of municipally owned property, along with a specific condition of sale. The sale was not speculative, and the closed session discussion involved information that, if public, could have affected the Municipality’s bargaining position. Accordingly, council’s discussion fit within the exception for acquisition or disposition of land.

“Au Chateau Matter”

- 28 Next, the Mayor provided an update to council about the municipality’s financial contributions to the Au Chateau long-term care home. The long-term care home had litigated against the municipality in the previous year for failing to pay a particular fee required by law. Council discussed whether to pay this fee for the current year. The Mayor told council about a recent meeting with a Member of Provincial Parliament that could potentially affect the municipality’s requirement to pay this fee in the near future.
- 29 In its discussion, council specifically referred to the settled litigation from the previous year, the expectation of litigation during the current year, and explored various potential next steps. The Deputy Clerk and Mayor told my

⁹ Fort Erie (Town of) (Re), 2018 ONOMBUD 2, online: <<https://canlii.ca/t/hvmtm>>.

¹⁰ Fort Erie (Town of) (Re), 2015 ONOMBUD 12, at para 23, online: <<https://canlii.ca/t/gtp5w>>.

¹¹ Woolwich (Township of) (Re), 2015 ONOMBUD 24, online: <<https://canlii.ca/t/gtp6r>>.

¹² Letter from the Ombudsman of Ontario to City of Sault Ste. Marie (March 2, 2021), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2021/city-of-sault-ste-marie>>.

Office they believed there was a reasonable prospect of litigation at the time of the meeting.

- 30 Following this discussion, council returned to open session at 7:10 p.m. and adjourned the meeting.

Analysis

Applicability of the exception for litigation or potential litigation, s. 239(2)(e)

- 31 Council cited the exception for litigation or potential litigation to discuss in closed session the “Au Chateau Matter”.
- 32 My Office has determined that the litigation or potential litigation exception is reserved for circumstances where the subject matter is either related to ongoing litigation or involves a reasonable prospect of litigation.¹³ For potential litigation, there must be more than a remote possibility or a suspicion that litigation could arise, although it need not be a certainty.¹⁴ Rather, council must believe there is a reasonable prospect of litigation and must use the closed meeting exception to explore that prospect in some way.¹⁵
- 33 In this case, it was reasonable for council to expect, in the circumstances, that there would be imminent litigation related to this matter, as there had been litigation in the past for the same conduct. Council’s closed session discussion was specifically about how to proceed in light of that expectation.
- 34 Consequently, council’s discussion about the “Au Chateau Matter” fit within the exception for litigation or potential litigation.

¹³ Letter from the Ontario Ombudsman to City of Timmins (May 9, 2017), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2017/city-of-timmins-2>>; and Grey Bruce Health Unit (Re), 2023 ONOMBUD 6 at paras 38-39, online: <<https://canlii.ca/t/jw7tk>>.

¹⁴ *Ibid.*

¹⁵ West Lincoln (Township of) (Re), 2015 ONOMBUD 34 at para 36, <<https://canlii.ca/t/gtp7g>>; and Carleton Place (Town of) (Re), 2017 ONOMBUD 18 at para 26, online: <<https://canlii.ca/t/hqsph>>.

Notice

- 35 The complainant raised concerns that the Municipality did not provide notice to the public for the June 20 meeting. The Municipality's Office Administrator told my Office that the Municipality posted notice of the June 20 meeting on the "Events Calendar" and "Upcoming Meetings" municipal webpages on June 16. They also said that notice was posted on the doors of council chambers. We were told that this notice included a Zoom link, with a specified time and date.
- 36 The Mayor provided my Office with an internal copy of the posted notice, which bears a footnote indicating the notice was posted on June 16. Additionally, the Deputy Clerk confirmed to my Office that the document properties of the notice indicates it was created on June 16.

Analysis

- 37 Under section 238(2) of the Act, every municipality is required to pass a procedure by-law governing the calling, place, and proceeding of meetings. The Act further requires that municipalities include a public notice in the procedure by-law, but does not specify what the content of this notice should be.¹⁶
- 38 The Municipality's procedural by-law provides that the Clerk shall post notice on the municipal website, and shall give at least 24 hours notice to the public of all special meetings and committee meetings.¹⁷
- 39 In this case, the available evidence suggests that notice was provided several days in advance, both online and on the doors of council chambers. Accordingly, I am satisfied that public notice was provided in accordance with the requirements of the Act and the municipality's procedural by-law.

Accessibility of June 20 minutes and agenda

- 40 The complainant also raised concerns that the minutes and agenda for the June 20 meeting were not published online or otherwise publicly accessible.

¹⁶ *Municipal Act, 2001*, S.O. 2001, c. 25, at s 238(2.1).

¹⁷ Municipality of Temagami, by-law No 23-1659, *Being a by-law to govern the proceedings of the Council, the calling of Meetings and the conduct of Members, Staff and the Public*, at ss. 5.1.2 and 5.1.4.

- 41 My Office's review indicates that the agenda and open meeting minutes for the June 20 meeting are, at the time of this report, unavailable on the municipality's website.
- 42 The Office Administrator told my Office in August 2023 that the minutes would be posted imminently, and that at the time, this had not yet occurred due to a backlog caused by significant staff turnover. When members of my Office spoke with the Deputy Clerk several months later, we were again told that staff were managing the backlog caused by staff turnover, and the minutes would be published soon.

Analysis

- 43 Section 239(7) of the Act requires that a municipality record, without note or comment, all resolutions, decisions, and other proceedings at its meetings, and that this obligation applies to both open and closed meeting minutes. My Office has previously stated that keeping complete and accurate minutes of closed session meetings helps ensure the public feels confident that matters dealt with in closed session were consistent with the requirements of the Act.¹⁸
- 44 The Act does not provide guidance as to the actual publishing of minutes. However, my Office has recommended as a best practice that minutes be available to members of the public to improve accountability and transparency.¹⁹
- 45 The municipality's procedural by-law indicates that minutes of all meetings, except closed meetings, will be posted after approval, in accordance with applicable municipal policies.²⁰ However, with respect to the minutes for the June 20 meeting, the Municipality told my Office that minutes were taken, but more than ten months later, they remain in draft form and unpublished.
- 46 With respect to the municipality failing to post the meeting agenda, there is no requirement in the Act, or in the municipality's procedural by-law, to provide the meeting agenda to members of the public or otherwise publish it.

¹⁸ Tehkummah (Township of) (Re), 2018 ONOMBUD 3, online: <<https://canlii.ca/t/hvmtmp>>.

¹⁹ Greater Napanee (Town of) (Re), 2021 ONOMBUD 2, online: <<https://canlii.ca/t/jctvh>>.

²⁰ *Supra* note 2 at s. s. 2.9.

- 47 I recognize that Temagami is a small municipality with limited resources, and that it has experienced significant workload pressures due to recent staff turnover. However, it is nonetheless a best practice that the municipality make publicly accessible the open session minutes and agenda for all meetings, as soon as possible.

Opinion

- 48 Council for the Municipality of Temagami did not contravene the *Municipal Act, 2001* in its June 20, 2023 meeting. Council was permitted to discuss property previously owned by the municipality under the exception for personal matters about an identifiable individual. Although a portion of this *in camera* discussion did not involve personal information, it could not be parsed from the rest of the discussion and therefore fit within the exception. In addition, council was permitted to discuss a request to sell property under the exception for acquisition or disposition of property. Lastly, council was permitted to discuss an issue related to a local long-term care home under the exception for litigation or potential litigation.

Report

- 49 The Mayor for the Municipality of Temagami was given the opportunity to review the preliminary version of this report and provide comments to my Office. All comments received were considered in the preparation of this final report.
- 50 The Mayor indicated my report will be included as correspondence at an upcoming meeting. At that time, it will also be posted on my website at www.ombudsman.on.ca.



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