



June 19, 2020

Council for the Municipality of Callander
280 Main Street North, P. O. Box 100
Callander, ON
P0H 1H0

Sent via email to egunnell@callander.ca

Dear Mayor and Members of Council for the Municipality of Callander:

Re: Closed meeting complaint

My Office received a complaint about a closed meeting held by council for the Municipality of Callander on November 19, 2019. The complainant told us they believed that council discussed a drainage issue, even though it was not listed on the agenda for that meeting. The complainant also said that council held an informal private gathering on November 18, 2019, in which a council decision was made.

I am writing to advise you that my investigation did not substantiate these concerns.

Closed Meeting Investigator

As of January 1, 2008, the *Municipal Act, 2001*, gives citizens the right to request an investigation into whether a municipality or its local boards have complied with the Act in closing a meeting to the public.¹ Municipalities and local boards 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. I am the closed meeting investigator for the Municipality of Callander.

To assist municipal councils, staff, and citizens, we have developed an online digest of open meeting decisions that contains summaries of the Ombudsman's open meeting cases. This searchable repository was created to provide interested parties with easy access to the Ombudsman's past decisions on, and interpretations of, the open meeting rules. Council

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

members and staff can consult the digest to inform their discussions and decisions on whether a matter should or may be discussed in closed session, as well as issues related to open meeting procedure. Summaries of many previous Ombudsman decisions may be consulted in the digest at www.ombudsman.on.ca/digest.

Review

On March 4, 2020, my Office advised the municipality of our intent to investigate this complaint. My Office obtained and reviewed the relevant meeting agendas, open and closed session minutes, and other materials including a staff report. We also reviewed relevant emails exchanged by members of council in November 2019.

We interviewed the Clerk and the members of council who attended the November 19, 2019 meeting and were involved in the email chain.² My Office received full cooperation in this matter.

Timeline of events leading to the November 19, 2019 meeting

The Municipality of Callander's Operations and Emergency Services Executive Committee (the Executive Committee) deals with a variety of matters that are assigned to them by council. At the time of the November meeting, the Executive Committee consisted of the Mayor and two members of council.

Open session documents we reviewed indicate that during a meeting on September 9, 2019 the Chief Administrative Officer (CAO) provided the Executive Committee with a history, overview and recommendations on the drainage issue. The minutes state:

The recommendation from the Executive Committee was that the matter be taken to the Committee of the Whole and that the Executive Committee feels that Municipality [sic] has done and is doing everything that they should be doing with respect to this matter.

The Executive Committee prepared a report regarding this matter, which was reviewed at the open session of the Committee of the Whole meeting on September 17, 2019. During this meeting, the Mayor informed council that the owner of the affected residence had made a request to delegate to council on the drainage matter and that council would have the opportunity to hear the property owner's delegation at the regular meeting of council before making a decision on the Executive Committee's report.

² In November 2019, council for the Municipality of Callander was made up of five members. Due to the deaths of two members of council, at the time of our interviews council consisted of three members.

At the subsequent regular meeting of council on September 24, 2019, the property owner posed several questions to council during their delegation. The open session minutes indicate that council explained that they were not prepared to answer all the questions at that time and requested the owner submit the questions in writing to the Clerk so they could be answered at a later date.

During interviews we were told that a staff report, Report 2019-44 ADMIN, was prepared in November 2019 that contained the answers to the owner's questions. The staff report recommended that council approve the responses to the questions in the report, and that a letter be sent to the owner.

The staff report was reviewed by the CAO at the open session of the meeting of the Committee of the Whole on November 19, 2019. Council directed staff to bring the matter forward to the regular council meeting. During the subsequent regular council meeting on November 26, 2019, council accepted the recommendations made in the staff report, and moved to direct staff to send a letter to advise the property owner of its decision.

November 19, 2019 meetings

The complainant alleged that council discussed the staff report and matters related to the drainage issue during the November 19, 2019 meeting, even though this matter was not listed on the agenda.

Special meeting of council at 6:30 p.m.

The open session minutes indicate that council held a Special Meeting on November 19, 2019 at 6:30 pm. The minutes state that council passed the following resolution to move into closed session:

That this meeting proceed in Closed Session at 6:18 p.m. as authorized by sections 239(2)(b) and (d) of the Municipal Act, 2001, as amended in order to address matters items [sic] related to personal matters about identifiable individuals, concerning a financial matter regarding a tax payer and a personal matter regarding a municipal employee; and labour relations or employee negotiations regarding compensation and benefits for specific employees.

The closed session minutes indicate that three reports were discussed, none of which were Report 2019-44 ADMIN.

In our interviews with the Mayor, councillors, and staff, we confirmed that the discussions in open and closed session at the special council meeting on November 19, 2019 did not include the staff report or relate to the drainage issue.

Committee of the whole meeting at 7:00 p.m.

As mentioned above, the staff report was initially attached to the agenda package of the meeting of the Committee of the Whole on November 19, 2019. The agenda and minutes for this meeting and the information gathered in interviews indicate that there were no closed sessions held at this meeting.

During interviews, we confirmed that council received and reviewed the staff report in open session, after which the minutes state that “Council's direction was to bring it forward to the Regular Council Meeting with the motion as proposed”.

My investigation found that the staff report was not discussed at any closed session on November 19, 2019.

Alleged informal gathering on November 18, 2019

In the course of our review of this complaint, we reviewed a series of emails exchanged by members of council on November 19, 2019. The email exchange refers to an interaction between members of council “yesterday”. The complainant alleged that the emails demonstrated that council had met informally prior to the November 19 meetings to make a decision about the drainage matter.

The *Municipal Act, 2001*, defines a meeting as a gathering of a quorum of members of council in which the business or decision-making of the municipality is materially advanced.³ An informal gathering of a quorum of members in which council business is materially advanced can constitute a meeting.

All the interviewees shared consistent information that no additional meeting respecting the drainage issue took place in person or over email in November 2019. Witnesses explained that the email referenced a council decision made on November 18, 2019, in error. A councillor mistyped that the drainage issue was discussed “yesterday”, when they meant to say the issue had been discussed in open meetings in the past.

Based on the information that my Office reviewed, I am satisfied that no informal meeting took place on November 18, 2019, and that council did not make a decision with respect to the drainage issue outside of a formal meeting.

³ *Municipal Act, 2001*, S.O. 2001, c. 25, s 238(1).

Conclusion

My investigation found that council for the Municipality of Callander did not contravene the open meeting rules during a closed session on November 19, 2019. I also found that council did not hold an informal meeting on November 18, 2019.

Ombudsman staff reviewed a preliminary version of this letter with the Mayor and Clerk on June 9, 2020 and provided the opportunity to comment. Any comments received were taken into account in preparing this letter.

I would like to thank the Municipality of Callander for its co-operation with my Office during this investigation. This letter should be provided to council and made available to the public no later than the next meeting of council.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Dubé', is written over a light blue horizontal line.

Paul Dubé
Ombudsman of Ontario

Cc: Robb Noon, Mayor - rnoon@callander.ca