

BY EMAIL

Clerk Dylinna Brock
Wollaston Township
90 Wollaston Lake Road, P.O. Box 99
Coe Hill, ON K0L 1P0

May 24, 2019

Dear Ms. Brock,

Re: Closed Meeting Complaint, December 3, 2018 and January 7, 2019

My Office received a complaint about two meetings of council for Wollaston Township held on December 3, 2018 and January 7, 2019. The complainant raised concerns that the resolution to proceed *in camera* during both meetings did not include a general description of the matters to be discussed, and that council cited the wrong closed meeting exception when it moved into closed session. Specifically, the complainant alleged that council cited the personal matters exception when it discussed three employee-related matters *in camera*.

I am writing to advise you of my review and to provide best practice suggestions and resources to assist the township with adhering to the open meeting rules in future.

Review

In investigating the present complaint, my Office spoke to the township's previous clerk (who retired during our review), as well as the current clerk. We were also provided with the meeting records for the December 3, 2018 and January 7, 2019 meetings and the audio recordings of the closed sessions for those meetings.

The wrong exception

The complainant told my Office that council cited the wrong exception (personal matters) when it discussed employee-related matters in closed session during the December 3 and January 7 meetings. The complainant told my Office that the labour

relations and employee matters exception was more appropriate and should have been cited instead of the personal matters exception.

The personal matters exception applies to discussions that reveal personal information about an identifiable individual. In order to qualify as personal information, it must be reasonable to expect that an individual could be identified if the information were disclosed publicly.¹

Generally, information that pertains to an individual in their professional capacity will not fit within the personal matters exception. However, in some cases information about a person in their professional capacity may still fit within the exception if it reveals something personal or relates to scrutiny of an individual's conduct.² Discussions regarding the hiring of a specific individual, including their employment history and past job performance, fit within the personal matters exception. Salary ranges are generally not considered personal information, but information on individual staff salaries can be discussed under the personal matters exception.³

While in closed session on December 3, council discussed a return to work plan for an employee. This discussion involved specific information related to the individual's job performance and other personal information. This discussion fit within the personal matters exception. Council also discussed retaining a named individual as a consultant to act as a "Transition Lead" for the municipality's administration. This discussion involved details related to the proposed consulting service including the individual's hourly rate and past job performance. This type of information qualifies as personal information. Accordingly, the discussion fit within the personal matters exception.

On January 7, council discussed an employee matter while in closed session using the personal matters exception. This discussion involved personal information related to an individual's employment and was appropriate for consideration in closed session under the personal matters exception.

While it was open to council to also cite the exception for labour relations and employee matters during both of these meetings, the discussions still also fit within the exception for personal matters and did not violate the open meeting rules.

¹ *Ontario (Ministry of Correctional Services) v Goodis* [2008], OJ No 289 at para 69.

² *South Huron (Municipality of) (Re)*, 2015 ONOMBUD 6 (CanLII)

³ *Russell (Township of) (Re)*, 2015 ONOMBUD 29 (CanLII)

Resolution to proceed into closed session

The complainant alleged that council failed to provide a description of the general nature of the matters to be considered in closed session during the December 3 and January 7 meetings.

The minutes from both of these meetings indicate that when council moved to close the meeting it only cited the exceptions on which it was relying to hold the closed session. There was no information provided about the topic to be discussed.

Under the open meeting rules, the resolution must state the fact of the closed meeting and the general nature of the topic to be discussed.⁴ The Court of Appeal in *Farber v. Kingston* emphasized that the resolution should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.⁵ In that case, the Court stated that the legislative intent of section 239(4) of the *Municipal Act* requires more than simply citing the closed meeting exception relied upon to exclude the public:

The notion of “the general nature of the matter to be considered” suggests more fidelity to transparent governance than that, while recognizing that a full description of the matter to be considered cannot be revealed to the public because of the very need to go into closed session.⁶

It is important to remember that these procedural requirements are not a mere formality. Open meeting legislation ensures effective democracy, and the *Municipal Act*'s provisions are intended to increase the public's confidence in the integrity of local government. My Office has recently released a public tool to assist municipalities with learning about and adhering to the open meeting rules. The Open Meeting Digest is an online resource which catalogues and summarizes the open meeting reports and letters my Office has released over the past ten years: www.ombudsman.on.ca/digest.

I acknowledge that the Township does report back after its closed sessions, which is an important practice that increases the transparency of the closed meeting process. The Township should also be commended for recording open and closed meetings of council. This provides the most clear, accessible record for closed meeting investigators to review, and assists in ensuring that officials do not stray from the legal requirements during closed meetings.

⁴ *Municipal Act, 2001* s. s 239(4)

⁵ *Farber v. Kingston*, 2007 ONCA 173 at para. 21.

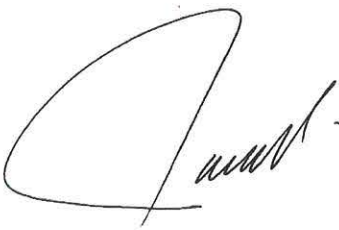
⁶ *Ibid* at para 19

The Clerk agreed to ensure that, in future, resolutions to proceed *in camera* contain a general description of the topics to be discussed.

Conclusion

I would like to thank the Township of Wollaston for its co-operation during my review, and for indicating to us that this letter would be included as correspondence at the next available meeting of council.

Sincerely,

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

Paul Dubé
Ombudsman of Ontario