



Ombudsman Report

**Investigation regarding a closed meeting held by the
Township of Emo on June 23, 2020**

**Paul Dubé
Ombudsman of Ontario
October 2020**

Complaint

- 1 My Office received a complaint about a closed meeting held by council for the Township of Emo (the Township) on June 23, 2020. The complaint alleged that council's discussion relating to a council code of conduct matter did not fit within the exceptions to the open meeting rules in the *Municipal Act, 2001*.

Ombudsman jurisdiction

- 2 Under the *Municipal Act, 2001*¹ (the Act), all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3 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. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4 The Ombudsman is the closed meeting investigator for the Township of Emo.
- 5 When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's procedure by-law have been observed.
- 6 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 easy access to the Ombudsman's past 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 a matter should or may be discussed in closed session, as well as issues related to open meeting procedure. Summaries of the Ombudsman's previous decisions can be found in the digest:
www.ombudsman.on.ca/digest.

¹ SO 2001, c 25.

Investigative process

- 7 In July 2020, I advised the municipality of our intent to investigate this complaint.
- 8 We reviewed the meeting agenda, minutes from the open and closed session, and the municipality's procedure by-law. We interviewed all members of council, as well as the municipal Clerk/Chief Administrative Officer (CAO)/Treasurer.
- 9 My Office received full co-operation in this matter.

The June 23, 2020 meeting

- 10 Council met for a regular meeting on June 23, 2020. According to the meeting minutes, council resolved to proceed *in camera* at 7:47 p.m. to discuss "personal matters regarding an identifiable individual, including employees." The agenda further clarified that council would be discussing, among other things, a matter regarding "Council Code of Conduct."
- 11 According to the closed session minutes and those we spoke with, council's discussion for this matter related to one councillor's concern about emails between other named councillors and community members. The names of the citizens who sent these emails and the content of the correspondence were also disclosed. The councillor discussed concerns and opinions about identified councillors' conduct in relation to the emails. Those we spoke with did not recall any specific discussions related to council's code of conduct, or ways in which the alleged behaviours related to the code of conduct.
- 12 There was limited discussion in response to these concerns. One of the named council members defended their conduct and indicated that they had not responded to certain emails. Other councillors did not participate in the discussion, and council did not provide any direction to staff regarding this matter.
- 13 Council returned to open session at 8:43 p.m. Council did not report back regarding this *in camera* matter.

Analysis

Applicability of the “personal matters” closed meeting exception

- 14 Council cited the exception in s. 239(2)(b) to discuss personal matters about identifiable individuals during its June 23, 2020 closed session. The personal matters exception applies to discussions that reveal personal information about an identifiable individual.
- 15 Generally, discussions of a council member’s actions in the course of their duties are considered to be of a professional nature and do not fall within the “personal matters” exception.² 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.³
- 16 In a letter to the Municipality of Temagami, my Office found that council was entitled to discuss a complaint against a member of council in closed session because staff were unsure if the council member was acting in a professional or personal capacity during the incident that gave rise to the complaint.⁴ Similarly, in a letter regarding a closed meeting held by the City of Elliot Lake, my Office found that an *in camera* discussion about unproven allegations that a council member had breached confidentiality fit within the “personal matters” exception. In that case, the allegations had not been investigated or made public and constituted personal information about the council member.⁵
- 17 In the present case, council’s discussion about some councillors’ alleged email correspondences related to those councillors’ professional capacity as members of council. However, the concerns raised touched on information that was speculative, and in one case refuted by the named member of council. The discussion involved scrutiny of these councillors’ conduct and the sharing of opinions related to the conduct. Accordingly, this

² IPC Order MO-2204 (22 June 2007), online: <<http://canlii.ca/t/1scqh>> and Municipality of Temagami (2017): <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2017/municipality-of-temagami>>

³ South Huron (Municipality of) (Re), 2015 ONOMBUD 6 at paras 31 to 32, online: <<http://canlii.ca/t/gtp80>>.

⁴ Municipality of Temagami (2017): <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2017/municipality-of-temagami>>

⁵ City of Elliot Lake (2014): <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2014/city-of-elliott-lake-1>>

discussion took on a more personal nature and therefore fits within the “personal matters” exception.

Procedural matters

Resolution to proceed *in camera*

- 18 Section 239(4)(a) of the Act provides that before moving into a closed session, a municipality must state by resolution in open session that a closed meeting will be held, and state the general nature of the matter to be considered at the closed meeting. In *Farber v. Kingston (City)* (2007 ONCA 173), the Ontario Court of Appeal determined that the resolution to go into a closed meeting 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.⁶ My Office has also recommended that councils provide more substantive detail in resolutions authorizing closed sessions.⁷
- 19 In this case, council’s agenda for the June 23, 2020 council meeting indicated that council would be discussing a “Council Code of Conduct” matter *in camera*. However, the resolution the council passed to proceed into closed session did not provide any information about council’s intended discussion, other than referencing the “personal matters” closed meeting exception.
- 20 In future, the Township should ensure that its resolutions to proceed *in camera* 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.

Opinion

- 21 Council for the Township of Emo did not contravene the *Municipal Act, 2001* when it proceeded *in camera* on June 23, 2020, to discuss a conduct issue related to several councillors. This discussion was permissible under

⁶ *Farber v. Kingston (City)*, 2007 ONCA 173, online: <<http://canlii.ca/t/1qtzl>>. ⁷ *Niagara (District Airport Commission) (Re)*, 2016 ONOMBUD 22, online: <<http://canlii.ca/t/h2stf>>.

the Act's closed meeting exception for personal matters about an identifiable individual in section 239(2)(b).

- 22 However, council for the Township of Emo contravened the requirements of section 239(4)(a) of the *Municipal Act, 2001* by failing to state by resolution the general nature of the matters to be considered in camera.

Recommendations

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

Recommendation 1

All members of council for the Township of Emo 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.

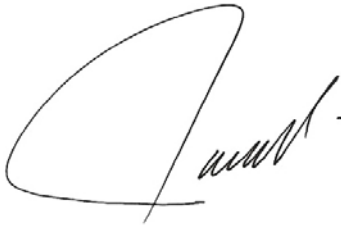
Recommendation 2

The Township of Emo should ensure that its resolution to proceed *in camera* provides 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.

Report

- 24 Council for the Township of Emo was given the opportunity to review a preliminary version of this report and provide comments to our Office. In light of the restrictions in place related to COVID-19, some adjustments were made to our normal preliminary review process and we thank council for their co-operation and flexibility. Any comments received were considered in the preparation of this final report.

- 25 This report will be published on my Office's website, and should be made public by the Township of Emo as well. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, council should pass a resolution stating how it intends to address this report.



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