

August 4, 2021

Council for Township of McKellar
c/o Peter Hopkins, Mayor
PO Box 69,
701 Highway 124
McKellar, ON P0G 1C0

Dear Council for the Township of McKellar:

Re: Closed meeting complaint

My Office received a complaint alleging that three councillors for the Township of McKellar met with the incoming Chief Administrative Officer (CAO)/Clerk on March 3, 2021, contrary to the *Municipal Act, 2001* (the Act).¹ The gathering, according to the attendees, was intended to serve as a “meet and greet” between council and the incoming CAO/Clerk.

I am writing to advise that my investigation has determined that council for the Township of McKellar did not contravene the Act’s open meeting requirements on March 3, 2021, as the gathering did not come within the definition of “meeting” under the Act.

Ombudsman jurisdiction

As of January 1, 2008, the *Municipal 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.² Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. My Office is the closed meeting investigator for the Township of McKellar.

¹ SO 2001, c 25.

² *Municipal Act*, s 239.1.

My 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 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.

Review

In May 2021, my Office advised the Township of our intent to investigate this complaint. My Office reviewed information provided by the complainant, the Township's procedure by-law, and relevant correspondence. We interviewed all five members of council, the incoming CAO/Clerk (now officially serving in the role), the Acting Treasurer, the Acting Deputy Clerk/Treasury Assistant, and the then-Acting CAO/Clerk.

According to the correspondence we reviewed, council was informed by the then-Acting CAO/Clerk that the incoming CAO/Clerk would be at the municipal office for a "meet and greet" on March 3, 2021, to speak with staff and municipal councillors in an informal setting. We were told that this was the first opportunity for the incoming CAO/Clerk to speak with councillors outside the formal interview process, which occurred virtually due to the pandemic. Based on the documentary evidence and those we spoke with, councillors were told when the CAO/Clerk would be available to speak and were invited to "drop in" according to their individual availability.

Based on our investigation, four councillors came to the municipal office on March 3 to speak with the incoming CAO/Clerk. Each arrived separately and at different times, ranging from approximately 9 a.m. to 12 p.m. In their interviews, councillors confirmed that at approximately 10:45 a.m., three councillors were present with the incoming CAO/Clerk in council chambers. This occurred when a third councillor joined two others who were already speaking with the incoming CAO/Clerk.

The councillors had different estimates of how long the three members of council were present with the incoming CAO/Clerk, ranging from five to 30 minutes. However, everyone we spoke with said that the discussion was restricted to non-municipal business, as councillors were aware of the Act's open meeting requirements. We were told that the group spoke about the incoming CAO/Clerk's personal and professional background, his search for living accommodations in the Township, and other personal matters. Several councillors emphasized that the incoming CAO/Clerk had not yet begun working for the municipality and had not been briefed on ongoing matters. No

one my Office spoke with said that councillors discussed municipal business during this exchange, and our interviews found no other evidence that this occurred.

We were told that after this discussion in council chambers, the incoming CAO/Clerk spoke individually with a fourth councillor in a public staff area. We were told that this conversation was very brief, as it was lunchtime and the incoming CAO/Clerk planned to eat with municipal staff. A fifth councillor met virtually with the incoming CAO/Clerk on a separate day.

Definition of “meeting” under the Municipal Act

My Office has found that the *Municipal Act*'s definition of “meeting” in section 238(1) requires a quorum of councillors to be physically present³ and discuss a matter in a way that “materially” or “significantly” advances council’s business or decision-making.⁴ In my Office’s 2018 report regarding “information sessions” in the Village of Casselman, we noted that “updates on recent activities and mere communication of information are not as likely to be considered as materially advancing business or decision-making,” while council would likely be materially-advancing its business or decision-making when “it votes, reaches an agreement, provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy.”

My Office has always recognized that it is important for council members to be able to speak freely with one another outside the structure of a formal meeting. In a 2013 report about the City of London, we explained:

To be clear, the *Municipal Act, 2001* does not create an absolute prohibition against members of council discussing city business outside chambers... I agree that to expect council members never to talk to one another outside of a public meeting is unrealistic and would have the effect of unnecessarily chilling speech.⁵

In the present case, a quorum of councillors gathered with the incoming CAO/Clerk to welcome him to the municipality, discuss his personal and professional background, his search for new accommodations, and other personal matters. This discussion did not materially advance council’s business or decision-making, and thus did not constitute a “meeting” under the *Municipal Act*.

³ *Hamilton (City of) (Re)*, 2019 ONOMBUD 7, <<https://canlii.ca/t/j2pww>> at para 65.

⁴ *Casselman (Village of) (Re)*, 2018 ONOMBUD 11, <<https://canlii.ca/t/hvmtk>>, at paras 34-35.

⁵ *London (City of) (Re)*, 2013 ONOMBUD 3, <<https://canlii.ca/t/gtmhj>>.

Conclusion

Our review indicates that council for the Township of McKellar did not contravene the open meeting requirements on March 3, 2021 when a quorum of councillors met socially with the incoming CAO/Clerk, as this gathering did not constitute a meeting under the *Municipal Act*.

I would like to thank the Township for its co-operation during my review. The CAO/Clerk confirmed that this letter would be included as correspondence at an upcoming council meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Dubé', written over a large, light-colored oval shape.

Paul Dubé
Ombudsman of Ontario

CC: Lance Sherk, CAO/Clerk, Township of McKellar