

BY EMAIL

August 7, 2024

Council for the Municipality of Callander
c/o Mayor Robb Noon
280 Main Street North, P.O. Box 100
Callander, ON P0H 1H0

Dear Members of Council for the Municipality of Callander:

Re: Closed meeting complaint

My Office received a complaint regarding meetings held by council for the Municipality of Callander (the “Municipality”) on December 12, 2023 and January 9, 2024. The complaint alleged that with respect to a specific agenda item at each meeting, council failed to provide sufficient information in its resolutions to proceed into closed session, as required by the *Municipal Act, 2001* (the “Act”).¹

For the reasons set out below, I have determined that council contravened section 239(4)(a) of the Act on December 12, 2023 and January 9, 2024, by failing to provide sufficient information about the general nature of the matter to be considered in its resolutions to proceed into closed session.

Ombudsman’s role and authority

As of January 1, 2008, the Act gives anyone 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. My Office is the closed meeting investigator for the Municipality of Callander.

¹ SO 2001, c 25.

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.

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.

Review

My Office notified the Municipality of our intent to investigate this complaint on April 16, 2024. We spoke with the Municipal Clerk/Treasurer. We reviewed the Municipality's procedure by-law and the open and closed meeting materials for both meetings, including agendas, minutes, and other correspondence brought before council.

December 12, 2023 council meeting

On December 12, 2023, council met in council chambers at 6:30 p.m. At 8:20 p.m., council resolved to move into closed session to discuss two items. The complaint alleged that the resolution did not provide sufficient information about the second item, which was described as "2(c), a proposed or pending acquisition or disposition of land by the municipality or local board."

In closed session, after discussing the first item that was not subject to this complaint, council discussed an opportunity to purchase a specific property before directing staff. Council returned to open session at 8:39 p.m.

January 9, 2024 council meeting

On January 9, 2024, council met in council chambers at 6:30 p.m. At 6:48 p.m., council resolved to move into closed session to discuss three items. The complaint alleged that the resolution did not provide sufficient information about the second of the three items, which was described as “2(c), a proposed or pending acquisition or disposition of land by the municipality or local board.”

In closed session, after approving minutes and discussing an item not subject to this complaint, council discussed a request to purchase property owned by the Municipality before directing staff about this item. After discussing another matter, council returned to open session at 7:44 p.m.

Analysis

Section 239(4)(a) of the Act requires that, before holding a closed meeting, council must state by resolution “the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting.” The Court of Appeal for Ontario stated in *Farber v. Kingston (City)* that a 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 proceeding into closed session.² This means that municipalities are required to add a “level of informative detail” to the resolution to close a session to the public,³ and I have previously recommended that councils provide more substantive detail in resolutions authorizing closed sessions.⁴

My Office has previously noted that when council is relying on the exception for acquisition or disposition of land, there is no general requirement to provide the public with the address of the property to be discussed, and that doing so may undermine the reason for having the discussion in private.⁵ However, situations where any other additional information cannot be provided are a rarity.⁶

In both the December 12, 2023 and January 9, 2024 resolutions, council identified only the open meeting exception for acquisition or disposition of land as the topic to be discussed for these agenda items. In both cases, further information could have been provided in the resolution. When we spoke with the Municipal Clerk/Treasurer, she agreed that more information could have been provided in the resolutions without undermining council’s reasons for going into closed session. For example, council could have identified the name of the street on which each property was located, or council could have indicated on

² *Farber v Kingston (City)*, 2007 ONCA 173, online: <<https://canlii.ca/t/1qtzl>>.

³ *Brockville (City of)*, 2016 ONOMBUD 12, online: <<https://canlii.ca/t/h2ssr>>.

⁴ *Emo (Township of) (Re)*, 2020 ONOMBUD 6, online: <<https://canlii.ca/t/jb1g6>>.

⁵ *Amherstburg (Town of) (Re)*, 2024 ONOMBUD 5, online: <<https://canlii.ca/t/k4b02>>.

⁶ *Casselman (Municipality of) (Re)*, 2022 ONOMBUD 14, online: <<https://canlii.ca/t/jrkx7>>.

December 12 that council was discussing an opportunity for it to purchase a property, and on January 9 that it was discussing an offer to purchase municipal land.

I find that council for the Municipality of Callander contravened section 239(4)(a) of the Act by failing to provide sufficient information about the general nature of the matter to be considered in its resolutions to proceed into closed session on December 12, 2023 and January 9, 2024.

Conclusion

Council for the Municipality of Callander contravened section 239(4)(a) of the *Municipal Act, 2001* on December 12, 2023 and January 9, 2024, by failing to provide sufficient information about the general nature of two specific agenda items to be considered in its resolutions to proceed into closed session. In the future, council should ensure it maximizes the informative detail in its resolutions to move into closed session without undermining the reason for closing the meeting.

The Mayor, Municipal Clerk/Treasurer, and Senior Municipal Director for the Municipality of Callander were given the opportunity to review the contents of this letter and provide comments to my Office. All comments received were considered before the finalization of this letter.

I would like to thank the Municipality of Callander for its co-operation during my investigation. This letter will be published on my Office's website, and should also be made public by the Municipality. In accordance with section 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this letter.

Sincerely,



Paul Dubé
Ombudsman of Ontario

Cc: Cindy Pigeau, Municipal Clerk/Treasurer, Municipality of Callander

Cette lettre est aussi disponible en français