



Ombudsman Report

**Investigation into meetings held by the City of Cornwall's
Municipal Grants Review Committee / Working Group
on November 9 and November 30, 2021**

**Paul Dubé
Ombudsman of Ontario
February 2023**

Complaint

- 1 My Office received a complaint in December 2021 about two meetings held by the City of Cornwall’s Municipal Grants Review Committee / Working Group (the “Committee”).¹ The complaint alleged that the Committee’s meetings on November 9 and November 30, 2021, were closed to the public contrary to the open meeting rules found in the *Municipal Act, 2001* (the “Act”).²
- 2 For the reasons set out below, I have concluded that the Committee is a committee of council and must comply with the open meeting rules set out in the Act.
- 3 As a result, I have also concluded that the Committee contravened the Act on November 9, 2021, as its discussions did not fit within any exception to the Act’s open meeting rules. The Committee also contravened the Act on November 30, 2021, as only some of its *in camera* discussion fit within a prescribed exception to the Act’s open meeting rules.

Ombudsman jurisdiction

- 4 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 5 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.
- 6 The Ombudsman is the closed meeting investigator for the City of Cornwall (the “City”).
- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality’s governing procedures have been observed.

¹ The group was called the Municipal Grants Review Committee at the time of the November 9, 2021 meeting. The name was changed to the Municipal Grants Review Working Group at the November 30, 2021 meeting.

² SO 2001, c 25.

- 8 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.

Investigative process

- 9 In February 2022, my Office advised the City of our intent to investigate this complaint.
- 10 Members of my Office’s open meeting team reviewed relevant portions of the City’s procedure by-law, the City’s committees by-law, the by-law appointing members to the Committee, the Committee’s Terms of Reference, the Municipal Grants Program Policy, the Municipal Grants Program Guidelines, and the Act. We also reviewed the open and closed meeting agendas as well as the meeting minutes for the November 9 and November 30, 2021 meetings.
- 11 We interviewed the City Clerk, the Committee’s recording secretary, and all members of the Committee.
- 12 My Office received full co-operation in this matter.

Procedure by-law

- 13 Section 238(2) of the Act requires municipalities to pass a procedure by-law that governs the calling, place, and proceedings of meetings. The City has passed By-law 2020-103.
- 14 Section 2.10 of the procedure by-law defines a committee as “a standing, advisory, or special purpose committee established by Council, but not Committee of the Whole.”³ An advisory committee is defined as “a committee appointed by Council to act in an advisory capacity to Council on operational and strategic issues during the full term of Council.”⁴

³ City of Cornwall, By-law 2020-103, *A By-law to Govern the Proceedings of the Council of the Corporation of the City of Cornwall* (10 August 2020), s 2.10.

⁴ *Ibid*, s 2.6.

- 15 Although the procedure by-law does not mention working groups, the City's Committees By-law defines a working group as "a committee established by a standing, advisory or legislated committee and authorized by Council with a clear mandate that has a beginning and ending and reports directly to the creating standing, advisory or legislated committee."⁵

The Municipal Grants Review Committee / Working Group

- 16 Council established the Municipal Grants Review Committee on January 27, 2020, pursuant to by-law 2020-057.⁶ There are five voting members of the Committee, three of whom are members of council.
- 17 The Committee's Terms of Reference state that the Committee is "an independent Committee of Council operating under delegated authority to review and approve the allocation of municipal grants."⁷
- 18 According to its Terms of Reference, the Committee was created to review applications and award grants based on the grant criteria outlined in the Municipal Grants Program Policy and in the Municipal Grants Program Guidelines.
- 19 The Terms of Reference indicate that the recording secretary is responsible for creating and distributing the agenda and taking meeting minutes. Both the agenda and minutes are to be forwarded to the Clerk for retention.⁸
- 20 We were told by interviewees that they believed the Committee to be an internal working group. We were told that in light of this belief, after the November 9, 2021 meeting, the Clerk began preparing meeting materials using the agenda template for the City's internal working groups instead of the template for the City's committees. From the November 30, 2021 meeting onwards, the meeting agendas and minutes referred to the Committee as the "Municipal Grants Review Working Group." My Office was told that the decision to change the name from the "Municipal Grants Review Committee" to the "Municipal Grants Review Working Group" did not occur at a council meeting or in any other official way. There were also no changes to the Terms of Reference.

⁵ City of Cornwall, By-law 2020-146, *Committees By-law* (9 November 2020), s 1.8.

⁶ City of Cornwall, By-law 2020-057, *By-law to appoint Members of Council and Administration to the Municipal Grants Committee* (11 May 2020).

⁷ City of Cornwall, "Municipal Grants Review Committee Terms of Reference" at 1.

⁸ City of Cornwall, "Municipal Grants Review Committee Terms of Reference" at 2.

Analysis

- 21 Section 238(1) of the Act defines a “committee” as any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards. In addition, my Office has previously found that a body may be subject to the open meeting requirements if it is a committee as defined in the municipality’s procedure by-law,⁹ or is considered by the municipality to be a committee.¹⁰
- 22 In assessing if a body is a committee, my Office also considers its role and function, as the Act defines a committee as an advisory or other committee or similar entity. My Office has found that a body that exercises delegated authority from council to make decisions or recommendations is likely to be a committee.¹¹ A body is not likely to be a committee if it serves an administrative purpose, merely exchanges information, or advances previously decided positions.¹²
- 23 The Committee’s composition meets the definition of a committee under the Act, as at least 50% of the Committee’s members are councillors.
- 24 The Committee also functions as a committee of council. The Committee receives applications, reviews their contents, scores them according to established policy and guidelines, and brings its final recommendations to council for approval. These functions are not purely administrative and go beyond the mere exchange of information.
- 25 The change of the Committee’s name to the “Municipal Grants Review Working Group” did not affect the composition or function of the Committee. Accordingly, the name change did not change the fact that the Committee meets the definition of a committee of council.
- 26 As a committee of council, the Committee is obligated to comply with the Act’s open meeting requirements.

⁹ *Niagara (Regional Municipality of) (Re)*, 2015 ONOMBUD 37, online: <<https://canlii.ca/t/gtp7n>>; *Hamilton (City of) (Re)*, 2021 ONOMBUD 9, online: <<https://canlii.ca/t/jfj02>>.

¹⁰ *Hornepayne (Township of) (Re)*, 2016 ONOMBUD 20, online: <<https://canlii.ca/t/h2st9>>.

¹¹ *West Parry Sound (Heads of Council in) (Re)*, 2015 ONOMBUD 38, online: <<https://canlii.ca/t/gtp7q>>.

¹² *Hamilton (City of) (Re)*, 2014 ONOMBUD 11, online: <<https://canlii.ca/t/gtmh8>>; *West Parry Sound (Heads of Council in) (Re)*, 2015 ONOMBUD 38, online: <<https://canlii.ca/t/gtp7q>>; *Deep River (Town of) (Re)*, 2017 ONOMBUD 17, online: <<https://canlii.ca/t/hqspf>>.

November 9, 2021 meeting

- 27 The Committee met in person on November 9, 2021 at 3:00 p.m. Notice of this meeting was posted on the City's community calendar in the form of a publicly available agenda. The agenda indicated that the Committee would discuss personal matters about identifiable individuals, and plans and instructions for negotiations.
- 28 According to the meeting minutes, the Committee carried the following resolution to proceed into closed session:
- Motion to move into a Closed Meeting at 3:00 p.m. to discuss matters that fall under the Municipal Act, 2001, c23 s.239 (3.1) [the "education and training" closed meeting exception]
- 29 The resolution did not refer to personal matters about identifiable individuals or plans and instructions for negotiations. While not cited in the resolution, we were told that these exceptions are cited on the agenda for each of the Committee's *in camera* meetings, rather than having been selected for this particular meeting.
- 30 Once in closed session, there were five matters on the agenda for discussion. The first matter was the letters of agreement submitted to the Committee by organizations that had applied for grants. In these letters, the organizations seeking to receive grants agreed to specific required terms and conditions as part of the grant process. We were told that the Committee received and accepted, but did not discuss, the letters.
- 31 The second matter related to the interim and final reports to the Committee from organizations that had received grants. The Committee received some reports and decided to send a letter to an organization relating to its report.
- 32 The third matter related to grant recipients who had not yet submitted their interim or final reports. We were told that the Committee discussed whether to provide these organizations with letters requesting they submit their reports, and ultimately the Committee decided to do so.
- 33 The fourth item on the agenda related to a draft annual report that the Committee had prepared for City council. We were told that the annual report included information about the organizations that applied for and received grants, including how the funds were used. According to the closed meeting minutes, the Committee reviewed its draft annual report and revised its policies and guidelines related to the municipal grant program.

- 34 The final matter on the agenda was the grant applications that the Committee received for 2022. According to the closed meeting minutes, the applications were distributed among members in preparation for their review. Some Committee members told my Office that they began reviewing and scoring applications during this meeting while other members could not recall if the application review process began during this meeting.
- 35 The closed session was adjourned at 4:30 p.m. There was no open session following the closed session discussions.
- 36 We asked interviewees why each matter was discussed in closed session. One interviewee told my Office that discussions about grant applications reveal personal information about the applicants and that disclosing a group's budget would impede a group's ability to negotiate for products and services. Accordingly, the interviewee felt that the exception for personal matters and the exception for plans and instructions for negotiations would apply.
- 37 However, the other interviewees told my Office that there was no discussion of any personal information relating to the applicants and that the Committee did not discuss any negotiations during the meeting.

Analysis

Exception for education or training

- 38 The resolution to proceed *in camera* cited the exception to the open meeting rules for education or training found in subsection 239(3.1) of the Act.
- 39 The exception for education or training allows a meeting to be closed to the public if it is held for the purpose of “educating or training” members, and if no member discusses or otherwise deals with a matter in a way that materially advances the business or decision-making of the municipality, local board, or committee.
- 40 The exception is to be narrowly construed and my Office has previously noted the limits of the exception for education or training. For example, my Office has found that the scope of the exception is only to include meetings where members receive information that may assist them in understanding the business of the municipality and/or to acquire skills.¹³

¹³ Casselman (*Village of*) (*Re*), 2015 ONOMBUD 14, online: <<https://canlii.ca/t/gtp61>>.

- 41 In this case, none of those we interviewed could explain why the exception for education or training was referenced in the resolution to proceed *in camera*. The meeting minutes do not indicate that the Committee members received information to help them understand its business or to acquire new skills. Further, the minutes indicate that members discussed and dealt with matters that materially advanced the business and decision-making of the Committee.
- 42 Accordingly, the discussion did not fit within the exception to the open meeting rules for education or training.

Exception for personal matters about an identifiable individual

- 43 Although not cited in the resolution to proceed *in camera*, the meeting agenda also indicated that the Committee would discuss personal matters about identifiable individuals. We were told that this exception is cited in the agenda for each of the Committee's *in camera* meetings.
- 44 Under section 239(2)(b) of the Act, a meeting or part of a meeting may be closed to the public if the discussion would reveal personal information about an identifiable individual. While the Act does not define "personal matters," personal information is information that can be reasonably expected to identify an individual.¹⁴
- 45 In this case, we found no evidence that the Committee's discussions included personal matters about identifiable individuals.
- 46 With respect to its discussion about the 2022 grant applications, one interviewee expressed concerns that the information contained in the applications should not be public. However, we were told that no personal information was contained in the applications, aside from perhaps a list of individuals on the applicant organization's board of directors. An individual's name alone is not personal information and my Office has consistently determined that information about an individual in their professional capacity is not considered personal information.¹⁵
- 47 Accordingly, the Committee's *in camera* discussion on November 9, 2021, did not fit within the exception for personal matters about an identifiable individual.

¹⁴ *Ontario (AG) v. Pascoe*, 2002 CanLII 30891 (ON CA), online: <<https://canlii.ca/t/1chz2>>; *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11 at para 19, online: <<https://canlii.ca/t/jr5rc>>.

¹⁵ *Temagami (Municipality of) (Re)*, 2021 ONOMBUD 3, online: <<https://canlii.ca/t/jcxs0>>.

Exception for plans and instructions for negotiations

- 48** The meeting agenda also indicated that the Committee would discuss plans and instructions for negotiations during the closed session on November 9, 2021. We were told that the Committee always cites this exception when proceeding *in camera* and did not specifically select it for this particular meeting.
- 49** Section 239(2)(k) of the Act allows discussions about plans and instructions for negotiations to occur in closed session. The purpose of this exception is to protect information that could undermine the Committee's bargaining position or give another party an unfair advantage during an ongoing negotiation.¹⁶ In order for the exception to apply, the Committee must show that:
1. The *in camera* discussion was about positions, plans, procedures, criteria, or instructions;
 2. The positions, plans, procedures, criteria, or instructions are intended to be applied to negotiations;
 3. The negotiations are being carried on currently, or will be carried on in future; and
 4. The negotiations are being conducted by or on behalf of the Committee.¹⁷
- 50** We were told that the Committee was not engaged in any negotiations at the time of the meeting.
- 51** It was suggested that if some of the information the Committee discussed became public, particularly the applicant organizations' budgets, it could disadvantage the applicant organizations with respect to their negotiations with third parties. However, the purpose of the exception for plans and instructions for negotiations is to protect the bargaining position of the body that is meeting *in camera*, not a third party's bargaining position in the context of purely speculative negotiations.
- 52** Accordingly, the Committee's *in camera* discussion on November 9, 2021, did not fit within the exception for plans and instructions for negotiations.

¹⁶ Letter from the Ombudsman to the City of Pickering (23 September 2020), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2020/city-of-pickering>>.

¹⁷ *St. Catharines (City of) (Re)*, 2019 ONOMBUD 1 at paras 30-31, online: <<https://canlii.ca/t/hxrk5>>.

Exception for information provided in confidence by a third party

- 53** While not specifically raised by the Committee, my Office also considered the applicability of the exception for information supplied in confidence by a third party found in subsection 239(2)(i) of the Act.
- 54** The purpose of this exception is to protect confidential information about third parties, where the disclosure of the confidential information could interfere with the competitive position of a third party in negotiations.¹⁸
- 55** My Office has found that this exception applies when:
1. The discussion concerns information that falls into one of the types listed in the exception (trade secret, scientific, technical, commercial, financial, or labour relations information);
 2. A third party supplied the information confidentially, whether explicitly or implicitly, to the municipality, local board, or committee; and
 3. If the information were disclosed, it could reasonably be expected to cause harm, either by significantly prejudicing the competitive position or significantly interfering with the contractual or other negotiations of a person, group of persons or organization.¹⁹
- 56** Based on our review, we found no evidence that disclosure of any information supplied by the third parties could reasonably be expected to cause significant harm, as required by the exception. One Committee member suggested that if information about the applicant organizations' budgets and funding were disclosed, it could disadvantage them in their negotiations for products and services with others. However, this potential impact is speculative and does not establish a reasonable expectation of harm.
- 57** Accordingly, the topics discussed during the Committee's closed session on November 9, 2021, did not fit within the exception for information supplied in confidence by a third party, or any other exception, under the Act.

¹⁸ *Greater Sudbury (City of) (Re)*, 2021 ONOMBUD 10 at para 40, online: <<https://canlii.ca/t/jfvt3>>.

¹⁹ Letter from the Ontario Ombudsman to Town of South Bruce Peninsula (14 October 2021), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2021/town-of-south-bruce-peninsula>>.

November 30, 2021 meeting

- 58 The Committee met in person on November 30, 2021 at 3:00 p.m. After convening the meeting, the Committee carried the following resolution to proceed into closed session:

Motion to move into a Closed Meeting at 3:05 p.m. to discuss matters that fall under the Municipal Act, 2001, c23 s.239 (3.1) [the exception for education and training].

- 59 As with the previous meeting, the agenda indicated that the Committee would also be discussing personal matters about identifiable individuals and plans and instructions for negotiations in closed session.
- 60 There were four matters on the agenda for the closed session.
- 61 For the first item on the agenda, the Committee members received an interim report from an organization that had received funding in 2021. Interviewees told us that they discussed how the applicant organization planned to use its remaining 2021 funds as well as the organization's query about its 2022 funding request. According to the minutes, the Committee resolved to send a letter to the organization responding to its query.
- 62 We were told that for the second matter, the Committee members continued their discussion from the previous meeting on November 9, 2021 regarding grant recipients who had not yet submitted their 2021 interim and final reports, which are a requirement of the grant process. The minutes indicate that the Committee agreed to extend the submission deadline for final reports for two organizations.
- 63 For the third item, the Committee considered a request to accept an application from a particular organization after the application deadline had already passed. According to the minutes, the Committee resolved to send the organization a letter denying the request to submit a late application. We were told that while the Committee considered this matter, some comments were made about a particular individual from this organization.
- 64 The final matter on the agenda related to the grant applications the Committee received for 2022. During this portion of the meeting, the Committee scored the applications that it had not had the time to review at the November 9, 2021 meeting.
- 65 The closed meeting adjourned at 5:00 p.m. There was no open session following this closed meeting.

- 66 We asked interviewees why the exception for education or training at s.239(3.1) was referenced for this meeting, but no one was able to explain. As discussed earlier, interviewees told my Office that the exception for personal matters and the exception for plans and instructions for negotiations are cited for each agenda item for each of the Committee's *in camera* meetings.
- 67 One interviewee told us they thought that the exceptions for personal matters and plans and instructions for negotiations would apply because the discussions about grant applications reveal personal information about the applicants and that disclosing a group's budget would impede a group's ability to negotiate for products and services.
- 68 As with the previous meeting, the other interviewees told my Office that there was no discussion of any personal information relating to the applicants and that the Committee did not discuss any negotiations during the meeting.

Analysis

Exception for education or training

- 69 As previously described, the exception for education or training applies only where the purpose of the discussion is to educate or train members of the committee, and where no member discusses or otherwise deals with a matter in a way that materially advances the business or decision-making of the committee.
- 70 Although the resolution cited the exception for education or training, none of those interviewed could explain why this exception was referenced.
- 71 The meeting minutes indicate that the Committee's discussion did not relate solely to providing general information to its members, educating them, or teaching them skills. Rather, the discussion advanced the business and decision-making of the Committee. Accordingly, this discussion did not fit within the exception for education or training.

Exception for personal matters about an identifiable individual

- 72 While the resolution to proceed *in camera* did not cite this exception, the meeting agenda indicated that the Committee would discuss personal matters about identifiable individuals during the closed session on November 30, 2021.

- 73 As stated earlier, the exception for personal matters about an identifiable individual applies where the discussion contains personal information about an individual who could be identified.²⁰
- 74 Our review found that only one agenda item contained information that could be considered personal information about an identifiable individual. Under the third agenda item, the Committee was considering an organization's request to submit a late grant application. During the discussion of this request, the Committee discussed an individual from this organization.
- 75 When asked if the discussion of personal information was relevant to the decision-making process of the Committee, those we spoke with told us there could be no exception to the application deadline, no matter the reason. As a result, there was no need for the Committee to discuss personal information about the particular individual, as this would not have affected the Committee's decision to deny the request.
- 76 In this case, the discussion considering the request for the late application falls within the exception for personal matters about an identifiable individual. However, this is only the case because of the extraneous comments made about an individual from the organization, and the Committee should be diligent in ensuring that its conversations do not include unnecessary information that require them to occur *in camera*. The other portions of the Committee's discussion did not come within the exception for personal matters.

Exception for plans and instructions for negotiations

- 77 While the resolution to proceed *in camera* does not cite the exception for plans and instructions for negotiations, the meeting agenda also cited this reason for proceeding *in camera*.
- 78 As set out above, this exception applies to closed session discussions about plans or instructions that are intended to be applied to current or future negotiations conducted by or on behalf of the Committee.²¹
- 79 In this case, the Committee's closed session discussion was not related to any current or future negotiations being carried out by the Committee or on its behalf. Accordingly, the *in camera* discussion at the November 30, 2021 meeting did not fit within the closed meeting exception for plans and instructions for negotiations.

²⁰ *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11 at para 19, online: <<https://canlii.ca/t/jr5rc>>.

²¹ *St. Catharines (City of) (Re)*, 2019 ONOMBUD 1 at paras 30-31, online: <<https://canlii.ca/t/hxrk5>>.

Exception for information provided in confidence by a third party

- 80 While the resolution to proceed *in camera* does not cite the exception for information provided in confidence by a third party, one interviewee expressed concern about the release of applicants' financial information. He said that the bargaining positions of the applicant organizations could be affected if the financial information contained in grant applications were to be discussed in open session. My Office considered this exception in relation to the discussion under each of the four agenda items.
- 81 As previously described, this exception covers trade secret, scientific, technical, commercial, financial or labour relations information that is supplied by a third party in confidence, either explicitly or implicitly. There has to be a reasonable expectation of harm if this information is revealed.
- 82 As with the previous meeting, my Office was not provided with evidence to support the possibility of harm to the applicant organizations. One interviewee expressed concern about the potential harm to applicants when dealing with other parties should their financial information be made public, but this speculation, without other evidence, does not establish a reasonable expectation of harm.
- 83 Accordingly, the topics discussed during the Committee's closed session on November 30, 2021, did not fit within the exception for information supplied in confidence by a third party, or any other exception, under the Act.

Procedural matters

Public notice

- 84 Under the *Municipal Act*, every municipality and local board must pass a procedure by-law that governs the calling, place, and proceedings of meetings. The Act also requires that municipalities include a public notice requirement in their procedure by-law. The Act does not specify what the content of the public notice requirement should be.
- 85 The City has enacted by-law number 2020-103, a procedure by-law governing the proceedings of council and by-law number 2020-146, which is an additional committees by-law. While council's procedure by-law describes how notice shall be given for all council meetings, neither by-law describes the type of notice required for committee meetings. The City should amend its by-law to set out how notice will be provided for committee meetings.

Resolution to proceed *in camera*

- 86 Before moving into a closed session, section 239(4)(a) of the Act requires a municipality, local board, or committee to state by resolution in open session that a closed meeting will be held, and the general nature of the matter to be considered at the closed meeting.
- 87 The Ontario Court of Appeal has determined that the resolution to close a meeting should provide a general description of the issue to be discussed in a way that maximizes the information available to the public without undermining the reason for excluding the public.²² My Office has also recommended that councils provide more substantive detail in resolutions authorizing closed sessions.²³
- 88 In this case, the resolutions to proceed into closed session on November 9 and November 30, 2021, did not include any information about the Committee's intended discussion other than referencing the exception for education or training pursuant to section 239(3.1) of the Act. While not cited in the resolutions, the agendas for each of the Committee's *in camera* meetings routinely indicated that the Committee would discuss personal matters about identifiable individuals and plans and instructions for negotiations, without including any further description of the matters to be discussed in each particular meeting.
- 89 Accordingly, the Committee failed to fulfill the requirements of the Act when it failed to provide a general description of the issues to be discussed in its resolutions to proceed *in camera* on November 9 and November 30, 2021.

Adequacy of meeting minutes

- 90 My Office was provided with one set of meeting minutes for each of the November 9 and November 30 meetings. The City did not keep separate minutes for the open and closed portions of each meeting. In addition to only keeping one set of minutes, the minutes that were kept recorded limited information that consisted mainly of a list of resolutions passed, but did not record the content or the nature of the Committee's discussion.
- 91 Section 239(7) of the Act requires that all resolutions, decisions and other proceedings that take place during a meeting be recorded without comment. This requirement applies whether the meeting is open or closed.

²² *Farber v. Kingston (City)*, 2007 ONCA 173 (CanLII), online: <<https://canlii.ca/t/1qtz/>>.

²³ *Niagara (District Airport Commission) (Re)*, 2016 ONOMBUD 22, online: <<https://canlii.ca/t/h2stf/>>.

- 92** While the Act requires minutes to be recorded “without note or comment,” the requirement to keep a meeting record should be interpreted in a manner that is consistent with the intent of the municipal meeting provisions, which are directed at enhancing the openness, transparency, and accountability of municipal government.
- 93** My Office has found that a proper record of a closed meeting should include:
- where the meeting took place;
 - when the meeting started and adjourned;
 - who chaired the meeting;
 - who was in attendance, with specific reference to the clerk or other designated official responsible for recording the meeting;
 - whether any participants left or arrived while the meeting was in progress and if so, at what time this occurred;
 - a detailed description of the substantive and procedural matters discussed, including reference to any documents considered;
 - any motions, including who introduced the motion and seconders; and
 - all votes taken, and all directions given.²⁴
- 94** Further, as a best practice, my Office recommends that all municipalities, local boards or committees make audio or video recordings of all meetings – both open and closed – to ensure a thorough record. This provides a clear and accessible record for closed meeting investigators to review, and assists in ensuring that officials do not stray from the legal requirements during closed meetings.
- 95** The Committee should be diligent in ensuring that it keeps complete and accurate minutes of all substantive and procedural matters discussed during open and closed meetings. As the public is only entitled to access open meeting minutes, it is important to keep two sets of minutes that separately record the proceedings that occur in open session versus closed session. I also strongly encourage the municipality to make audio or video recordings of council and committee proceedings, including closed meetings.

Reporting back

- 96** The Committee did not return to open session and did not report back following its closed sessions on November 9 and November 30, 2021. My Office was told that the Committee did not have a practice of returning to open session and reporting back because it did not believe it was a committee of council.

²⁴ *Tehkummah (Township of) (Re)*, 2018 ONOMBUD 3, online: <<https://canlii.ca/t/hvmtpt>>.

Because it did not return to open session, the Committee was not able to adjourn the meeting in accordance with the City's procedure by-law.

- 97 Numerous closed meeting investigators, including my Office, recommend as a best practice that municipalities, local boards or committees report back after closed sessions and provide general information about what occurred *in camera*.²⁵ A report back may consist of a general discussion in open session of subjects considered in closed session, together with information about any decisions, resolutions, and directions given to staff. In other cases, the nature of the discussion might allow for considerable information about the closed session to be provided publicly.²⁶
- 98 Returning to open session and reporting back after each closed session provides meaningful information to the public about the issues discussed *in camera* and inspires confidence that the meeting has been properly closed.

Opinion

- 99 The City of Cornwall's Municipal Grants Review Committee / Working Group contravened the *Municipal Act, 2001* on November 9, 2021, when it went *in camera* as its discussion did not fit within a prescribed exception to the Act.
- 100 The Committee also contravened the *Municipal Act, 2001* on November 30, 2021, as only some of its *in camera* discussion fit within a prescribed exception to the Act. Portions of the discussion relating to an organization's request to submit a late grant application fit within the exception for personal matters about an identifiable individual. However, this discussion only fell within the exception for personal matters because of the extraneous comments made about an identified individual, which the Committee was not required to discuss in order to make its decision. The remainder of the discussion on this date did not fit within any of the closed meeting exceptions.
- 101 The Committee contravened the requirements of section 239(4)(a) of the *Municipal Act, 2001* on November 9, 2021 and November 30, 2021 by failing to state by resolution the general nature of the matters to be considered *in camera*.

²⁵ *Oshawa (City of) (Re)*, 2016 ONOMBUD 10 at para 58, online: <<https://canlii.ca/t/h2ssm>>.

²⁶ *The Nation (Municipality of) (Re)*, 2019 ONOMBUD 4 at para 82, online: <<https://canlii.ca/t/j2b4c>>.

Recommendations

102 I make the following recommendations to assist the City of Cornwall and its Municipal Grants Review Committee / Working Group in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

All members of the Committee should be vigilant in adhering to their individual and collective obligation to ensure that the Committee complies with its responsibilities under the *Municipal Act, 2001* and the City of Cornwall's procedure by-law.

Recommendation 2

The Committee should ensure that no subject is discussed in a closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

Recommendation 3

The City of Cornwall should amend its procedure by-law to provide for public notice of committee meetings in accordance with s. 238 (1) and (2.1) of the *Municipal Act, 2001*.

Recommendation 4

The Committee should take care to cite only the closed meeting exceptions in the Act that apply to the *in camera* discussion.

Recommendation 5

The Committee should ensure that meeting records are complete and accurately reflect all of the substantive and procedural items that were discussed.

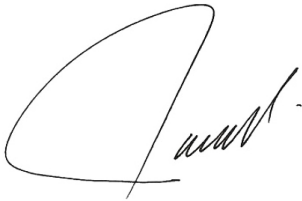
Recommendation 6

As a best practice, the Committee should make audio or video recordings of its proceedings, including closed meetings.

Report

103 Council for the City of Cornwall was given the opportunity to review a preliminary version of this report and provide comments to my Office. Due to restrictions in place related to COVID-19, some adjustments were made to the normal preliminary review process and we thank council and staff for their co-operation and flexibility. All comments we received were considered in the preparation of this final report.

- 104** Council accepted my recommendations and indicated that there will be improved education and training for all committees and amendments made to the City's procedure by-law as appropriate. In response to my recommendation that the Committee adhere to the best practice of making audio or video recordings of all proceedings, the City indicated that it will incorporate this best practice as is feasible. I applaud the City's commitment to improving its meeting practices.
- 105** This report will be published on my Office's website, and should also be made public by the City of Cornwall. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario