



Ombudsman Report

**Investigation into a complaint about a meeting
of council for the Town of Halton Hills
on August 28, 2023**

**Paul Dubé
Ombudsman of Ontario**

August 2024

Complaint

- 1 My Office received a complaint about a meeting of council for the Town of Halton Hills (the “Town”) on August 28, 2023. The complaint alleged that council’s closed session discussion of recent provincial policy announcements about municipalities did not fall within any of the prescribed open meeting exceptions in the *Municipal Act, 2001* (the “Act”).¹ The complaint also alleged that the Town did not pass a resolution stating that this matter would be discussed in closed session.
- 2 For the reasons set out below, my investigation determined that council for the Town of Halton Hills contravened the *Municipal Act, 2001* on August 28, 2023, as its discussion about provincial policy announcements did not fit within any exception to the open meeting rules, and it failed to include a general description of this topic in its resolution to proceed into closed session. Additionally, the meeting minutes incorrectly suggested that council had included this topic of discussion in its resolution to proceed into closed session, when it had not.

Ombudsman jurisdiction

- 3 Under the Act, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the Town of Halton Hills.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable governing procedures have been observed.

¹ SO 2001, c 25.

- 7 Our 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.
- 8 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.

Investigative process

- 9 On October 6, 2023, my Office advised the Town of Halton Hills of our intent to investigate this complaint.
- 10 We reviewed the Town’s procedure by-law,² minutes and agendas from the meeting, the subsequent open session video recording, and relevant portions of the Act.
- 11 My Office spoke with the Town Clerk & Director of Legislative Services, and interviewed all members of council as well as the Commissioner of Corporate Services, who served as acting Chief Administrative Officer on August 28, 2023 (the “Acting CAO”).
- 12 We received full co-operation in this matter.

² Town of Halton Hills, by-law No 2023-0026, *A By-law to govern the calling, place, proceedings and providing public notice of meetings of the Council and its Committees; to provide rules for the conduct of its Members; and to repeal and replace By-law No. 2021-0020 and 2021-0054* (17 April 2023).

Background

- 13 In late 2022, the provincial government amended the *Municipal Act, 2001* to provide for strong mayor powers in prescribed municipalities.³
- 14 On August 21, 2023, at the annual conference for the Association of Municipalities of Ontario “AMO”), the Premier and the then-Minister of Municipal Affairs and Housing (the “then-Minister”) made several announcements about new and existing provincial policies and programs related to municipalities.
- 15 On August 22, 2023, the then-Minister sent a letter to the Mayor of Halton Hills. The letter asked the Mayor to commit to a housing target by October 15, 2023, and for the Town to make a housing pledge by December 15, 2023, in order for the Town to receive strong mayor powers.
- 16 My Office was told that, typically, the Mayor, the member of council serving as alternate chair, the Clerk, and the CAO hold “pre-meetings” before council meetings to review the agenda. On the morning of August 28, 2023, this group met to discuss the council agenda for later that day. The agenda included a closed session discussion for an unrelated planning matter.
- 17 At this pre-meeting, the Mayor explained that she wanted to give council a verbal update related to the recent provincial announcements in closed session that afternoon. The Clerk and the Acting CAO recalled the Clerk raising procedural concerns at the pre-meeting about adding this item to the agenda without notice and about the topic being discussed in a closed session.

August 28, 2023 meeting

- 18 At 2:00 p.m., council met in council chambers in open session. Around 2:04 p.m., council passed a resolution closing the meeting to discuss a planning staff report under the exception at s. 239(2)(e), for litigation or potential litigation.
- 19 In closed session, council discussed a planning matter that was unrelated to the provincial announcements. When that discussion finished, the Mayor told council that she wanted to provide an update further to the recent provincial announcements made during the AMO conference.

³ *Strong Mayors, Building Homes Act, 2022*, SO 2022, c 18, Sched 2.

- 20 There was no motion to add this update to the agenda, and there were no related reports or meeting materials. After the Mayor began to speak, a councillor raised a point of order, submitting that the discussion should occur in open session. The Mayor maintained that it was important to provide the update and said the councillor could leave if they did not want to participate in the discussion.
- 21 Some interviewees recalled that there was an unspoken consensus for the Mayor to proceed, while others recalled that there was a shared feeling that the discussion should not have proceeded.
- 22 My Office was told that the Mayor then discussed topics related to the provincial announcements made during the AMO conference and the then-Minister's letter. The Mayor noted that staff would be preparing a report for council on these topics for future consideration.
- 23 Although a few councillors asked questions or made comments, those we spoke to recalled little discussion or debate.
- 24 Council did not vote during the discussion. At 3:42 p.m., council recessed for a break before returning to open session.
- 25 Council discussed matters related to the provincial announcements at subsequent meetings. At a September 2023 meeting, council received a copy of the then-Minister's letter and a detailed staff report. During an October 2023 meeting, council considered another related report and passed a resolution regarding its opposition to the strong mayor powers and concerns with other related aspects of the province's housing policy. The Town received strong mayor powers from the province on October 31, 2023.⁴

Analysis

- 26 Under the Act, all meetings of council, local boards, and committees of either of them must be open to the public, unless they fall within a prescribed exception in section 239 of the Act. Before moving into a closed session, section 239(4) of the Act requires a council, 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.

⁴ O Reg 331/23.

- 27 Council did not indicate that there would be an update *in camera* related to the previous provincial announcements in its resolution to go into closed session, and did not identify an exception it was relying on for that item.
- 28 Those we spoke to identified the exception for education or training at section 239(3.1) as an exception that potentially could have applied.
- 29 Our Office did not identify any other relevant exceptions. Accordingly, we considered if the exception for education or training applied to the discussion about the provincial announcements.

Applicability of the exception for education or training under the Act

- 30 Under section 239(3.1) of the Act, a meeting may be closed to the public if it is both (1) held for the purpose of educating or training members of council, and (2) members do not discuss a matter in a way that materially advances the business or decision-making of council. I have previously noted that attempts to rely on this exception must be carefully scrutinized.⁵
- 31 Regarding the first requirement, the purpose of the discussion must clearly relate to education or training, and the exception cannot be used to circumvent the requirement to hold open meetings by characterizing a subject that would normally be considered in open session as “educational”.⁶ Similarly, my Office has previously found that the exception applies to sessions that assist council members in better understanding the business of the municipality, rather than when they “exchange information” on an issue.⁷
- 32 In past reports, my Office has found that discussions fit within the exception when the purpose was to provide general information about how to undertake a specific process or how to understand a certain type of document, rather than to consider the specific content of a particular proposal in front of council.

⁵ *Brockville (City of)*, 2016 ONOMBUD 12 at para 35 [*Brockville*], online: <<https://canlii.ca/t/h2ssr>>.

⁶ Ontario Ombudsman, *The ABCs of Education and Training* (March 2009) at para 29, online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2009/the-abcs-of-education-and-training>>; Quoted *ibid*.

⁷ *Casselman (Village of) (Re)*, 2015 ONOMBUD 14 at para 54, online: <<https://canlii.ca/t/gtp61>>.

- 33** For example, in a report to the Township of Russell, my Office determined that the exception for education or training applied to a meeting where councillors sat in a classroom-like arrangement and were given training on vocabulary and principles related to the strategic planning process. The only references to Russell's own strategic plan were made to illustrate abstract concepts.⁸
- 34** Similarly, a meeting of the City of Brockville fit within the exception when a committee received general information about how to understand the Ontario Provincial Police's costing process, prior to receiving a costing proposal.⁹ Likewise, I determined that council for the Township of Emo was permitted to receive lecture-style training on how to read and understand its new budget format, prior to discussing the content of the budget at future open meetings.¹⁰
- 35** Conversely, in a 2014 letter to the Town of Moosonee, my Office determined that a presentation from a Municipal Advisor from the Ministry of Municipal Affairs and Housing to discuss a letter from a previous Minister about terms and conditions of certain funding agreements did not fit within the exception for education or training. In that case, after the closed session presentation, council voted to approve the course of action presented by the Municipal Advisor. We noted that the information was not general in nature, and related to matters that directly affected the business of the municipality.¹¹
- 36** In this case, the Mayor provided an update related to recent provincial announcements originally made during the AMO conference, and shared information from the then-Minister's letter to council. The letter required action from the Mayor and the Town within relatively short timeframes on matters that would be going before council. We were told that the Mayor's intention was to ensure that all council members had this information, which would soon be coming to them for consideration.

⁸ *Russell (Township of) (Re)*, 2016 ONOMBUD 1 at paras 18-22 and 68, online: <<https://canlii.ca/t/ght6qg>>.

⁹ *Brockville*, *supra* note 5 at para 38.

¹⁰ *Emo (Township of) (Re)*, 2023 ONOMBUD 5 at para 24, online: <<https://canlii.ca/t/jvj4d>>.

¹¹ Letter from the Ombudsman's Office to the Town of Moosonee (9 September 2014), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2014/town-of-moosonee>>; cited in *Brockville*, *supra* note 5 at para 36.

- 37 The discussion was not framed as a session meant to educate council members in a general manner. Rather, the discussion aimed to provide information about recent provincial policy matters that the Town would specifically need to respond to at upcoming council meetings – and which it did, at meetings in September and October 2023.
- 38 As the purpose of the discussion was not to educate or train council members, the discussion did not fit within the exception for education or training at section 239(3.1), and council for the Town of Halton Hills contravened section 239(1) of the *Municipal Act, 2001* on August 28, 2023.

Procedural matters

Resolution to proceed into closed session

- 39 Before moving into a closed session, section 239(4) of the Act requires a council, 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.
- 40 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.¹² This means that municipalities are required to add a “level of informative detail” to the resolution to close a session to the public.¹³
- 41 In this case, council did not identify that it was going to discuss an update related to previous provincial announcements in its resolution to proceed *in camera*. It is council’s responsibility to ensure that it discusses a topic in closed session only after providing a general description of the subject matter in a resolution to proceed into closed session. As there was no general description of this discussion in council’s resolution, council therefore also contravened section 239(4) of the *Municipal Act, 2001*.

¹² *Farber v Kingston (City)*, 2007 ONCA 173 at para 21, online: <<https://canlii.ca/t/1qtz/>>.

¹³ *Brockville*, *supra* note 5 at para 45.

Adequacy of record keeping

- 42** During my investigation, I determined that council’s resolution to proceed into closed session on August 28, 2023, did not include a general description of an item related to the provincial announcements, as laid out above. However, the minutes later approved by council state that council resolved to close the meeting to discuss the planning and development report, as well as a “Verbal Update from Mayor A. Lawlor regarding the Provincial update of Regional Facilitator, Strong Mayor Powers and Housing Pledge.” Accordingly, the minutes suggest that council’s resolution included both topics when it did not.
- 43** My Office was told that while this item was not included in the actual resolution passed, it was included in the minutes to reflect the discussion that took place in closed session.
- 44** In a 2009 report to the Township of Emo, my Office reviewed a meeting where council discussed a second item in closed session, which was not included in the resolution to go into closed session, as only the mayor was aware of his intent to discuss it. Council later amended the resolution to reflect the second discussion.¹⁴
- 45** My Office found that although there may have been good intentions in attempting to correct the official record, those efforts resulted in the public record being falsified.¹⁵ My Office noted that the requirement to publicly identify what issues will be discussed in closed session in the resolution authorizing the closed session is not a mere technicality, but is of fundamental importance in ensuring the transparency of local democracy.¹⁶
- 46** In this case, the desire to ensure there was a public record that a discussion about prior provincial announcements had occurred in closed session was well-intentioned, as staff sought to maximize transparency for the public. While I recognize that increasing transparency is a laudable goal, meeting minutes should reflect resolutions as they were actually voted on by council. Retroactively editing the content of the resolution can undermine the public’s confidence that the minutes accurately reflect what took place at a meeting. Going forward, council should ensure that its minutes accurately reflect any resolutions as they were passed at the meeting.

¹⁴ *Emo (Township of) (Re)*, 2008 ONOMBUD 2 at paras 24–28, 38–39, online: <<https://canlii.ca/t/gttgg>>.

¹⁵ *Ibid* at para 50.

¹⁶ *Ibid* at para 39.

Opinion

- 47 Council for the Town of Halton Hills contravened the *Municipal Act, 2001* on August 28, 2023 when it held a discussion about provincial announcements in closed session that did not fit within any of the exceptions to the open meeting rules.
- 48 Council for the Town of Halton Hills also contravened the requirements of section 239(4) of the Act by failing to include a general description of this item in the resolution to proceed into closed session.

Recommendations

- 49 I make the following recommendations to assist the Town of Halton Hills in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

All members of council for the Town of Halton Hills should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001*.

Recommendation 2

Council for the Town of Halton Hills 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

Council for the Town of Halton Hills should ensure that all proper procedural steps are taken to authorize the discussion of a topic in closed session, including by ensuring it passes a resolution to proceed into closed session that contains a general description of all the topics to be discussed.

Recommendation 4

Council for the Town of Halton Hills should ensure that meeting records accurately reflect resolutions as actually passed by council.

Report

- 50 Council for the Town of Halton Hills was given the opportunity to review a preliminary version of this report and provide comments to my Office. All comments we received were considered in the preparation of this final report.
- 51 This report will be published on my Office's website and should also be made public by the Town of Halton Hills. 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 report.



Paul Dubé
Ombudsman of Ontario

Ce rapport est aussi disponible en français