

**BY EMAIL**

Mayor Mitch Twolan  
Township of Huron-Kinloss  
21 Queen Street  
Ripley, ON N0G 2R0

May 11, 2022

Dear Mayor Twolan:

**Re: Closed Meeting Complaint**

My Office received a complaint regarding the closed meetings held by council for the Township of Huron-Kinloss (the “Township”) on October 4, and November 1, 2021, and on February 18, 2022. It was alleged that the discussions closed under the exception for personal matters about an identifiable individual at each of these meetings did not comply with the open meeting rules found in the *Municipal Act, 2001*<sup>1</sup> (the “Act”).

I am writing to share the outcome of my review. For the reasons set out below, I have found that each of these meetings was properly closed under the exception for personal matters about an identifiable individual found at section 239(2)(b) of the Act.

**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.<sup>2</sup> 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 Huron-Kinloss.

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<sup>1</sup> *Municipal Act, 2001*, SO 2001 c 25.

<sup>2</sup> *Ibid* at 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](http://www.ombudsman.on.ca/digest).

## Review

My Office reviewed the Township's procedural by-law as well as the agendas and minutes for both the open and closed meetings. We also reviewed staff reports written by the Chief Administrative Officer (CAO) for each of these meetings.

We spoke with the Clerk and the CAO. We were advised that the Township does not make audio or video recordings of closed meetings of council.

## October 4, 2021 meeting

Township council met as a committee of the whole on October 4, 2021. Council resolved at 7:56 p.m. to move into a closed session to discuss, among other things, personnel matters about municipal employees, relying on the exception for personal matters about an identifiable individual at section 239(2)(b) of the Act.

Under this topic, the CAO delivered a report about two specific employees. The report proposed promoting one employee and extending the other employee's contract. The discussion related to each individual's job performance and personal qualifications. The specific salaries for each position were also mentioned as council wanted to know the financial impact on the municipal budget of approving the proposals outlined in the report.

These employees were identified by name and we were told that due to the small size of the municipal staff, it would have been evident whom council was discussing if the conversation had been held in public.

The closed session was adjourned at 8:06 p.m.

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## Analysis

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. Information about an individual in their professional capacity may qualify as personal information if it reveals something of a personal nature.<sup>3</sup>

It is not necessary for the individuals being discussed to be identified by name for this exception to apply. My Office has previously investigated closed municipal meetings where employees could be easily identified by their position due to the small number of municipal staff and has determined that discussions about such employees were appropriately closed under the exception for personal matters about an identifiable individual.<sup>4</sup>

In this case, we were told that the content of the discussion as well as the small size of the Township's staff meant it would have been clear whom council was discussing. The discussion was about these two specific, identified individuals in their professional capacity and the conversation included information our Office has previously found to be considered personal information such as their job performance,<sup>5</sup> their suitability as candidates,<sup>6</sup> and their individual salaries.<sup>7</sup> Therefore, this discussion was properly closed under the exception for personal matters about an identifiable individual.

### November 1, 2021 meeting

Township council met as a committee of the whole on November 1, 2021. Council resolved at 8:58 p.m. to move into a closed session to discuss, among other items, two items regarding personal matters about an identifiable individual under section 239(2)(b) of the Act.

The first topic of discussion was a report drafted by the CAO about a specific employee's job performance and upcoming retirement. This employee's salary, age, and employment history was included, as was some pertinent medical information.

<sup>3</sup> *Amherstburg (Town of) (Re)*, 2015 ONOMBUD 13 at para 22, online: <<https://canlii.ca/t/gtp5z>>.

<sup>4</sup> *Norfolk (County of) (Re)*, 2021 ONOMBUD 6 (CanLII), online: <<https://canlii.ca/t/jdr8d>>.

<sup>5</sup> *Kirkland Lake (Town of) (Re)*, 2021 ONOMBUD 12 (CanLII), online: <<https://canlii.ca/t/jgvld>> at para 30.

<sup>6</sup> Ontario Ombudsman, "Letter to the Town of South Algonquin," (8 September 2021) online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2021/township-of-south-algonquin-en>>.

<sup>7</sup> *The Nation (Municipality of) (Re)*, 2019 ONOMBUD 4 (CanLII), online: <<https://canlii.ca/t/j2b4c>> at para 56.



The second topic of discussion was a report about the creation of a new staff position. This report was also authored by the CAO. It discussed the upcoming retirement of an employee and also included details about the workload of another employee so as to propose the creation of a new position that combined some of the responsibilities held by each.

While in closed session, council discussed the qualifications and job performance of both employees to determine which duties would be included in the new position. We were told it was not possible to discuss the needs of the new position without reviewing the performance of these two individuals. The specific salaries of these two employees were also discussed so council could understand the financial impact on the Township's budget of creating a new position.

The employees discussed under the second topic were not identified by name. We were told that there is only one individual in each of these positions, and it was not possible to discuss any of these subjects without indirectly identifying them.

The closed session was adjourned at 9:26 p.m.

### *Analysis*

As previously stated, council is permitted to discuss personal information about an identifiable individual in closed session. Information about an individual in their professional capacity may qualify as personal information if it reveals something of a personal nature.<sup>8</sup>

Under the first topic, council discussed a specific employee's medical information, salary, age, and employment history. There was also discussion about their job performance and upcoming retirement. Council was permitted to discuss the personal information about this identified employee in closed session.

Under the second topic, council discussed the creation of a new position in the context of one municipal employee's upcoming retirement. In addition to discussing the retirement itself, council considered the qualifications and job performance of both the retiring employee and a second employee in order to assess which duties would be assigned to the new position. Council was also permitted to discuss this personal information in closed session.

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<sup>8</sup> *Amherstburg (Town of) (Re)*, 2015 ONOMBUD 13 at para 22, online: <<https://canlii.ca/t/gtp5z>>.



## February 18, 2022 meeting

Council met for a regular meeting on February 18, 2022. Council resolved at 11:41 a.m. to move into a closed session to discuss, among other topics, two items relating to personal matters about identifiable individuals.

The first discussion was about municipal personnel and was closed pursuant to the exception for personal matters about an identifiable individual. This discussion pertained to a report drafted by the CAO about two staff positions. With respect to the first staff position, the report proposed making the position full-time. The job performance and salary of the individual holding that position on a part-time basis were discussed. We were told that council needed to understand the financial impact on the municipal budget of making the position full-time.

The second staff position discussed was Human Resource Specialist. The report proposed creating this position and proposed a possible candidate. Council discussed this individual's job performance, qualifications and education. Council also discussed the expected salary for the new position in order to assess the financial impact on the Township's budget.

The closed session adjourned at 12:18 p.m.

### Analysis

With respect to the conversation about making a certain position full-time, council discussed the job performance and salary of a specific part-time employee. As noted above, both job performance and salary are considered to be personal information that is covered under the exception for personal matters about an identifiable individual.<sup>9</sup>

With respect to the Human Resource Specialist position, there was discussion around a specific individual's qualifications, experience, and job performance. Our Office has consistently found that discussions about an identifiable individual's employment history and qualifications for a particular job fit within the personal matters exception of the Act.<sup>10</sup>

Accordingly, both topics fit within the exception for personal matters about an identifiable individual at section 239(2)(b) of the Act.

<sup>9</sup> *Supra* note 6; *Supra* note 8.

<sup>10</sup> *Johnson (Township of) (Re)*, 2021 ONOMBUD 1 (CanLII), online: <<https://canlii.ca/t/jckg4>> at para 39.



## Conclusion

Council for the Township of Huron-Kinloss did not contravene the open meeting requirements on October 4, 2021 when it met in closed session to discuss two specific municipal employees. Council also did not contravene the open meeting requirements on November 1, 2021 when it discussed in closed session a specific municipal employee and the creation of a new staff position. Finally, council did not contravene the open meeting requirements on February 18, 2022 when it met in closed session to discuss two staff positions.

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

Sincerely,



Paul Dubé  
Ombudsman of Ontario

cc: Emily Dance, Clerk

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