

BY EMAIL

September 13, 2024

Council for the Town of Iroquois Falls
c/o Tory Delaurier, Mayor
253 Main Street, PO Box 230
Iroquois Falls, ON P0K 1G0

Dear Members of Council for the Town of Iroquois Falls:

Re: Closed meeting complaint

My Office received a complaint alleging that council for the Town of Iroquois Falls (the “Town”) contravened the open meeting rules in the *Municipal Act, 2001*¹ (the “Act”) when it met in closed session on November 28, 2022 to discuss a letter from a resident.

I am writing to share the outcome of my review of this complaint. For the reasons set out below, I have concluded that council’s discussion fit within the closed meeting exception for personal matters about an identifiable individual. However, council failed to provide sufficient information about the topic of discussion in its resolution to proceed into closed session on November 28, 2022.

Ombudsman’s role and authority

All meetings, as defined by the Act, held by council, local boards or their committees must be open to the public subject to limited exceptions. 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 Town of Iroquois Falls.

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 has the mandate to review 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 reviewed records from the November 28, 2022 meeting, including the open and closed session minutes. We also reviewed the Town's procedural by-law.² Members of my Office spoke to the Clerk, the Town's former Chief Administrative Officer (CAO), and the Mayor regarding the complaint.

Background

On November 28, 2022 council held a meeting which included a closed session. The meeting minutes record that council passed a resolution to proceed into closed session to discuss two items under the exceptions for acquisition or disposition of land and personal matters about an identifiable individual. The resolution does not include any general information about the topics to be discussed in the closed session. The complaint my Office received was about the item discussed under the exception for personal matters about an identifiable individual.

The item that is the subject of the complaint is described in the closed session minutes as "letters from community members." According to those we spoke to, council reviewed correspondence from an identifiable individual. The discussion also included information about the individual's conduct and interactions with Town staff. The closed session minutes confirm this information.

² Town of Iroquois Falls By-law 3545/19.

Analysis

Exception for personal matters about an identifiable individual

The exception for personal matters in section 239(2)(b) of the Act applies to discussions that reveal personal information about an identifiable individual. The Information and Privacy Commissioner has found that discussions in which an individual's conduct is scrutinized will generally be considered personal in nature.³ Although not binding on my Office, these decisions are informative.

In a 2018 report to the Town of Amherstburg, I found that council's discussion fit within the exception because it was about identified individuals' conduct and allegations that they acted improperly, and council members expressed their opinions about the alleged conduct.⁴

Similarly, in the present case, while *in camera*, council discussed and scrutinized an identifiable individual's conduct. Accordingly, the discussion fit within the exception for personal matters about an identifiable individual.

The resolution to move into closed session

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.⁵

I have previously found that merely citing the open meeting exception that council is relying on does not typically meet the requirements set out in *Farber v. Kingston (City)*. Rather, municipalities are required to add a "level of informative detail" to the resolution to close a session to the public.⁶

³ *Madawaska Valley (Township) (Re)*, 2010 CanLII 24619 (ON IPC), online: <<https://canlii.ca/t/29p2h>>.

⁴ *Amherstburg (Town of) (Re)*, 2018 ONOMBUD 8 at paras 32-33, 67, online: <<https://canlii.ca/t/hvmv1>>.

⁵ *Farber v. Kingston (City)*, 2007 ONCA 173, online: <<https://canlii.ca/t/1qtzl>>.

⁶ *Brockville (City of)*, 2016 ONOMBUD 12, online: <<https://canlii.ca/t/h2ssr>>.

In the case of the closed session on November 28, 2022, council cited the exceptions it relied upon to move *in camera* without providing further information about the general topic of the closed session discussion. Council could have provided a general description of the topic to be discussed in closed session, such as “correspondence from an identifiable individual,” without undermining the reason for excluding the public.

Conclusion

Council for the Town of Iroquois Falls did not contravene the *Municipal Act, 2001* when it discussed correspondence from an identifiable individual because the subject matter fit within the exception for personal matters about an identifiable individual. However, council did contravene section 239(4)(a) of the Act by failing to provide sufficient information about the general nature of the matters to be considered in the closed session. In future, council should ensure that it provides an appropriate level of informative detail in its resolutions to move into closed session.

The Mayor and Clerk were given an 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 Town for its co-operation during my review. This letter will be published on my Office’s website and should also be made public by the Town. 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: Maureen Reeder, Clerk, Town of Iroquois Falls

Cette lettre est aussi disponible en français