

BY EMAIL

September 16, 2024

City of Oshawa
c/o Dan Carter, Mayor
50 Centre Street South
Oshawa, ON L1H 3Z7

Dear members of Council for the City of Oshawa:

Re: Closed meeting complaints

My Office received complaints about a meeting held by the Corporate and Finance Services Committee (the “Committee”) of the City of Oshawa (the “City”) on March 4, 2024. The complaints raised concerns that the agenda/public notice for this meeting was temporarily unavailable on the City’s website for a specific period, and that audio issues during the webcast of the meeting prevented members of the public from observing the meeting virtually.

My Office’s review of these concerns did not identify any instances in which the City failed to comply with the open meeting requirements set out in the *Municipal Act, 2001* (the “Act”).

Ombudsman’s role and authority

As of January 1, 2008, the *Municipal Act, 2001*¹ (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 City of Oshawa.

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.

¹ SO 2001, c 25, s 1.

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: <https://www.ombudsman.on.ca/have-a-complaint/who-we-oversee>.

Our review

My Office reviewed relevant documents including the meeting agenda, the City's consolidated procedure by-law,² email correspondence, and the City's website. My Office also spoke with the Director, Legislative Services/City Clerk (the "Clerk") to obtain additional information on the Committee's March 4, 2024 meeting.

Public notice of the meeting

My Office received a complaint that the public notice for the Committee meeting was temporarily unavailable the day before the meeting.

Section 238(2) of the Act requires that all municipalities pass a procedure by-law governing the calling, place, and proceedings of meetings, which must also provide for public notice of meetings. The City's procedure by-law indicates that notice will be provided by publishing a meeting agenda on the City's website no later than the week prior to the scheduled committee meeting.

Subscribers to the City's events calendar were sent an email update on February 28, 2024 to notify them that the Committee's meeting agenda was available to view on the City's website. The Clerk also confirmed to our Office that the agenda/public notice was published to the City's website on February 28, in accordance with the procedure by-law. However, the Clerk told our Office it was briefly unavailable to the public on March 3 and 4 for less

² City of Oshawa, consolidated as amended by-law 111-2017, *Procedure By-law* (28 March 2022), online: <https://www.oshawa.ca/en/city-hall/resources/Documents/Council_Procedure_Bylaw_111-2017_Consolidated.pdf>.

than 24 hours due to technical issues affecting the City's website. The Clerk told our Office that, as soon as it was brought to her attention on March 4, the City immediately took steps to resolve the issue and restored access to the agenda/public notice.

To uphold the public's right to observe municipal decision-making, a public notice should be accessible to members of the public at all times between the time of its posting and the meeting. Otherwise, members of the public may not have the information necessary to attend the meeting. Any issue affecting publication should be addressed promptly, as occurred in this case, to ensure the openness and transparency of municipal meetings.

Audio issues

We also received complaints about audio issues during the webcast of the March 4, 2024 meeting of the Committee. We were told that the discussion was inaudible for most of the meeting.

While my Office has noted that broadcasting in-person meetings increases the accountability and transparency of municipal decision-making,³ neither the Act nor Oshawa's procedure by-law requires it to livestream meetings to the public. The Clerk confirmed to our Office that members of the public were able to attend the meeting in person, which satisfies the openness requirements under the Act.

The Clerk told our Office that when staff became aware of the audio issues, they posted a notification on the City website, invited the public to attend in person, and took action to have the webcast audio fixed in time for a different committee's meeting later that day.

In addition, the City has also updated its website to explicitly state that, as set out in its procedure by-law, meetings are held in person and the webcasts are provided for convenience only.

Conclusion

My review determined that the City provided notice of the March 4, 2024 Committee meeting as required by the Act and the City's procedure by-law. Although public notice was given in this case, the City should remain vigilant to promptly identify any technological issue affecting the publication of its public notices.

³ Letter from the Ontario Ombudsman to the Township of Stone Mills (22 December 2020) at 4, online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2020/township-of-stone-mills>>.

The City acknowledges that there were audio issues in the livestream of the meeting, but I find that the meeting was not improperly closed because the public was permitted to attend the meeting in person and the livestream was provided as a convenience only.

All members of committees in the City are encouraged to familiarize themselves with the open meeting rules. My Office has resources available, including our Open Meeting Guide for Municipalities, which can be accessed on our website here. You can also contact us directly to order copies at info@ombudsman.on.ca.

I thank the City for its assistance during my review. The Clerk confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario

cc: Mary Medeiros, Director, Legislative Services/City Clerk, City of Oshawa

Cette lettre est aussi disponible en français