

BY EMAIL

November 19, 2021

Council for the Township of South Algonquin
c/o Bryan Martin, CAO/Clerk
PO Box 217
7 Third Avenue
Whitney, ON K0J 2M0

Dear Council for the Township of South Algonquin:

Re: Closed meeting complaint

My Office received a complaint alleging that council for the Township of South Algonquin (the “Township”) held meetings contrary to the open meeting rules on September 8, 2021. The complainant alleged that council improperly held a closed meeting during a recess in an otherwise open meeting. Additionally, the complainant alleged that the topic discussed by council during a scheduled closed meeting that day did not fit within the closed meeting exception cited by the municipality under the *Municipal Act, 2001* (the “Act”) – namely, section 239(2)(b), for discussions about personal matters about an identifiable individual.

I am writing to share the outcome of my review. For the reasons set out below, I have concluded that there was no meeting of council during the recess on September 8, 2021, that the cited exception did apply to the scheduled closed meeting, and that council for the Township did not contravene the open meeting requirements under 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.¹

¹ *Municipal Act, 2001*, SO 2001, c 25, s 239.1.



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 South Algonquin.

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.

Review

My Office reviewed documentation related to the meeting on September 8, 2021, including the agenda, open and closed session minutes, and an email that one of the councillors had sent to the Mayor, CAO/Clerk, and another councillor earlier that morning. We also reviewed the video recordings of the open sessions of the meeting and spoke with the CAO/Clerk and the Mayor.

We were advised that the Township does not make audio or video recordings of closed meetings of council.

Background

One member of council for the Township resigned in July 2021. At a regular council meeting on August 4, 2021, in open session, council declared the seat vacant and decided to fill it by way of appointment rather than a by-election. A notice of vacancy and call for applications were disseminated, with applications accepted until the end of August 2021. The municipality scheduled a special closed meeting on September 8, 2021 to discuss the applications.

The special meeting on September 8, 2021

Council met virtually on September 8, 2021. Shortly after the special meeting was called to order at 9:02 a.m., the Mayor requested a recess so that all of council could receive and review an email that one councillor had sent only to the Mayor, the CAO/Clerk, and the chair of Human Resources earlier that morning. The Mayor told my Office that she had not realized that not all of council had received the email earlier that morning. She indicated she believed it contained information relevant to the appointment process and

wanted to give all of council the opportunity to review and consider its contents before proceeding.

The meeting was recessed at 9:07 a.m. and reconvened at 9:20 a.m. Our Office was told that during the recess, council members reviewed the email and did not hold any discussion amongst themselves. We were told that some members of council even signed off from the meeting entirely in order to review the email and that they only rejoined after they had done so. The CAO/Clerk told us that he instructed council not to discuss the email until the meeting was reconvened.

Once the special meeting was reconvened, following some discussion in open session, council passed a resolution to proceed into closed session to discuss the applicants for the vacant seat. In doing so, council cited the exception for personal matters about an identifiable individual, pursuant to section 239(2)(b) of the Act.

Council reconvened from closed session at 9:51 a.m. Council voted in open session to appoint one of the applicants to council. The special meeting of council was then adjourned.

Analysis

The recess

During the recess, councillors each independently received and reviewed an email. My Office has determined that there was no discussion between council members during this time. The definition of “meeting” under section 238(1) of the Act requires that a quorum of council be present and discuss or otherwise deal with a matter in a way that materially advances council’s business or decision-making.² As no business was discussed during the recess, this was not a meeting of council subject to the open meeting rules.

The closed session - applicability of the exception for personal matters about an identifiable individual

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. In order to qualify as “personal information” for the purpose of the exception, the information must usually be about an individual in their personal, rather than professional, capacity.³ However, information about an individual in their professional

² *Ibid* at s 238(1).

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

capacity may still qualify as personal information if it reveals something of a personal nature.⁴

My Office has consistently found that information relating to individuals' work experience and suitability for a position qualifies as personal information and may be discussed *in camera*. For example, my Office has found the exception to apply where council identified a candidate by name and discussed their employment history,⁵ and where council discussed an individual's qualifications and expressed opinions about their suitability for a position.⁶

Our review has found that council's discussion during the *in camera* session on September 8, 2021 was about the qualifications of the specific candidates who had applied to fill the vacant council seat for the purposes of determining the most suitable individual for that position. The discussion fit within the exception under section 239(2)(b) of the Act.

Conclusion

Council for the Township of South Algonquin did not contravene the open meeting requirements on September 8, 2021 when it met in closed session to discuss the applicants for a vacant council seat. Additionally, as no discussion took place between council members during the recess, there was no contravention of the open meeting rules at that time.

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

Sincerely,



Paul Dubé
Ombudsman of Ontario

Cc: Bryan Martin, CAO/Clerk, Township of South Algonquin

⁴ *Ibid.*

⁵ *Russell (Township of) (Re)*, 2015 ONOMBUD 29 at para 31, online: <<https://canlii.ca/t/gtp73>>.

⁶ *Amherstburg (Town of) (Re)*, 2015 ONOMBUD 13 at paras 24-25, online: <<https://canlii.ca/t/gtp5z>>.