



## **Ombudsman Report**

**Investigation into complaints  
about a special meeting held by council  
for the Township of Springwater  
on May 3, 2023**

**Paul Dubé  
Ombudsman of Ontario**

**May 2024**

## Complaints

- 1 My Office received complaints that council for the Township of Springwater (the “Township”) held a special council meeting on May 3, 2023, which did not fit within the closed meeting exceptions in the *Municipal Act, 2001* (the “Act”).<sup>1</sup>
- 2 Council discussed three items in closed session: A rainbow crosswalk project, the hiring process for an Economic Development Assistant, and an employment matter related to the Springwater Public Library. My Office received complaints collectively alleging that council’s discussion of all three items in closed session was contrary to the open meeting rules.
- 3 My investigation determined that council for the Township of Springwater did not contravene the open meeting rules on May 3, 2023. The discussions regarding a rainbow crosswalk project and an employment matter related to the Springwater Public Library fit within the cited exception for personal matters about an identifiable individual. While the “hiring process” item did not fit within the cited exception for labour relations and employee negotiations, a portion of the discussion came within the “personal matters” exception. As the remainder of that discussion could not be parsed, the entire discussion fit within the exception.

## Ombudsman jurisdiction

- 4 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.
- 5 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.
- 6 The Ombudsman is the closed meeting investigator for the Township of Springwater.
- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable governing procedures have been observed.

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<sup>1</sup> SO 2001, c 25.

- 8 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](http://www.ombudsman.on.ca/digest).
- 9 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](http://www.ombudsman.on.ca/have-a-complaint/who-we-oversee).

## Investigative process

- 10 On October 31, 2023, my Office informed the Township of our intent to investigate these complaints.
- 11 Members of my Office's open meeting team reviewed the recordings, agendas, and minutes of the open and closed sessions, an email petitioning for the special meeting, and relevant past minutes and reports. We conducted interviews with the Mayor and Clerk.
- 12 My Office received full co-operation during our investigation.

## May 3, 2023 special council meeting

- 13 On May 3, 2023, council met for the special council meeting in council chambers at 3:00 p.m. The meeting was called by petition of four of the seven members of council, and identified three topics for discussion: A matter related to an Economic Development Assistant position, a drag storytime, and a rainbow sidewalk project.
- 14 The open session agenda indicated that as requested by petition, council would discuss a rainbow crosswalk project and a drag storytime event hosted by the Springwater Public Library in open session, before discussing three items in closed session.
- 15 In open session, council discussed perceived irregularities related to a rainbow crosswalk project, including different understandings of what financial responsibility a local high school would have, and directed staff to prepare a report on this subject.
- 16 Council next discussed an event arranged by the Springwater Public Library, at which a drag queen would read children's stories to an audience. Council members shared their views on this type of event and library storytimes more generally. Council discussed the event's funding and venue. After some discussion, council passed a resolution stating council supported the event.
- 17 At 4:26 p.m., council passed a resolution to proceed into closed session with the following description:
  - A personal matter about an identifiable individual, including municipal or local board employees;
  - Labour relations or employee negotiations.

Topics:

Employment Matters - Springwater Public Library  
(Identifiable Individual)

Hiring - Economic Development Assistant (Labour relations  
or employee negotiations)

Rainbow Crosswalk Project - Irregularities (Identifiable  
Individual and Labour relations and employee negotiations)

- 18** In closed session, council first discussed the rainbow crosswalk project. Council’s discussion focused on the concerns of some council members about communications between a representative from a local high school and council about the project. At 4:44 p.m., council recessed from closed session for its scheduled regular council meeting.
- 19** At 7:59 p.m., council returned to closed session following the regular council meeting. Council continued to discuss the high school representative’s actions, then directed staff to prepare correspondence related to the concerns.
- 20** Council next discussed the Economic Development Assistant item. As requested by a councillor, the Chief Administrative Officer explained the steps that had been taken to successfully fill the Economic Development Assistant position through an informal partnership with a post-secondary institution. Some council members shared particular concerns about changes to the position and hiring process that were made before it was filled.
- 21** While the discussion referred to certain information about the employee who was already in the role, council did not discuss negotiations with them or their conduct. Council also discussed having a formalized partnership with the employee’s educational institution, partnerships with other post-secondary institutions, co-op positions more generally, and other potential changes to future hiring processes.
- 22** Lastly, council finally discussed the Springwater Public Library item. Some council members shared their concerns about the conduct of a specific individual in relation to the drag queen storytime event, which had previously been discussed in open session. Council also raised questions about the transparency obligations of the Springwater Public Library Board and whether it had a code of conduct.
- 23** During this part of the discussion, the Clerk and the Mayor reminded council to stay on the topic of an “identifiable individual,” as cited in the resolution to proceed into closed session. A councillor was also reminded to stay on topic after beginning to share an opinion about drag performances generally.

- 24** After a question was raised about the Township’s ability to dissolve the Library Board, a councillor suggested that that line of questioning did not relate to an identifiable individual, and asked whether such a discussion should be held in open session. Council then discussed how it could provide comments to the Library Board related to the concerns council had discussed. After directing the Mayor, council returned to open session at 9:21 p.m.

## Analysis

### *Discussion regarding the rainbow crosswalk project*

- 25** Council’s resolution to proceed into closed session cited the exceptions for personal matters about an identifiable individual (section 239(2)(b)) and labour relations and employee negotiations (section 239(2)(d)) for the rainbow crosswalk project discussion.

### *Exception for personal matters about an identifiable individual*

- 26** The exception for personal matters about an identifiable individual allows a meeting to be closed to the public when the discussion pertains to personal matters about an identifiable individual.
- 27** I have previously determined that “personal information” is information that can be reasonably expected to identify an individual.<sup>2</sup> To qualify as “personal information”, information must be about an individual in their personal capacity, rather than their professional, official, or business capacity.
- 28** However, information about an individual in their professional capacity may qualify as personal information if it reveals something of a personal nature about the individual.<sup>3</sup> I have found that discussions scrutinizing the personal conduct of identifiable individuals fit within this exception.<sup>4</sup>

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<sup>2</sup> *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11 at para 19, online: <<https://canlii.ca/t/jr5rc>>; *Nipissing (Township of) (Re)*, 2023 ONOMBUD 2 at para 22 [*Nipissing*], online: <<https://canlii.ca/t/jv6ch>>.

<sup>3</sup> *Nipissing*, *supra* note 2 at para 23.

<sup>4</sup> *Lanark Highlands (Township of) (Re)*, 2021 ONOMBUD 15 at paras 37, 45 [*Lanark Highlands* 2021], online: <<https://canlii.ca/t/jhx9n>>; *Greater Sudbury (City of) (Re)*, 2017 ONOMBUD 2 at paras 49–53 [*Greater Sudbury*], online: <<https://canlii.ca/t/h4rwp>>.

- 29** In this case, some council members raised concerns about the high school representative's previous communications with council in connection with the rainbow crosswalk project that had been discussed in open session. While the representative had interacted with council in a professional capacity, council scrutinized this individual's personal conduct. Accordingly, the exception for personal matters about an identifiable individual applied.

*Exception for labour relations or employee negotiations*

- 30** Although the resolution also cited the exception for labour relations or employee negotiations for this topic, the Clerk told my Office that this was an error. As the high school representative was not an employee of the Township, the "labour relations or employee negotiations" exception did not apply.

## **Discussion regarding the hiring process**

*Exception for labour relations or employee negotiations*

- 31** Council's resolution cited the exception for labour relations or employee negotiations at section 239(2)(d) of the Act to discuss the hiring process for the Economic Development Assistant position.
- 32** I have previously stated that the purpose of the "labour relations" exception is to protect discussions relating to the relationship between a municipality and its employees.<sup>5</sup> This includes situations where a council discusses information related to an employee's duties and reporting relationships.<sup>6</sup>
- 33** I have determined that this exception does not apply to discussions of a hiring plan and proposed steps,<sup>7</sup> job descriptions and positions,<sup>8</sup> salary ranges,<sup>9</sup> and organizational reviews, unless the discussion covers how it affects individual employees and their roles.<sup>10</sup> I have also found that the

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<sup>5</sup> *St. Catharines (City of) (Re)*, 2019 ONOMBUD 1 at para 24, online: <<https://canlii.ca/t/hxrk5>>.

<sup>6</sup> *The North Shore (Township of) (Re)*, 2018 ONOMBUD 9 at paras 42–44, online: <<https://canlii.ca/t/hvmv3>> [*The North Shore*].

<sup>7</sup> *Nipissing*, *supra* note 2 at para 75.

<sup>8</sup> *Ibid* at para 88. However, this discussion could not have been parsed and was permissible on that particular occasion.

<sup>9</sup> *Nipissing*, *supra* note 2 at para 69.

<sup>10</sup> Letter from the Ombudsman of Ontario to the Town of Georgina (November 23, 2017), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2017/town-of-georgina>>.

discussion of a Chief Administrative Officer hiring process would typically not fit within this exception.<sup>11</sup>

- 34** In this case, council’s discussion focused on concerns about how the Economic Development Assistant position was filled, and how the Township should generally approach co-op positions and partnerships with post-secondary institutions. Council did not specifically discuss its relationship to the particular employee selected for the role, and references to the position’s pay and duties were incidental to questions about changes to the position that had been made before the position was filled. Accordingly, the “labour relations or employee negotiations” exception did not apply.

*Exception for personal matters about an identifiable individual*

- 35** Although not cited in council’s resolution to proceed into closed session, my Office also considered whether the exception for personal matters about an identifiable individual (section 239(2)(b)) could have applied to any portions of council’s discussion about the Economic Development Assistant position. Both the Mayor and the Clerk indicated that this exception might have applied to some portions of the discussion.
- 36** In a 2015 report to the City of Niagara Falls, my Office investigated a closed session where the City’s chief administrative officer provided an overview of events from an overseas trip taken with the mayor and another staff member, where council members raised concerns. Although there was a heated tone in that discussion, and some members of council expressly raised concerns about misconduct during that closed session, my Office determined the discussion was limited to actions the officials took in their professional capacities, and the “personal matters” exception did not apply.<sup>12</sup>
- 37** In this case, council’s closed session discussion related to both the Chief Administrative Officer and the Economic Development Assistant position. With respect to the CAO, council raised concerns about the hiring process he used when filling the Economic Development Assistant position. However, the discussion focused on perceived concerns with the hiring

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<sup>11</sup> *Lanark Highlands (Township of) (Re)*, 2018 ONOMBUD 1 at paras 42–4, online: <<https://canlii.ca/t/hvmtf>>; Letter from the Ombudsman of Ontario to the Township of Leeds and the Thousand Islands (September 8, 2016), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2016/township-of-leeds-and-the-thousand-islands-en>>.

<sup>12</sup> *Niagara Falls (City of) (Re)*, 2015 ONOMBUD 9 at paras 32–35, 45–51, online: <<https://canlii.ca/t/gtp86>>.



process, rather than on criticism of the Chief Administrative Officer's conduct. As the discussion did not focus on the CAO's actions in a way that went beyond the CAO's professional capacity, the "personal information" exception did not apply to those portions of the discussion.

- 38** With respect to the Economic Development Assistant, the Clerk told my Office that the Township is small and it would be possible to identify the individual that council discussed based on their job title. Although council's discussion did not name the Economic Development Assistant or focus on the Assistant's conduct, council referred to information about the Assistant, such as the Assistant's educational affiliation, start date, hourly rate of pay, and an approximate earnings range for the duration of the temporary position.
- 39** My Office has previously determined that an individual's educational history qualifies as personal information for the purposes of the exception,<sup>13</sup> and that discussions about an individual's salary, a salary grid, and proposed changes to an employee's contract can also fit within this exception.<sup>14</sup> While not binding on my Office, the Information and Privacy Commissioner has also determined that a municipal employee's starting hourly rate of pay is personal information.<sup>15</sup>
- 40** Accordingly, I find that the portion of the discussion related to the Assistant's educational affiliation and hourly rate of pay fit within the "personal matters about an identifiable individual" exception.

## Parsing the discussion

- 41** As only certain portions of council's discussion fit within any of the Act's closed meeting exceptions, it is necessary to consider whether the council could have parsed its discussion between open and closed sessions.
- 42** In *St. Catharines v. IPCO, 2011*, the Divisional Court found that it is unrealistic to expect municipal councils to split up discussions between open and closed sessions where it would "detract from free, open and

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<sup>13</sup> *Burk's Falls / Armour (Village of / Township)*, 2015 ONOMBUD 26 at para 58, online: <<https://canlii.ca/t/gtp6w>>.

<sup>14</sup> *The North Shore*, *supra* note 6 at para 34; *The Nation (Municipality of) (Re)*, 2019 ONOMBUD 4 at para 58, online: <<https://canlii.ca/t/j2b4c>>.

<sup>15</sup> *Tay Valley Township (Re)*, 2021 CanLII 52049 (ON IPC) at paras 36–41, 58–64, 68–72, online: <<https://canlii.ca/t/jggck>>.

uninterrupted discussion.”<sup>16</sup> In other words, where it would be unrealistic to expect council to parse intertwined subjects, topics that do not otherwise fit within a closed meeting exception may still be discussed *in camera*.<sup>17</sup> However, if the topics can be separated, council is expected to return to open session for those portions of the discussion that do not fit within an open meeting exception.

- 43** After the initial discussion of how the specific hiring process had unfolded, council commented on broader issues related to co-op positions, partnerships with post-secondary institutions, and how the Economic Development Assistant position could be filled next year. These aspects of the discussion arose incidentally to the discussion about the hiring process for the Economic Development Assistant position.
- 44** Although this portion of the discussion did not refer to any identifiable individuals and would not fit within the exception on its own, it would have been unrealistic in these circumstances to have expected council to parse its discussion. Accordingly, the entire discussion fit within the “personal matters” exception.

## Discussion regarding Library employment matters

### *Exception for personal matters about an identifiable individual*

- 45** Council also relied on the “personal matters” exception at section 239(2)(b) of the Act to discuss an employment matter related to the Springwater Public Library concerning a specific individual.
- 46** As stated above, information about an individual in their professional capacity may qualify as personal information if it reveals something of a personal nature about the individual.<sup>18</sup> A discussion scrutinizing the personal conduct of an individual comes within this exception.<sup>19</sup>
- 47** During the discussion, some council members raised concerns about the conduct of an employee at the Springwater Public Library, in connection to the drag storytime event discussed in open session. As this amounted to scrutiny of the individual’s conduct, the portions of the discussion about the

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<sup>16</sup> *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 at para 42, online: <<https://canlii.ca/t/fkqfr>>.

<sup>17</sup> *Plympton-Wyoming (Town of) (Re)*, 2021 ONOMBUD 4 at para 26, online: <<https://canlii.ca/t/jd49k>>.

<sup>18</sup> *Nipissing*, *supra* note 2 at para 23.

<sup>19</sup> *Lanark Highlands 2021*, *supra* note 4 at paras 37, 45; *Greater Sudbury*, *supra* note 4 at paras 49–53.

individual's conduct fit within the exception for personal matters about an identifiable individual.

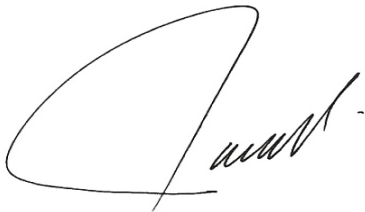
- 48 However, on several occasions, council's discussion moved beyond this topic. For instance, there were questions and comments about Library Board minutes, the merits of drag performances, and whether council could dissolve the Library Board. In response to these digressions, the Clerk, the Mayor, and a councillor interrupted the discussion to raise concerns and provide reminders about staying on topic. These interventions triggered some procedural discussions as well.
- 49 Due to timely interventions by staff and some members of council, these digressions were brief and arose incidentally to the main discussion about scrutinizing the individual's conduct. Accordingly, the discussion as a whole fit within the exception for personal matters about an identifiable individual. However, I encourage all members of council to be vigilant in keeping discussions focused on the topic cited in the resolution to proceed into closed session.

## Opinion

- 50 Council for the Township of Springwater did not contravene the *Municipal Act, 2001* during its special council meeting on May 3, 2023, when it met in closed session to discuss a rainbow crosswalk project and an item related to employment matters at the Springwater Public Library.
- 51 Council also did not contravene the *Municipal Act, 2001* when it discussed the hiring process for an Economic Development Assistant position. While no part of the discussion fit within the cited exception for labour relations or employee negotiations, the portion of the discussion that referred to personal information about a specific employee fit within the exception for personal matters. As the remaining portion of the discussion could not have been parsed, the entire discussion fit within the "personal matters" exception.

## Report

- 52 Council for the Township of Springwater was given the opportunity to review a preliminary version of this report and provide comments to my Office. No comments were received.
- 53 The Clerk indicated that my report would be shared with council and made available to the public at the next council meeting. This report will also be published on our website at [www.ombudsman.on.ca](http://www.ombudsman.on.ca).



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Paul Dubé  
Ombudsman of Ontario

*Ce rapport est aussi disponible en français*