



Ombudsman Report

**Investigation into a closed meeting held
by council for the Township of Lanark Highlands
on December 7, 2021**

**Paul Dubé
Ombudsman of Ontario
May 2022**

Complaint

- 1 My Office received a complaint about a closed meeting held by council for the Township of Lanark Highlands (the “Township”) on December 7, 2021.
- 2 The complaint alleged that council’s *in camera* discussion did not fall within any of the prescribed exceptions in the *Municipal Act, 2001*.
- 3 My review has determined that council for the Township did not contravene the *Municipal Act, 2001* when it held a meeting *in camera* on December 7, 2021.

Ombudsman jurisdiction

- 4 Under the *Municipal Act, 2001*¹ (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 Lanark Highlands.
- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality’s governing procedures have been observed.
- 8 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.

¹ SO 2001, c 25.

Investigative process

- 9 On January 10, 2022, my Office advised the Township of our intent to investigate the complaint about the meeting on December 7, 2021.
- 10 We reviewed relevant portions of the Township's procedural by-law, as well as the Act. We reviewed the open meeting agenda, open and closed meeting minutes, and a staff report circulated in closed session.
- 11 We spoke with the Reeve, Deputy Reeve, and municipal staff to obtain additional information.
- 12 My Office received full co-operation in this matter.

December 7, 2021 council meeting

- 13 The meeting on December 7, 2021 began at 7:17 p.m. by conference call. Council immediately passed a resolution to proceed *in camera*, citing the exception for personal matters about an identifiable individual. The resolution described the discussion as relating to "human resources matter finance department".
- 14 During the closed session, the Treasurer presented a report concerning the performance of an individual in the context of their employment with the Township. The report also included financial information about the Township. We were told that there was minimal discussion following the Treasurer's presentation.
- 15 Council returned to open session and reported that no pecuniary interest was declared during the meeting. The meeting was adjourned at 8:10 p.m.

Analysis

Applicability of the exception for personal matters about an identifiable individual

- 16 Council relied on paragraph 239(2)(b) of the Act to proceed *in camera*. This open meeting exception allows a meeting to be closed when discussions pertain to personal matters about identifiable individuals, including municipal employees.

- 17 Personal information is information that can be reasonably expected to identify an individual.² While information about an individual in their professional capacity is not generally considered personal, it may qualify as personal if it relates to scrutiny of the individual's conduct.³ I have previously found that discussions scrutinizing the performance of an identified staff member fit within the personal matters exception.⁴
- 18 During the December 7, 2021 meeting, council heard a presentation of a report about the performance of an individual in the context of their employment with the Township. The portion of the discussion about the individual's performance fit within the exception for personal matters about an identifiable individual.
- 19 During the closed session, financial information about the Township was also discussed. This, on its own, would not fit under the personal matters exception. I have previously stated that information about a municipality's finances should typically be discussed in open session.⁵

Parsing the discussion

- 20 The Divisional Court has found that it is not realistic to expect municipal councils to parse their discussions between open and closed sessions where it would "detract from free, open and uninterrupted discussion."⁶ Matters that would not usually fit within an exception can sometimes be discussed in closed session if they relate to a discussion on a single topic and where it would be unrealistic to expect council to split up this discussion.⁷ However, if the discussion can be separated, council is expected to return to open session for those parts of the discussion that do not fit within an open meeting exception.⁸
- 21 In this case, the discussion about the Township's finances was intertwined with the discussion about the individual's performance as an employee. It would not have been practical for the municipality to parse these discussions.

² *Ontario (AG) v Pascoe*, 2002 CanLII 30891 (ONCA), online: <<https://canlii.ca/t/1chz2>>.

³ *Elliot Lake (City of)*, 2015 ONOMBUD 30 at para 20, online: <<https://canlii.ca/t/gtp77>>.

⁴ *South Huron (Municipality of)*, 2015 ONOMBUD 6 at paras 31-2, online: <<https://canlii.ca/t/gtp80>>.

⁵ *Pelham (Town of) (Re)*, 2018 ONOMBUD 4 at para 41, online: <<https://canlii.ca/t/hvmtr>>.

⁶ *St. Catherines (City) v. IPCO*, 2011 ONSC 234 at para 42, online: <<https://canlii.ca/t/fkqfr>>.

⁷ *Leeds and the Thousand Islands (Township of) (Re)*, 2022 ONOMBUD 5 at para 54, online: <<https://canlii.ca/t/jnkk9>>.

⁸ *Plympton-Wyoming (Town of) (Re)*, 2021 ONOMBUD 4 at para 26, online: <<https://canlii.ca/t/jd49k>>.

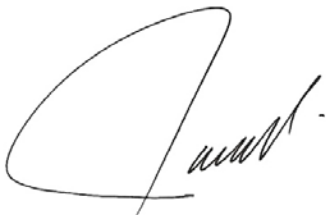
- 22 Accordingly, the exception for personal matters about an identifiable individual applied to council's discussions during the December 7, 2021 closed meeting.

Opinion

- 23 Council for the Township of Lanark Highlands did not contravene the *Municipal Act, 2001* when it went *in camera* to discuss the performance of an individual in the context of their employment with the Township. The discussion fell within the closed meeting exception for matters about an identifiable individual at paragraph 239(2)(b) of the Act.

Report

- 24 Council for the Township of Lanark Highlands was given the opportunity to review a preliminary version of this report and provide comments to my Office. Due to restrictions in place related to COVID-19, some adjustments were made to the normal preliminary review process and I thank council and staff for their co-operation and flexibility. No comments were received.
- 25 My report should be shared with council for the Township of Lanark Highlands. The Township agreed to make my report available at the next council meeting.



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