

BY E-MAIL

January 23, 2023

Council for the Municipality of Casselman
c/o Geneviève Lajoie, Mayor
751 St-Jean Street
Casselman ON K0A 1M0

Council for the Municipality of Casselman:

Re: Closed meeting complaint

My Office received complaints alleging that council for the Municipality of Casselman (the “Municipality”) contravened the *Municipal Act, 2001*¹ (the “Act”) during meetings of council on January 11 and January 17, 2022. The complaints alleged that *in camera* discussions about the purchase of an identified property, which was then being considered as a potential location for a new city hall, did not come within the Act’s closed meeting exceptions. One complainant also alleged that council failed to provide the general nature of the subject matter to be discussed in closed session.

Ombudsman’s role and authority

As of January 1, 2008, the *Municipal Act, 2001* (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, but 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 Municipality of Casselman.

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.

Investigative process

My Office notified the Municipality of our intent to investigate these complaints on August 19, 2022. We spoke with the Clerk and the former Mayor. My Office also reviewed the meeting materials for both the January 11 and January 17, 2022 council meetings, including the open and closed meeting minutes, the agendas, and staff reports relating to the purchase of the property.

Meeting on January 11, 2022

Council met for a regular meeting at 6:00 p.m. on January 11, 2022 and resolved to move *in camera* at 7:10 p.m. Although council discussed multiple items during this closed session, the complaints only raised concerns about the discussion listed under the exception for acquisition or disposition of land.

For the matter at issue, the resolution to move *in camera* stated that council would discuss the acquisition or disposition of land pursuant to paragraph 239(2)(c) of the Act. The resolution also referenced a related staff report and stated that council would be discussing "revision of purchase offer for building".

During the closed session, council briefly discussed the potential acquisition of the property and passed a resolution to acknowledge receipt of an administrative report, approve an offer of purchase, and direct staff in relation to that offer. My Office was told that council did not make a decision to purchase the property during this closed session. The closed session was adjourned at 8:49 p.m.

Applicability of the exception for acquisition or disposition of land

Section 239(2)(c) of the Act allows a meeting to be closed to the public if the municipality is in the process of buying or selling municipal land.² The purpose of the exception is to protect a municipality from potential harm, such as weakening or jeopardizing the municipality's bargaining position or negotiation strategy.³

In this case, council's discussion involved the purchase of a specific property and details about the proposed acquisition. Council had a bargaining position to protect with respect to the potential acquisition of the property. Accordingly, the discussion about the potential purchase of the property fit within the open meeting exception for acquisition or disposition of land.

Voting in closed session

Generally, voting in a closed session is not permitted by subsection 239(5) of the Act. However, subsection 239(6) provides an exception to the general rule. A vote is permitted to occur in closed session if the meeting is allowed to be closed based on one of the exceptions in the Act *and* the vote is for a procedural matter or for giving direction or instructions to staff.⁴

In this case, there were three components to the vote taken by council in closed session. Council acknowledged receipt of an administrative report, council directed staff in relation to the offer of purchase, and council approved the offer of purchase.

With respect to the first matter, council's vote to acknowledge receipt of an administrative report was a procedural matter. The second matter was a direction to staff in relation to the purchase offer. Since the *in camera* discussion fit the open meeting exception for acquisition or disposition of land, both of these votes were permitted by the Act.

However, council also voted to approve the offer of purchase, which is not a procedural matter or a direction to staff. Both the Clerk and the former Mayor told us that the resolution reflected council's decision to offer a specific price and other purchasing conditions for property during negotiations. Although council could have instead directed staff to make an offer consisting of the specified price and conditions, this is not what council resolved to do. As it was worded, the resolution directly endorsed the offer

² *Letter from the Ontario Ombudsman to the Town of Orangeville* (24 January 2014), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2014/town-of-orangeville>>.

³ *Burk's Falls / Armour (Village of / Township)*, 2015 ONOMBUD 26, online: <<https://canlii.ca/t/gtp6w>>.

⁴ *Deep River (Town of) (Re)*, 2017 ONOMBUD 17 at paras 64-68, online: <<https://canlii.ca/t/hqspf>>.

presented by staff, which is a substantive decision. As a result, this vote was not authorized by paragraph 239(6)(b) of the Act.

Resolution to move in closed session

Subsection 239(4) of the Act requires that, before holding a closed session, 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”. In *Farber v. Kingston (City)*,⁵ the Court of Appeal of Ontario determined that the resolution to go in closed session should provide a general description of the issue(s) to be discussed in a way that maximizes the information available to the public while not undermining the reason for closing the meeting. Typically, this means the resolution should include a brief description of the subject matter to be considered in closed session in addition to the specific exceptions being relied upon.⁶

In this case, the resolution stated the general subject matter to be discussed in closed session (i.e., reviewing an offer to purchase a building) and further cited the exception relied upon for the closed session. This description provided sufficient information about council’s intended discussion and complied with the requirements in the Act.

Meeting on January 17, 2022

Council met for a regular meeting at 9:00 a.m. on January 17, 2022 and resolved to move *in camera* at 9:22 a.m. Although council discussed multiple items during this closed session, the complaints only raised concerns about the discussion listed under the exception for acquisition or disposition of land.

For the matter at issue, the resolution to move *in camera* stated that council would discuss the acquisition or disposition of lands pursuant to paragraph 239(2)(c) of the Act. The resolution also referenced the related staff report, and stated that council would be discussing “review of counter-offer for building purchase”.

My Office was told that the *in camera* discussion focused on the ongoing negotiations and the purchase price. The closed meeting minutes indicate that council passed a resolution to acknowledge receipt of the administrative report related to the potential purchase and to direct staff in relation to a counter offer. Again, we were told that council did not make a decision to purchase the property during the closed session. The closed session was adjourned at 9:51 a.m. and council returned to open session.

⁵ 2007 ONCA 173.

⁶ *Temagami (Municipality of) (Re)*, 2021 ONOMBUD 3, online: <<https://canlii.ca/t/jcxs0>>.

Ultimately, on March 8, 2022, a resolution was passed in open session to confirm the purchase of the property in question for the location of the future city hall. A summary report about the negotiations to purchase the property was made public by the municipality at this same meeting.

Applicability of the exception for acquisition or disposition of land

As explained above, a meeting may be closed to the public pursuant to paragraph 239(2)(c) of the Act if the municipality is in the process of buying or selling municipal land and holding discussions about the land transaction in open session would affect the municipality's bargaining position.

On January 17, 2022, council discussed the purchase of a specific property at a specific cost. Council had a bargaining position to protect with respect to the potential acquisition of the property and, accordingly, the discussion fit within the open meeting exception for acquisition or disposition of land.

Voting in closed session

As explained above, a vote is permitted in closed session if the meeting could be closed under an exception in the Act and the vote is for a procedural matter or for giving direction to staff.

In this case, council voted to pass a resolution to acknowledge receipt of the administrative report and to direct staff in relation to a counter offer. Acknowledging receipt of the report was a procedural matter, and the other matter was a direction to staff regarding the counter offer. As the *in camera* discussion was permissible under the Act, these votes were authorized by subsection 239(6) of the Act.

Resolution to move in closed session

As previously discussed, section 239(4) provides that resolutions to move in closed session should maximize the information provided to the public without compromising the reason for proceeding in closed session. In this case, the resolution to move *in camera* stated the general subject matter to be discussed in closed session (i.e., the review of a counter-offer for the purchase of a building) and cited the exception relied upon for the closed session. This resolution complied with the requirements in the Act.

Conclusion

Council for the Municipality of Casselman did not contravene the *Municipal Act, 2001* on January 11 or January 17, 2022 when council moved *in camera* to discuss the potential purchase of a property. However, on January 11, council voted in closed session to approve the offer to purchase, which does not comply with subsections 239(5) and (6) of the Act. Since Council's apparent intention was to ensure that staff would offer a specific price and conditions for the property in question, it would have been appropriate to direct staff to make an offer consisting of a specific price and conditions.

The Mayor and Clerk for the Municipality of Casselman were given the opportunity to review the content of this letter and provide comments to my Office. All comments received were considered before the finalization of this letter.

I thank the Municipality for its co-operation during my review. The Clerk has confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario

Cc: Sébastien Dion, Clerk, Municipality of Casselman