

BY EMAIL

December 6, 2021

Council for Loyalist Township
c/o Debbie Chapman, Clerk
P.O. Box 70
263 Main Street
Odessa, ON K0H 2H0

Dear Mayor and members of council for Loyalist Township:

Re: Closed meeting complaint

My Office received a complaint alleging that council for Loyalist Township (the “Township”) met in closed session on May 3, 2021, contrary to the open meeting rules, to discuss a grant policy. For the reasons set out below, I have determined that council for the Township did not contravene the open meeting requirements.

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, 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 Loyalist Township.

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.



Complaint

My Office received a complaint that council contravened the *Municipal Act, 2001* when members communicated with each other by phone in order to formulate a motion that was later moved in open session of the Committee of the Whole (the “committee”).

The complaint stemmed from a statement made by a councillor at the end of the May 3, 2021 meeting concerning the Township’s final draft for a renewable energy fund grant policy (the “grant policy”). Addressing the other members of council, the council member stated:

As you all know, I spoke with everyone today, and kind of got an idea on where they were and what it would take to get something to move forward. Due to our last Committee of the Whole meeting, things weren’t moving forward. And, from one conversation, they would have been, I believe, fairly devastated to the whole idea of this if it hadn’t been put back to the Committee themselves to make change. So it wouldn’t have been fair to them. So I tried to come up with something. And if anyone has any questions I can give them the rationale and the intent behind all the different points.

The council member’s comments were made during an open session of Committee of the Whole where the grant policy was discussed for approximately 1.5 hours. The council member’s motion to receive and accept the draft policy with amendments was subject to questions and comments from all members of council. After being amended by the committee, the motion was adopted by a vote of 5-2.

The complainant alleged that these comments in open session indicated that members held an improper meeting by discussing the grant policy prior to the open session.

A parallel complaint was filed with the municipality’s integrity commissioner, alleging that the councillor contravened the code of conduct by causing an illegal closed meeting discussion to occur. The integrity commissioner for Loyalist Township found no contravention of the code of conduct and dismissed the complaint. However, as the Ombudsman is the closed meeting investigator for Loyalist Township, we independently reviewed this complaint and considered the applicability of the open meeting rules.

Review

My Office spoke with the complainant and with the member of council who made the remarks set out above. We reviewed the meeting agenda, minutes, and a video

483 Bay Street, 10th Floor, South Tower / 483, rue Bay, 10^e étage, Tour sud
Toronto, ON M5G 2C9

Tel./Tél. : 416-586-3300 Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

www.ombudsman.on.ca

Facebook : facebook.com/OntarioOmbudsman Twitter : twitter.com/Ont_Ombudsman YouTube : youtube.com/OntarioOmbudsman



recording of the meeting. We also reviewed relevant phone records from the day of the meeting.

Our review indicates that, on May 3, 2021, the member of council in question did communicate by phone with other council members. At no point did the member of council communicate with multiple members of council simultaneously. This is consistent with what the member of council told us during our inquiries.

Analysis

Section 238(1) of the *Municipal Act* defines “meeting” for the purposes of the open meeting rules.² In order for the coming together of people to be considered a “meeting”:

- A quorum of a council, of a local board or of a committee of either must be physically present³ or synchronously electronically present; and
- The discussions must materially advance the business or decision-making of the council, local board, or committee.⁴

In this case, a quorum of the Committee of the Whole was never present in the course of the one-on-one phone conversations. As I noted in a recent letter to the Town of Hawkesbury, a quorum is not “present” if the communication occurs over a series of individual discussions.⁵

In addition to a lack of quorum being present, our review indicates that council business and decision-making were not materially advanced during these discussions. Mere updates on recent activities or communication of information is unlikely to materially advance business or decision-making.⁶ Indeed, it is usually acceptable to inquire about other members’ positions where the discussion is not intended to lead to specific outcomes or to persuade decision-makers.⁷

In my letter to the Town of Hawkesbury, I explained that “my Office has always recognized that it is important that council members be able to speak freely with one

² *Municipal Act, 2001*, SO 2001, c 25, s 238 (3.1-3.4).

³ *Hamilton (City of) (Re)*, 2019 ONOMBUD 7 at para 65, online: <<https://canlii.ca/t/j2pwf>>.

⁴ *Casselman (Village of) (Re)*, 2018 ONOMBUD 11 at paras 34-35 [*Casselman*], online: <<https://canlii.ca/t/hvmtk>>.

⁵ *Hawkesbury (Town of) (Re)*, 2021 ONOMBUD 7 at para 18 [*Hawkesbury*], online: <<https://canlii.ca/t/jdzm9>>.

⁶ *Casselman*, *supra*, note 3 at para 40.

⁷ *Ibid* at para 31.

483 Bay Street, 10th Floor, South Tower / 483, rue Bay, 10^e étage, Tour sud
Toronto, ON M5G 2C9

Tel./Tél. : 416-586-3300 Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

www.ombudsman.on.ca

Facebook : facebook.com/OntarioOmbudsman Twitter : twitter.com/Ont_Ombudsman YouTube : youtube.com/OntarioOmbudsman



another outside the structure of a formal meeting.”⁸ It would not be realistic, nor respectful of democratic governance in municipalities, to implement a culture of absolute silence between council members outside of council chambers.

In the present case, council members shared information prior to the meeting in order to prepare a motion about a grant policy to put to the Committee of the Whole. The public had the opportunity to observe an extensive debate about the grant policy before the committee voted on the matter. A quorum of the committee did not come together ahead of the meeting, and committee business was not materially advanced during the series of telephone calls.

Conclusion

Council for Loyalist Township did not contravene the *Municipal Act, 2001* when council members had informal conversations on May 3, 2021 before a meeting of the Committee of the Whole pertaining to a grant policy.

I would like to thank the Township 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: Debbie Chapman, Clerk, Loyalist Township

⁸ *Hawkesbury, supra*, note 4 at para 19.

