



Ombudsman Report

**Investigation into a meeting held by council
for the Township of Lake of Bays
on September 10, 2024**

**Paul Dubé
Ombudsman of Ontario**

November 2025

Complaint

- 1 My Office received a complaint that council for the Township of Lake of Bays (the “Township”) held a closed meeting on September 10, 2024 that did not fit within the open meeting exceptions in the *Municipal Act, 2001*¹ (the “Act”) for personal matters, acquisition or disposition of land, and advice subject to solicitor-client privilege.
- 2 My investigation determined that council for the Township of Lake of Bays contravened the *Municipal Act, 2001* on September 10, 2024, when a small portion of its closed session discussion did not fit within the cited exceptions or any of the exceptions to the open meeting rules. However, the majority of the discussions were permitted to be held in closed session.

Ombudsman jurisdiction

- 3 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.
- 4 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.
- 5 The Ombudsman is the closed meeting investigator for the Township of Lake of Bays.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality’s procedure by-law have been observed.
- 7 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/en/info-public-bodies-and-officials/municipal-government/municipal-meeting-digest.

¹ SO 2001, c 25.

- 8 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/en/make-complaint/what-we-can-help-you/organizations-you-can-complain-about.

Investigative process

- 9 My Office notified the Township of our intent to investigate these complaints on October 28, 2024. We spoke with the Mayor and the Clerk, and reviewed the meeting agenda, open and closed session minutes, and the closed session recording for the September 10, 2024 meeting.
- 10 My Office received full co-operation in this matter.

Background

- 11 In June 2024, the Township passed By-Law No. 2024-098 requiring residents who access their properties through unassumed road allowances (land owned by the Township that is not formally maintained) to enter into a Road License Agreement ("RLA") with the Township.
- 12 My Office was told that the decision to implement the RLA program caused concern in the community and resulted in the formation of a Facebook group of residents opposed to the program. According to the Clerk, individuals who were members of the Facebook group threatened the Township with legal action, indicated they would file a complaint to the Township's Integrity Commissioner, filed Freedom of Information requests, and criticized the RLA program publicly to the media and on social media.
- 13 On August 13, 2024, the Township paused the RLA program for 180 days and introduced an option allowing residents to apply to purchase road allowances from the Township at a default price rather than obtain a licence. The Township also held a special meeting on September 9, 2024 for the public to provide council with feedback on the RLA program.

September 10, 2024 council meeting

- 14 Council met on September 10, 2024 at 9:00 a.m. for a regular meeting. At 10:25 a.m., council passed a resolution to move into closed session to discuss the agenda item “Public Works Department (Roads License Agreement Program & Purchase of Private Roads).” The resolution cited the exceptions for personal matters, acquisition or disposition of land, and advice subject to solicitor-client privilege to move into closed session.
- 15 According to the recording of the closed session, at the beginning of the closed session, council briefly discussed a potential complaint related to the RLA program from an unidentified resident to the Township’s Integrity Commissioner. A councillor speculated about the resident’s identity, but the individual was not identified during the discussion. Council also discussed the Facebook group without identifying the group or its members by name.
- 16 The discussion then turned to several Freedom of Information requests related to the RLA program and the impact on municipal staff resources of responding to them. Council did not identify the individuals who filed the requests or detail the content of the requests. This portion of the discussion lasted less than one minute.
- 17 Following completion of that portion of the discussion, council discussed items related to the RLA program with the intent that staff would seek legal advice on these and report back to council. The Clerk also relayed information about potential legal liabilities.
- 18 Council also discussed the option of selling unassumed road allowances to residents and the default price the Township was charging them to purchase the land. The Clerk told my Office that prior to the September 10, 2024 meeting, residents requested the Township reduce the purchase price.
- 19 At various points throughout this portion of the discussion, council members referred to and relayed legal advice previously obtained from the Township’s solicitor regarding the RLA program. Staff also referred to legal advice when responding to questions posed by council members. The Township’s solicitor was not present at the meeting, but my Office was advised that the legal advice was essential to this discussion.
- 20 While *in camera*, council directed staff to seek further legal advice on a consolidated list of items and questions related to the RLA program that arose from the discussion. Shortly after this direction, at 11:58 a.m., council passed a resolution to move back into open session.

Analysis

Exception for personal matters, s. 239(2)(b)

- 21 We were told by the Clerk that council cited the exception for personal matters to discuss the potential complaint to the Integrity Commissioner and several Freedom of Information requests related to the RLA program.
- 22 This exception applies to discussions that reveal personal information about an identifiable individual. My Office has found that in order to qualify as personal information, it must be reasonable to expect that an individual could be identified if the information were disclosed publicly.² In addition, information that would normally be considered personal in nature may not come within the exception for personal matters if the information has already been publicly discussed, or is generally known to the public.³
- 23 My Office has found that discussions where individuals are not specifically identified do not fall within this exception. In a 2024 report to the City of Elliot Lake, for example, I found that the exception did not apply to a municipal committee's discussion of changes to a procurement process because members discussed the general opinions of staff members without identifying individual staff members by name or role.⁴
- 24 In this case, council's discussion involved the Facebook group composed of residents opposed to the RLA program. Neither the group nor any of its members were identified by name during the discussion, and there is no evidence to suggest that individual members of the group could otherwise be identified by council's discussion.
- 25 Additionally, the individual who indicated they would complain to the Township's Integrity Commissioner was not identified by name, nor were the individuals who filed Freedom of Information requests. Accordingly, the exception for personal matters does not apply to this portion of council's discussion.

² *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, online: <<https://canlii.ca/t/jv6ch>>.

³ Letter from the Ontario Ombudsman to Town of Midland (4 February 2014), online: <<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/town-midland-february-4-2014>>.

⁴ *Elliot Lake (City of) (Re)*, 2024 ONOMBUD 3 (CanLII), at para 35-37, online: <<https://canlii.ca/t/k2wqr>>.

Exception for Freedom of Information requests, s. 239(3)(a)

- 26 While discussing the group of residents, council briefly referenced several Freedom of Information requests received by the Township and attributed to members of the Facebook group. Although not cited by council, section 239(3)(a) of the Act requires a municipality to proceed *in camera* if the subject matter being considered is a request under the *Municipal Freedom of Information and Protection of Privacy Act*.⁵
- 27 During this discussion, council and staff made a passing reference to the existence of the Freedom of Information requests and briefly mentioned the impact on municipal staff resources. No details of the subject matter of the requests were discussed, nor did council debate their merits. Because council did not substantively discuss the requests, but merely mentioned their existence, this exception does not apply to this portion of the discussion.
- 28 In addition, my review did not identify any other exceptions that could apply to this portion of the discussion.

Exception for advice subject to solicitor-client privilege, s. 239(2)(f)

- 29 Council cited the exception for advice subject to solicitor-client privilege to discuss the RLA program in closed session. Section 239(2)(f) of the Act allows a municipality to proceed *in camera* to discuss advice that is subject to solicitor-client privilege, including communications necessary for that purpose.⁶ The purpose of the exception is to ensure that municipal officials can speak freely about legal advice without fear of disclosure.⁷
- 30 This exception can only be relied upon when advice from a solicitor or related communication actually exists for council's consideration. Communication will only be found to be subject to solicitor-client privilege if it is: (1) between a client and his or her solicitor, where the solicitor is acting in a professional capacity; (2) made in relation to the seeking or receiving of legal advice; and (3) intended to be confidential.⁸

⁵ *Municipal Act*, *supra* note 1, s 239(3)(a).

⁶ *Municipal Act*, *supra* note 1

⁷ *Municipal Act*, *supra* note 1

⁸ *Canada v Solosky*, [1980] 1 SCR 821.

- 31 Solicitor-client privilege also protects materials that are directly related to the seeking, formulating or giving of legal advice.⁹ The Supreme Court of Canada has found that documents that an individual had intended to, but had not yet, communicated to legal staff fall within the ambit of solicitor-client privilege.¹⁰
- 32 Council's *in camera* discussion about various aspects of the RLA program, was grounded in legal advice received from the Township solicitor. We were told that the Township solicitor previously provided council and staff with extensive legal advice on the RLA program which covered several topics under discussion at the meeting. This advice was discussed and referenced throughout the *in camera* discussion. Both the Clerk and Mayor told us the legal advice was essential to council's discussion.
- 33 In addition, council prepared a list of items with respect to the RLA program and directed staff to seek further legal advice on them. A client's communications prepared for the purpose of seeking legal advice are captured by solicitor-client privilege. As such, council's *in camera* discussion about the RLA program fits within the exception for advice subject to solicitor-client privilege.

Exception for acquisition or disposition of land, s. 239(2)(c)

- 34 The Clerk told my Office that council cited the exception for acquisition or disposition of land to discuss the price the Township would charge residents to purchase an unassumed road allowance.
- 35 This exception applies to discussions of "a proposed or pending acquisition or disposition of land by the municipality or local board."¹¹ It is primarily intended to protect a municipality's bargaining position during the process of buying or selling municipal land. For the exception to apply, a municipality must be either the seller or purchaser of the land.¹² In addition, the discussion must involve an actual land transaction that is either pending or has been proposed.¹³ The land transaction must be more than merely speculative.¹⁴
- 36 In assessing whether a transaction is too speculative, my Office considers whether practical steps were taken to begin negotiations for a transaction, including identifying a specific property for sale or purchase.¹⁵ I have repeatedly

⁹ *Susan Hosiery Ltd v Canada*, [1969] 2 Ex CR 27.

¹⁰ *Descôteaux v. Mierzewski*, [1982] 1 SCR 860, at p 877-878.

¹¹ *Municipal Act*, *supra* note 1.

¹² *Port Colborne (City of)*, 2015 ONOMBUD 32 at para 77, online: <<https://canlii.ca/t/gtp7c>>.

¹³ *Fort Erie (Town of) (Re)*, 2018 ONOMBUD 2 at para 31, online: <<https://canlii.ca/t/hvmtm>>.

¹⁴ *Fort Erie (Town of) (Re)*, 2015 ONOMBUD 12 at paras 22–23, online: <<https://canlii.ca/t/gtp5w>>.

¹⁵ *Cochrane (Town of) (Re)*, 2024 ONOMBUD 20 at para 24, online: <<https://canlii.ca/t/k8b2r>>.

found that the exception may apply in the absence of a pending land transaction if discussions relate to specific lands and the municipality's bargaining position is at risk.¹⁶

- 37 In this case, by the September 10, 2024 meeting, the Township had already introduced an option to allow residents to purchase unassumed road allowances rather than enter into an RLA, and had set a default price for their purchase. However, residents affected by the RLA program requested the Township reconsider this price. As such, although no specific transaction with a resident was identified during the closed session, council's discussion was directly connected to transactions that were reasonably expected to occur in the foreseeable future between the Township and residents seeking to purchase municipal property.
- 38 The Township has a bargaining position to protect in these transactions. At this meeting, council discussed the price to purchase an unassumed road allowance, and how that price had been determined. If this discussion had occurred in public, the Township's bargaining position would have been adversely affected in foreseeable negotiations with purchasers.
- 39 Accordingly, this portion of council's discussion falls within the exception for acquisition or disposition of land.

Parsing the discussion

- 40 Having determined that the first portion of the closed session discussion regarding the potential Integrity Commissioner complaint and the Freedom of Information requests did not fit within any closed meeting exception, I must determine whether it could have been parsed between open and closed session. The Ontario Divisional Court has found that it is unrealistic to expect municipal councils to divide discussions between open and closed sessions where it would "detract from free, open and uninterrupted discussion."¹⁷ I have previously found that this principle should be applied narrowly and only to discussions on a single topic, where splitting the information would require interrupting the conversation.¹⁸

¹⁶ *Russell (Township of) (Re)*, 2021 ONOMBUD 19 at para 15, online: <<https://canlii.ca/t/jlchq>>; see also *Norfolk (County of) (Re)*, 2021 ONOMBUD 6 at para 34, online: <<https://canlii.ca/t/jdr8d>>.

¹⁷ *St. Catharines (City) v IPCO*, 2011 ONSC 2346 at para 42.

¹⁸ *Elliot Lake (City of) (Re)*, 2024 ONOMBUD 3 (CanLII), at para 35, online: <<https://canlii.ca/t/k2wqr>>.

- 41 In a 2024 report to the Municipality of Temagami,¹⁹ I found that, although no exceptions applied to a brief portion of the discussion at the beginning of an *in camera* meeting, it would have been unrealistic to parse that portion to open session because it was brief, foundational to, and intertwined with the rest of council's discussion.²⁰
- 42 In this case, council discussed the potential Integrity Commissioner complaint and the Freedom of Information requests at the beginning of the closed session in a distinctly structured portion of the *in camera* session, and upon completion of that, discussed the RLA program itself.
- 43 Although these topics were related, they were conceptually distinct, one being a brief discussion of potential complaints and Freedom of Information requests, and the other being a substantive discussion about the RLA program itself. This brief introductory portion was neither necessary nor foundational for the subsequent discussion.
- 44 As well, this portion of the discussion was not fluidly intertwined with the rest of council's discussion of the RLA program. Instead, there were two independent discussions. As such, council could have realistically parsed the discussion, and the first portion does not fit under any closed meeting exception.

Opinion

- 45 Council for the Township of Lake of Bays contravened the *Municipal Act, 2001* on September 10, 2024 during the first portion of its *in camera* meeting, when it discussed a potential complaint to the Integrity Commissioner and Freedom of Information requests. This discussion did not fit within the exception for personal matters and should have been parsed from the closed session discussion.
- 46 However, during the remainder of the closed session, council was permitted to discuss the RLA program under the exceptions for advice subject to solicitor-client privilege and for acquisition or disposition of land.

Recommendations

- 47 I make the following recommendations to assist the Township of Lake of Bays in fulfilling its obligations under the *Municipal Act, 2001*, and enhancing the transparency of its meetings:

¹⁹ *Temagami (Municipality of) (Re)*, 2024 ONOMBUD 6, online: <<https://canlii.ca/t/k4j1b>>.

²⁰ *Ibid*, at para 22.

Recommendation 1

All members of council for the Township of Lake of Bays should be vigilant in adhering to their individual and collective obligation to ensure that the Township complies with its responsibilities under the *Municipal Act, 2001*.

Recommendation 2

The Township of Lake of Bays should ensure that no subject is discussed in closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

Report

- 48 Council for the Township of Lake of Bays was given the opportunity to review a preliminary version of this report and provide comments to my Office. All comments we received were considered in the preparation of this final report.
- 49 This report will be published on my Office's website and should also be made public by the Township of Lake of Bays. In accordance with section 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario

Ce rapport est aussi disponible en français