



Ombudsman Report

**Investigation into whether
Council for the Municipality of Central Huron
held an illegal closed meeting
on January 12, 2015**

“Recording Unavailable”

**André Marin
Ombudsman of Ontario
March 2015**

Complaints

- 1 On January 14, 2015, my Office received a complaint that council for the Municipality of Central Huron held an illegal closed meeting on January 12, 2015, when it went in camera under the “personal matters” exception – *Municipal Act, 2001*, s. 239(2)(b) – without prior notice. The complainant alleged that council discussed the work of a former contractor in a professional, not personal, capacity.

Ombudsman jurisdiction

- 2 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3 As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has properly closed a meeting to the public. Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4 My Office is the closed meeting investigator for the Municipality of Central Huron.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipal procedure by-law have been complied with.

Investigative process

- 6 Members of my Office’s Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the city’s procedure by-law and the Act, as well as the agenda and the open and closed meeting minutes of the January 12, 2015, meeting of council. They also spoke with staff and those council members in attendance during the closed meeting.

Council procedure

- 7** The Municipality of Central Huron’s procedure by-law (48-2013) contemplates that regular council meetings are to be held at 7:00 p.m. on the first and third Monday of each month in the Council Chamber at 23 Albert Street, Clinton, Ontario. Committee of the Whole meetings are to be held at 1:00 p.m. on the second Monday of each month, except in the month of August. The schedule of regular meetings, once approved by council, is to be published on the municipal website.
- 8** The by-law states that all meetings are to be open to the public. It also makes provision for closed meetings, mirroring the requirements of section 239 of the *Municipal Act, 2001*. The nature of closed meeting items is to be listed on the agenda; however, council may enter into closed session during a meeting if necessary, on an oral motion. Following a closed session, an oral report is to be given to the public on the general nature of the matters discussed therein.
- 9** The Municipality’s procedure by-law at section 8(i) states that “All Closed Meetings shall be audio and/or video recorded and such recordings shall be securely and confidentially stored and archived for future reference.” When a request was made for a recording of the closed session of January 12, 2015, our Office was informed by staff that, contrary to the by-law, council does not audio or video record its closed sessions. Open sessions are audio recorded, but the recording device is turned off once a meeting goes in camera.
- 10** When asked why meetings were not recorded, council members recalled there having been discussions about the audio recording of closed sessions during the previous term of council, but that the matter was never resolved. Some council members raised technological issues with respect to the separate recording and storage of closed sessions, while others admitted that audio recording closed sessions would facilitate investigations of alleged illegal meetings.
- 11** I have regularly called on councils to demonstrate their commitment to openness and transparency by making digital audio or video recordings of their closed meetings.¹ I am therefore recommending that the Municipality of Central Huron immediately begin to comply with its own procedure by-law with respect to the audio or video recording of closed meetings.

¹ Ombudsman Ontario, *Open Meeting Law Enforcement Team 2013-2014 Annual Report* (January 27, 2015): <https://ombudsman.on.ca/Resources/Reports/2013-2014-OMLET-Annual-Report.aspx>.

- 12** Agendas for regular meetings, including supporting documentation, are to be posted on the municipal website the Thursday prior to each meeting. Notice of special meetings is to be given to each member of council at least 24 hours in advance of the meeting, and public notice of special meetings is to be posted on the municipal website and provided electronically to those members of the media and the public who have requested notification.

Council meeting of January 12, 2015

Agenda

- 13** The agenda of the Committee of the Whole meeting of January 12, 2015, did not indicate that there would be a closed session of council.

Open session

- 14** According to the minutes of the meeting, during discussion of item 10.1 – Formal Report – Recreation and Leisure Guide – RFP, concerns were raised about a previous contract for the production of the Central Huron Leisure Guide.
- 15** The discussion progressed to the point that council felt it would be necessary to go in camera to determine what was to be done about the former contract. It was suggested that the matter be put on the agenda of the next meeting. However, council ultimately felt that it needed to be discussed immediately before moving forward with a new request for proposals. The Clerk then advised council that going into closed session would be permissible, if necessary, as it would be in relation to an item on the agenda.
- 16** The meeting then went in camera “to discuss the previous consulting contract for the Leisure Guide”.

Resolution

- 17** A motion was moved, seconded and carried that:

...the Committee of the Whole go “In Camera” in accordance with the Municipal Act, 2001, S. 239, for the following purposes:

(X) (b) personal matters about an identifiable individual, including Municipal or local board employees.

Closed session

- 18** The minutes show that council went in camera at 2:13 p.m. Mayor Ginn, Deputy Mayor Jewitt and Councillors Anderson, Colquhoun, Metzger and Westerhout were present, as were the Clerk and the Chief Administrative Officer. Councillor Lobb was away on vacation. Councillor Smith, having earlier declared a conflict of interest with respect to the leisure guide matter, vacated her seat and left the chamber for the duration of the in camera session.
- 19** While in camera, council raised concerns about a named former contractor. The discussion included questions of the individual's performance and credibility. Potential recourse by council was also discussed.
- 20** At the end of the closed session, council gave a direction to staff.

Report back

- 21** The open meeting minutes continue at 2:30 p.m. with a motion to “reconvene into regular session” and a recommendation “that the CAO proceed as directed in camera.” Council then voted to defer the Recreation and Leisure Guide – RFP report.

Analysis

The meeting

- 22** The information provided to my Office indicates that the in-camera discussions on January 12, 2015 pertained to discussions of the municipality's contract with an identified individual.
- 23** When reviewing the parameters of the open meeting exceptions, my Office has often considered the case law of the Office of the Information and Privacy Commissioner (the IPC). Although not binding on my Office, these cases can be informative.
- 24** The discussion of performance of professional obligations and carrying out of contracts with a municipality does not normally qualify for closed meeting consideration. The IPC has noted that, in order to qualify as “personal

information,” the information must be about an individual in their personal capacity, rather than their professional, official or business capacity.²

- 25** However, information in a professional capacity may qualify as personal information if it reveals something of a personal nature about the individual. Information about a person in their professional capacity can take on a more personal nature if it relates to scrutiny of that individual’s conduct.³
- 26** I recently discussed the “personal matters” exception with respect to a contractor in my report on the Town of Cochrane.⁴ In that case, council reviewed a confidential staff report that outlined concerns about the individual and suggested the contract should not be renewed. After reviewing the above findings of the IPC, I found that the specific content of the discussions in the Town of Cochrane matter fit within the personal matters exception, as “council was scrutinizing the conduct and questioning the credibility of an individual who was under a contract to provide services to the town.”
- 27** In the Central Huron case, council for the municipality discussed the work of a contractor, who was identified by name. Council members also commented on the individual’s performance and personal credibility. I am satisfied that these discussions crossed into the realm of personal matters and that council’s reliance on the exception was justified.

Procedural matters

- 28** In a March 2013 report on a meeting of council for the Municipality of Central Huron, I found a number of procedural violations and problematic meeting practices. The municipality’s procedure by-law appears to have since been updated in order to comply with my recommendations.
- 29** Council followed its procedural by-law when it went into closed session. While the closed session was not specifically on the agenda, the by-law provides for the possibility of going into a closed session without prior notice. In addition, a resolution to go into closed session under the personal matters exception was duly moved and carried, as required by section 239(4) of the *Municipal Act*.

² IPC Order MO-2204, Town of Aylmer (June 22, 2007).

³ IPC Order MO-2519, Township of Madawaska Valley (April 29, 2010).

⁴ Ombudsman Ontario, “Investigation into whether Council for the Town of Cochrane held an illegal closed meeting on February 12, 2013” (January 2015): <https://ombudsman.on.ca/Resources/Reports/Town-of-Cochrane.aspx>.

30 However, the municipality violated its procedure by-law by failing to audio or video record its closed meeting. In so doing, the municipality lost an opportunity to demonstrate confidence that it is following the rules, and to inspire community trust in the transparency and accountability of local government. It also resulted in my Office having to conduct formal interviews of those present at the meeting, necessitating additional time and resources for both my Office and the municipality.

Opinion

31 The closed session of January 12, 2015 was permitted under the exception for personal matters about an identifiable individual, under section 239(2)(b) of the *Municipal Act, 2001*.

32 However, council for the Municipality of Central Huron violated the municipality's procedure by-law (48-2013) when it failed to audio or video record the closed session, as required by section 8(i) of the by-law.

33 I am therefore making the following recommendations.

Recommendations

Recommendation 1

The Municipality of Central Huron should comply with its own procedure by-law and immediately begin audio or video recording its closed meetings.

Recommendation 2

All members of council of the Municipality of Central Huron should be vigilant in adhering to their individual and collective obligation to ensure that council complies with its responsibilities under the *Municipal Act, 2001* and its own procedure by-law.

Report

- 34** Staff from my Office spoke with the Mayor, the Clerk and the Chief Administrative Officer on March 24, 2015, to provide an overview of these findings, and to give the municipality an opportunity to comment. Their responses were taken into account in preparing this report.
- 35** This report should be shared with council for the Municipality of Central Huron and made available to the public as soon as possible, and no later than the next council meeting.



André Marin
Ombudsman of Ontario