



Ombudsman Report

**Investigation into a complaint about a
closed meeting held by the County of Norfolk
on January 28, 2020**

**Paul Dubé
Ombudsman of Ontario
March 2021**

Complaint

- 1 My Office received a complaint that the Budget Committee (the “committee”) for the County of Norfolk (the “County”) held a meeting on January 28, 2020 that did not fit within the closed meeting exceptions in the *Municipal Act, 2001*¹ (the “Act”). The complaint alleged that the committee discussed items related to the County’s 2020 Levy Supported Operating Budget contrary to the Act.

Ombudsman jurisdiction

- 2 Under the *Municipal Act*, 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 complied with the Act in closing a meeting to the public. Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4 The Ombudsman is the closed meeting investigator for the County of Norfolk.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality’s governing procedures have been observed.
- 6 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/digest.

¹ SO 2001, c 25.

Investigative process

- 7 On March 12, 2020, we advised the County of our intent to investigate the January 28, 2020 meeting.
- 8 Members of my Office's open meeting team reviewed relevant portions of the County's by-laws and policies, and the Act. We reviewed the meeting records from the meeting. We interviewed members of council and the Clerk.
- 9 My Office received full co-operation in this matter.

Council procedures

- 10 The County's procedural by-law provides that no meeting shall be closed except in accordance with the Act.
- 11 The Budget Committee is composed of all members of council. Section 238(1) of the Act defines "committee" as "any advisory or other committee, subcommittee or similar entity of which at least fifty percent of the members are also members of one or more councils or local boards." Consequently, the Budget Committee is a committee of council under the Act and its meetings must comply with the Act's open meeting requirements.

Background

- 12 The committee met on January 28, 2020 to review the County's 2020 Levy Supported Operating Budget (the "budget"). The budget determines the amount of municipal taxes to be levied to pay for municipal services.
- 13 We were told by council members that the 2020 budget process was challenging due to a large deficit. We were also told that there were concerns among municipal staff about their job security.
- 14 As part of the budgeting process, staff brought forward several options for committee's consideration to modify or reduce municipal service levels. These options were outlined in a confidential staff report presented to the committee *in camera* on January 28.

- 15** According to the meeting minutes, the committee moved into closed session to discuss nine items under the “labour relations”, “personal matters”, and “acquisition or disposition of land” exceptions. The committee passed the following resolution:

THAT Committee move into closed session at 11:09 a.m. to discuss the Closed Session Options 2 through 10 as outlined on page 2-1 of the 2020 budget :

2. Ontario Works Administration Provincial Cost Sharing
3. Corporate Services Restructuring Initiative
4. Fleet Restructuring
5. Hockey Arena Consolidation
6. Repositioning Tourism & Economic Development Services
7. Museum Consolidation
8. Simcoe Farmer's Market Service Delivery Model Change
9. Office of the CAO Staffing Changes
10. Land Monetization

Pursuant to Section 239 (2) b, d and c of the Municipal Act, 2001. R.S.O 2001 c. 25 as the subject matter pertains to personal matters about identifiable individuals, including municipal or local board employees, labour relations or employee negotiations, a proposed or pending acquisition or disposition of land by the municipality or local board.

- 16** According to the Clerk, the exceptions for labour relations and personal matters applied to the first eight items listed in the resolution, and the exception for acquisition or disposition of land applied to the last item listed in the resolution.
- 17** We were told that during the closed session, the committee considered each item separately. Staff members were present to answer questions and provide information to the committee.
- 18** The first eight items related to reducing service levels by consolidating municipal resources and reducing staff positions. We were told that the proposals put forward by staff would impact several facilities and departments within the municipal administration. The number of employees in these facilities and departments is small. The committee discussed specific staff positions that were identified by role and, as a result, individual employees impacted by the proposals were readily identifiable. In some cases, individual employees were identified by name and their duties were discussed. We were also told that the committee discussed the labour relations impacts the proposals could have, including on negotiations and bumping rights.

- 19 The last item related to a staff proposal to sell land owned by the County in order to raise capital. Staff provided the committee with options to declare as surplus and sell approximately 143 acres of land owned by the County over three years. We were told by council members that staff were seeking the committee's direction to explore the proposal further. The land was generally identified as vacant land and parkland located within the County. The committee also set a target price per acre for the land.

Applicability of the “labour relations” exception

- 20 The committee cited s. 239(2)(d), the exception for labour relations, when it moved into closed session on January 28, 2020. We were told by the Clerk that the exception applied to the following discussion topics: Ontario Works Administration Provincial Cost Sharing, Corporate Services Restructuring Initiative, Fleet Restructuring, Hockey Arena Consolidation, Repositioning Tourism & Economic Development Services, Museum Consolidation, Simcoe Farmers Market Service Delivery Model Change, and Office of the CAO Staffing Changes.
- 21 The purpose of the “labour relations or employee negotiations” exception is to protect discussions relating to the relationship between a municipality and its employees.
- 22 Generally, the “labour relations” exception does not apply to discussions relating to an organizational review or restructuring by a municipality. However, my Office has found that the exception may apply to discussions relating to reorganization as it impacts individual employees and their roles.²
- 23 For example, in a report to the Town of Georgina, my Office found that an *in camera* discussion about an organizational review of departments within the municipality's administration fit within the “labour relations” exception.³ In that case, council's discussion about the organizational review included the performance of individual employees in relation to the restructuring options presented by municipal staff.

² *Sault Ste. Marie (City of) (Re)*, 2016 ONOMBUD 13 (CanLII), <<http://canlii.ca/t/h2sst>> and Letter from Ombudsman of Ontario to Town of Amherstburg (9 December 2013), <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2013/town-of-amherstburg-en>>.

³ Letter from Ombudsman of Ontario to Town of Georgina (23 November 2017), <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2017/town-of-georgina>>.

- 24 In the present case, the committee discussed eight items under the “labour relations” exception. The *in camera* discussion centered on proposals to reduce municipal services by eliminating staff positions in various departments and sectors throughout the municipal administration. The discussion referred to individual employees by name, as well as employees who were potentially identifiable because of the small number of staff in the departments being reorganized.
- 25 We were told by council members that the nature of the discussion would have made it obvious which staff members would be eliminated by the reorganization. The committee’s discussion also referred to employees who were identified by name or by position title. As cited above, generally discussions about organizational reviews do not fit within the “labour relations” exception. However, in this case, the committee’s discussions referenced identifiable employees and their roles.
- 26 Further, some of the staff positions proposed to be eliminated were unionized and the *in camera* discussion considered the labour relations impacts of eliminating those positions. For example, the committee considered negotiations with the union and bumping rights.
- 27 Accordingly, council’s closed session discussion fit within the “labour relations” exception.

Applicability of the “personal matters” exception

- 28 The committee cited s. 239(2)(b), the exception for personal matters, when it moved into closed session to discuss the following discussion topics: Ontario Works Administration Provincial Cost Sharing, Corporate Services Restructuring Initiative, Fleet Restructuring, Hockey Arena Consolidation, Repositioning Tourism & Economic Development Services, Museum Consolidation, Simcoe Farmers Market Service Delivery Model Change, and Office of the CAO Staffing Changes.
- 29 The Act does not define “personal matters” for the purposes of section 239 of the *Municipal Act*. However, when reviewing the parameters of the open meeting exceptions, our Office has often considered the case law of the Office of the Information and Privacy Commissioner (the IPC). Although not binding on our Office, these cases can be informative. The IPC has found that information will only qualify as personal for the purposes of the Act if it pertains to an individual in their personal capacity, rather than their professional capacity. However, information about a person in their

professional capacity may still qualify if it reveals something personal about the individual, such as information about job performance.⁴ My Office has consistently found that discussions relating to an identifiable individual's employment history and qualifications for a particular job fit within the "personal matters" exception.⁵

- 30** In this case, the committee's discussion broadly involved layoffs of employees. In some cases, the employees were identified by name; however, in most cases, the employees were identified by position and the discussion involved departments with a small number of employees. Had the committee's discussions happened in public, we were told that these employees would have been easily identifiable. These portions of the committee's discussion fit within the "personal matters" exception.

Applicability of the "acquisition or disposition of land" exception

- 31** The committee cited s. 239(2)(c), the exception for acquisition or disposition of land, when it moved into closed session to discuss the "land monetization" topic.
- 32** The purpose of the "acquisition or disposition of land" exception is to protect a municipality's bargaining position by permitting closed session discussions about a proposed or pending acquisition or disposition of land by a municipality.
- 33** The exception does not apply to discussions that involve speculation about a land transaction or discussions about land transactions that may or may not happen in the future. The discussion must involve an actual land transaction that is currently pending or has been proposed.⁶
- 34** The committee discussed options to raise capital by divesting 143 acres of municipally-owned land over three years. Staff identified the land as vacant land and parkland. The plan to dispose of the land was preliminary, however the committee's discussion included setting a target price per acre for the land. While there was no pending land transaction, disposition of specific lands was proposed and a target price per acre was set. I am satisfied that in the circumstances, the County had a bargaining position to protect. Had the discussion taken place in public, the County's bargaining

⁴ *Aylmer (Town) (Re)*, 2007 CanLII 30462 (ON IPC), online: <<http://canlii.ca/t/1scqh>>.

⁵ *Burk's Falls / Armour (Village of / Township) (Re)*, 2015 ONOMBUD 26 (CanLII), online: <<http://canlii.ca/t/gtp6w>>.

⁶ *Burk's Falls / Armour (Village of / Township) (Re)*, 2015 ONOMBUD 26 (CanLII), online: <<http://canlii.ca/t/gtp6w>>.

position with respect to the disposition of the identified land could have been compromised.

- 35 Accordingly, the discussion fit within the “acquisition or disposition of land” exception.

Procedural matters: Resolution to proceed *in camera*

- 36 The committee cited three closed meeting exceptions to discuss eight items in its resolution to proceed *in camera*: “personal matters”, “labour relations”, and “acquisition or disposition of land”. The resolution did not specify which closed meeting exception related to which closed session topic.
- 37 While the Act does not require a body to specifically indicate which exception it intends to rely on for each matter discussed in camera, the County should adopt this as a best practice.

Opinion

- 38 The Budget Committee for the County of Norfolk did not contravene the *Municipal Act, 2001* on January 28, 2020 when it discussed the following topics in closed session under the “personal matters” and “labour relations” exceptions: Ontario Works Administration Provincial Cost Sharing, Corporate Services Restructuring Initiative, Fleet Restructuring, Hockey Arena Consolidation, Repositioning Tourism & Economic Development Services, Museum Consolidation, Simcoe Farmers Market Service Delivery Model Change, and Office of the CAO Staffing Changes.
- 39 The Budget Committee did not contravene the *Municipal Act, 2001* when it discussed “land monetization” in closed session under the exception cited for acquisition or disposition of land.

Report

- 40 The County of Norfolk was given the opportunity to review a preliminary version of this report and provide comments. No comments were received.

- 41 My report should be shared with council for the County of Norfolk. The County agreed to make my report available at the next council meeting.



Paul Dubé
Ombudsman of Ontario