

BY EMAIL

October 24, 2024

Council for the City of London
c/o Mayor Josh Morgan
300 Dufferin Avenue
London, ON N6B 1Z2

Dear Members of Council for the City of London:

Re: Closed meeting complaint

My Office received a complaint regarding a special meeting of council for the City of London (the “City”) held on April 2, 2024. The complaint alleged that council failed to provide sufficient information in its resolution to proceed into closed session about an item described as “Litigation/Potential Litigation / Solicitor-Client Privileged Advice.”

I am writing to share the outcome of my review of this complaint. For the reasons set out below, I am satisfied that council maximized the information it could provide about this topic of discussion in its resolution in accordance with the requirements in the *Municipal Act, 2001* (the “Act”).¹

Ombudsman’s role and authority

As of January 1, 2008, 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. 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 City of London.

¹ SO 2001, c 25.

My Office has investigated and reviewed 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.

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/have-a-complaint/who-we-oversee.

Review

My Office reviewed the open session agenda, as well as the open and closed session minutes. We spoke with the City Clerk and the City Solicitor.

April 2, 2024 council meeting

Council met in council chambers on April 2, 2024 at 1:00 p.m. At 1:13 p.m., council passed a resolution to go into closed session to discuss four items. The item subject to the complaint to my Office had the following description:

4.2 Litigation/Potential Litigation / Solicitor-Client Privileged Advice

A matter pertaining to litigation or potential litigation and advice that is subject to solicitor-client privilege, including communications necessary for that purpose and directions and instructions to officers and employees or agents of the municipality. (6.2/6/CSC)

After discussing the first item listed in the resolution (which was not related to this complaint), council addressed item 4.2 – an update on a legal matter from the City Solicitor. Council asked questions of and received answers from the City Solicitor. Council subsequently voted to receive a report and give directions related to the legal matter. Council then discussed two further items not subject to this complaint and returned to open session at 3:19 p.m.

Analysis

Section 239(4)(a) of the Act requires that, before holding a closed meeting, 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.” The Court of Appeal for Ontario stated in *Farber v. Kingston (City)* that a resolution to go into a closed meeting should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for proceeding into closed session. However, with respect to the exception for advice subject to solicitor-client privilege at section 239(2)(f) of the Act, the Court observed that “there may be circumstances where the need for confidentiality encompasses even the information that such advice has been obtained on a specific issue.”²

In accordance with *Farber*, municipalities are required to add a “level of informative detail” to the resolution to close a session to the public,³ and I have previously recommended that councils provide more substantive detail in resolutions authorizing closed sessions.⁴ I have found that, generally speaking, only stating the open meeting exception relied upon to close a meeting does not satisfy the requirements of the open meeting rules.⁵ However, I have previously noted that there may be instances where a council cannot provide any such additional information, although such cases are a rarity.⁶ A resolution must balance the requirement to provide a general description of the topic to be discussed with protecting confidential and sensitive information from disclosure.⁷

In this case, the City Solicitor told my Office that the City was involved in an active litigation matter on which she was seeking instruction during the closed session on April 2, 2024. The City Solicitor also explained that disclosing further information about the matter in the resolution could provide insight into the City’s legal strategy and potentially adversely affect the City’s litigation strategy.

Based on the City’s explanation of the particular circumstances surrounding this meeting, including why providing further information may have undermined the reason for excluding the public, I am satisfied that council could not have provided further information in its resolution to proceed into closed session.

² *Farber v Kingston (City)*, 2007 ONCA 173 [*Farber*], online: <<https://canlii.ca/t/1qtz/>>.

³ See e.g. *Brockville (City of)*, 2016 ONOMBUD 12, online: <<https://canlii.ca/t/h2ssr/>>.

⁴ *Emo (Township of) (Re)*, 2020 ONOMBUD 6, online: <<https://canlii.ca/t/jb1g6/>>.

⁵ *Brockville (City of) (Re)*, 2022 ONOMBUD 12, online: <<https://canlii.ca/t/jrhjr/>>.

⁶ *Casselman (Municipality of) (Re)*, 2022 ONOMBUD 14, online: <<https://canlii.ca/t/jrkx7/>>.

⁷ Letter from the Ontario Ombudsman to the Municipality of Brockton (Walkerton Business Improvement Area) (5 August 2016), online: <[https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2016/municipality-of-brockton-\(walkerton-bia\)](https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2016/municipality-of-brockton-(walkerton-bia))>. See also *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11, online: <<https://canlii.ca/t/jr5rc/>>.

Conclusion

Council for the City of London did not contravene section 239(4)(a) of the *Municipal Act, 2001* during its meeting on April 2, 2024, and provided sufficient information in its resolution about the general nature of the item “Litigation/Potential Litigation / Solicitor-Client Privileged Advice” that it considered in closed session.

I would like to thank the City of London for its co-operation during my review. The City Clerk confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Dubé', written over a large, stylized oval shape.

Paul Dubé
Ombudsman of Ontario

CC: Michael Schulthess, City Clerk, City of London

Cette lettre est aussi disponible en français