

BY EMAIL

December 10, 2021

Council for the Township of Russell
c/o Joanne Camiré-Laflamme, Clerk
717 Notre-Dame Street
Embrun, ON K0A 1W1

Dear Council for the Township of Russell:

Re: Closed meeting complaint

My Office received a complaint alleging that council for the Township of Russell (the “Township”) improperly met in closed session on June 21, 2021, contrary to the *Municipal Act, 2001* (the “Act”). The complainant alleged that council’s *in camera* discussion about a report, entitled “Report CS-04-2021”, should have occurred in open session.

I am writing to advise that my review has determined that council for the Township of Russell did not contravene the Act’s open meeting requirements on June 21, 2021.

Ombudsman’s role and authority

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. 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.¹ 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 the Township of Russell.

¹ SO 2001 c 25, s 239.1.





J. Paul Dubé, Ombudsman

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.

Review

My Office reviewed the meeting agenda as well as the open and closed session minutes for the meeting on June 21, 2021. We also reviewed Report CS-04-2021, a relevant by-law, and correspondence between Township staff and another level of government. My Office spoke with members of Township staff about the meeting.

According to our review, council met at 6:00 p.m. on June 21, 2021. The open session minutes indicate that council proceeded *in camera* to discuss Report CS-04-2021 under the closed meeting exception for information supplied in confidence by another level of government under section 239(2)(h) of the Act. The exception for acquisition or disposition of land was also cited with respect to a different matter, which was not subject to our review.

Once in closed session, a Township staff member presented Report CS-04-2021 to council. My Office was told that council discussed the report and recommendation *in camera*. Once council returned to open session, it passed a resolution to receive Report CS-04-2021 and accept the recommendation in the report.

When asked why Report CS-04-2021 had been scheduled for *in camera* discussion, the Clerk advised us that the Chief Administrative Officer (CAO) told her that it contained confidential information. We were told by the staff member who presented the report that it was discussed in closed session because it incorporated information provided in confidence from another level of government.

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Our review confirmed that another level of government communicated information in an email to the Township and explicitly requested that it remain confidential until both parties made a joint public statement. My Office further confirmed that this specific confidential information was contained in Report CS-04-2021 and discussed by council in closed session.

Application of the closed meeting exception for information supplied in confidence by another level of government

Section 239(2)(h) of the Act allows a municipal council to meet in closed session to discuss “information explicitly supplied to it in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them.”

My Office has found that this exception does not include discussions where the municipality itself determines that the matter should be confidential, rather than the other level of government.² For example, in a letter to the City of Niagara, my Office found that the exception applies when the other level of government explicitly, in writing, supplies information to the municipality in confidence.³

My Office’s review confirmed that Report CS-04-2021 contained information that another level of government explicitly, in writing, asked the Township to keep confidential. This report and the confidential information it contained was discussed by council *in camera*. Accordingly, it was appropriate for council to discuss the report under section 239(2)(h) of the *Municipal Act, 2001*.

While neither the agenda nor the resolution to proceed *in camera* provided a description of the report, our review indicates that it would have been difficult to maintain confidentiality if more detail had been provided in these circumstances.

² Ontario Ombudsman, Letter to the City of Niagara Falls (2020), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2020/city-of-niagara-falls>>.

³ *Ibid.*




Conclusion

Council for the Township of Russell was permitted to rely on the closed meeting exception for information supplied in confidence by another level of government under section 239(2)(h) of the *Municipal Act* to discuss Report CS-04-2021 on June 21, 2021.

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

Sincerely,



Paul Dubé
Ombudsman of Ontario