



J. Paul Dubé, Ombudsman

BY EMAIL

November 16, 2023

Council for the Township of Sables-Spanish Rivers
c/o Mayor Kevin Burke
11 Birch Lake Road
Massey, Ontario P0P 1P0

Dear Members of Council for the Township of Sables-Spanish Rivers:

Re: Closed meeting complaint

My Office received a complaint regarding two closed meetings held by council for the Township of Sables-Spanish Rivers (the “Township”) on July 26 and August 9, 2023. The complaint alleged that council did not provide sufficient information about the general topic of discussion in its resolution to proceed into closed session. The complaint also raised a concern that the closed sessions at both meetings were not listed on the publicly posted agendas prior to each meeting.

For the reasons set out below, I have determined that council for the Township of Sables-Spanish Rivers contravened section 239(4)(a) of the *Municipal Act, 2001* (the “Act”)¹ by failing to provide sufficient information about the general topic of discussion in its resolution to proceed into closed session for the meetings on July 26 and August 9, 2023.

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 the Township of Sables-Spanish Rivers.

¹ SO 2001, c 25.

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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.

Investigative process

In response to the complaint, my Office spoke with the Clerk-Administrator. We also reviewed the public agendas and minutes, the video recordings of the open sessions, and the closed session minutes for the July 26 and August 9, 2023 meetings, as well as the Township's procedure by-law. My Office notified the Township of our intent to investigate this complaint in October 2023.

Background

The complaint stated that the agendas posted in advance of the July 26 and August 9, 2023 meetings did not contain notice of any closed session items but that at both meetings, council held a closed session discussion.

According to the meeting materials, on July 26, 2023, council met in council chambers at 6:30 p.m. The agenda for that meeting did not list a closed session. At 8:28 p.m., council passed the following resolution:

BE IT RESOLVED THAT we move into closed session at 8:28 p.m., pursuant to Section 239(2) of the Municipal Act: -to consider personal matters about identifiable individuals including municipal or local board employees.

Council then discussed a matter regarding the performance of a Township staff member. Council did not pass any resolutions in closed session, and returned to open session at 8:54 p.m. The minutes and meeting recording indicate that council did not report back on what was discussed in the closed session. The meeting adjourned at 9:05 p.m.

On August 9, 2023, council met in council chambers at 6:30 p.m. The agenda for that meeting also did not list a closed session. At 6:56 p.m., the Mayor introduced a motion to move into closed session. The minutes record that council passed the following resolution:

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BE IT RESOLVED THAT we moved into closed session at 6:56pm, pursuant to Section 239(2) of the Municipal Act: -to consider personal matters about identifiable individuals including municipal or local board employees.

However, based on my Office's review of the recording of the open session meeting, the Mayor only read part of the resolution orally and did not include that council was relying on the open meeting exception for personal matters about an identifiable individual.

In closed session, council discussed a human resources matter involving a particular individual and voted to direct staff in closed session. Council returned to open session at 7:35 p.m. The meeting adjourned at 8:15 p.m.

The complaint did not raise concerns about whether or not the discussion fit within the cited open meeting exceptions.

Analysis

Did council provide sufficient information about the topic to be discussed in its resolution to proceed into closed session?

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.²

I have previously determined that merely citing the open meeting exception that council is relying on does not typically meet the requirement set out in *Farber v. Kingston (City)*. Rather, municipalities are required to add a "level of informative detail" to the resolution to close a session to the public,³ and situations where no further information can be provided tend to be a rarity.⁴ In a report to the City of Brockville, I observed that council had cited the open meeting exceptions for personal matters about an identifiable individual and for litigation or potential litigation, without describing the topic of discussion further. In that

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

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

⁴ *Casselman (Municipality of) (Re)*, 2022 ONOMBUD 14 [*Casselman*], online: <<https://canlii.ca/t/jrnx7/>>.



case, council had discussed an employee's performance, and I found that council could have provided additional information without undermining the reason for proceeding into closed session.⁵

In the case of the July 26, 2023 closed session, council cited the exception for personal matters about an identifiable individual without providing further information about the general topic of the closed session discussion. My Office was told that this resolution followed the Township's standard practice, which is to not include additional information in the resolution. In this case, council could have provided a general description of the topic to be discussed in closed session, such as "staffing matter", without undermining the reason for excluding the public.

Similarly, the August 9, 2023 resolution to proceed *in camera* did not provide an appropriate level of informative detail about council's intended discussion. For example, council could have orally stated what closed meeting exception it was relying on and identified that it was going into closed session to discuss a human resources matter.

Accordingly, council for the Township of Sables-Spanish Rivers contravened section 239(4)(a) of the Act on both July 26 and August 9, 2023, by failing to provide sufficient information about the general nature of the matter to be considered in each closed session.

Was there a lack of notice of the closed session discussions?

The complaint raised a concern that the agendas for both the July 26 and August 9, 2023 meetings did not provide notice of any closed session discussions prior to the meetings. As I have previously noted,⁶ the Act does not require municipalities to provide advance notice of the matters to be discussed in closed session. The Township's procedure by-law also does not require such notice. Further, for both the July 26 and August 9 meetings, the closed session discussion was not initially planned as part of the agenda.

As a best practice, and when possible, I encourage municipalities to provide advance notice of closed sessions with a general description of the matter to be discussed in closed session. Such a description should include enough information to allow citizens to make an informed choice about whether to attend a particular meeting. My Office has prepared a series of tip cards to assist municipalities. The Township may wish to consult the tip card containing this and other best practices related to closed meetings.⁷

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

⁶ *Woolwich (Township of) (Re)*, 2015 ONOMBUD 24, online: <<https://canlii.ca/t/gtp6r>>.

⁷ Ontario Ombudsman: Tips for Municipalities – Closed Meetings: Best Practices, online: <<https://www.ombudsman.on.ca/resources/brochures-and-posters/municipal-resources#Tip%20Cards>>.



Conclusion

Council for the Township of Sables-Spanish Rivers contravened section 239(4)(a) of the *Municipal Act, 2001* on July 26 and August 9, 2023 by failing to provide sufficient information about the general topic of discussion in its resolution to proceed into closed session. In the future, council should ensure it provides an appropriate level of informative detail in its resolutions to move into closed session.

However, council did not contravene the Act by failing to provide notice of the closed session discussions. Where possible, I encourage the Township to adopt the best practice of providing notice of closed sessions on agendas, including a general description of the matter to be discussed in closed session.

The Mayor and Clerk-Administrator for the Township of Sables-Spanish Rivers were given the opportunity to review the contents of this letter and provide comments to my Office. All comments received were considered before the finalization of this letter.

I would like to thank the Township of Sables-Spanish Rivers for its co-operation during my review. This letter will be published on my Office's website, and should also be made public by the Township. 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 letter.

Sincerely,



Paul Dubé
Ombudsman of Ontario

cc: Anne Whelan, Clerk-Administrator, Township of Sables-Spanish Rivers

Cette lettre est aussi disponible en français

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