

BY EMAIL

December 13, 2022

Council for Norfolk County
c/o Mayor Amy Martin
Robinson Administration Building
185 Robinson St., Suite 100
Simcoe, ON N3Y 5L6

Dear Members of Council for Norfolk County:

Re: Closed meeting complaint

My Office received a complaint regarding closed meetings held by council for Norfolk County (the “County”) on March 8, April 12, and May 10, 2022. The complaint alleged that the closed sessions did not comply with the procedural requirements found in the *Municipal Act, 2001*¹ (the “Act”). Specifically, the complaint alleged that council failed to provide sufficient detail in its resolutions regarding its intended *in camera* discussions.

I am writing to share the outcome of my review of this complaint. For the reasons set out below, I have determined that council’s four resolutions to proceed into closed session complied with the open meeting rules in the Act.

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 Norfolk County.

¹ SO 2001, c 25.

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 open and closed meeting materials, including the agendas, minutes, and the reports discussed in the closed sessions, other than those that were subject to solicitor-client privilege. We also spoke with the Clerk.

March 8, 2022 council meeting

On March 8, 2022, council met electronically at 1:00 p.m. At 1:05 p.m., council resolved to move to closed session to discuss four items. The complaint alleged that the parts of the resolution related to a "Ward 5 Property Update" and "Labour Relations Item" on the agenda did not provide sufficient information about the matters to be discussed in closed session.

The parts of the resolution that pertain to these two agenda items state:

THAT Committee enter closed session at 1:05 p.m. to discuss staff reports:

3.1 CS-22-C03 regarding Ward 5 Property Update;

[...]

3.4 Labour Relations Item

pursuant to Section 239(2)(d)(e)(f)(i)(k) of the *Municipal Act, 2001* as amended as the subject matter pertains to labour relations or employee negotiations; litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board; advice that is subject to solicitor-client privilege, including communications necessary for that purpose; a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice

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significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization; a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

With respect to the “Ward 5 Property Update,” the complaint alleged that council should have provided the public with the address of the property to be discussed during this closed session. Our discussion with the Clerk and review of the meeting minutes confirmed that council discussed a specific, identified property in Ward 5 in this closed session. During this closed session, legal counsel presented council with a report.

With respect to the “Labour Relations Item,” the complaint alleged that at past meetings, in its resolutions to move into closed session, council had provided more details about the matters to be discussed. Our discussion with the Clerk and review of the meeting minutes confirmed that council discussed a confidential labour relations matter in this closed session.

Analysis

Subsection 239(4) 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 Ontario Court of Appeal noted in *Farber v. Kingston* 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

While the Act does not require council to specifically indicate which exception to the open meeting rules it intends to rely on for each matter discussed in closed session, my Office suggests doing so as a best practice.³

In this case, the resolution for the two agenda items in question cited the sections of the Act being relied upon and noted the general nature of the items to be discussed.

The part of the resolution pertaining to the property update identified that council would be discussing a property in Ward 5. There is no general requirement that council must provide the public with the address of a property to be discussed in closed session, and doing so may undermine the reason for having the discussion in closed session. This

² 2007 ONCA 173, online: <<https://canlii.ca/t/1qtz/>>.

³ Ontario Ombudsman, “Letter to the City of Pickering,” (23 September 2020) online: <www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2020/city-of-pickering>.



resolution sufficiently described the matter to be discussed in closed session and met the requirements of section 239(4)(a) of the Act.

The part of the resolution pertaining to the labour relations item noted that council would discuss a matter pertaining to labour relations or employee negotiations. Given the content of the discussion, the resolution sufficiently described the matter to be discussed in closed session and also met the requirements of section 239(4)(a) of the Act.

April 12, 2022 special council meeting

On April 12, 2022, council met electronically at 11:30 a.m. for a special council meeting. At 11:31 a.m., council resolved to move to a closed session to discuss a potential property sale in Ward 3, stating:

That council enter into closed session at 11:31 AM to discuss Proposed Property Sale - Ward 3, CS-22-CO5 pursuant to Section 239 (2) (c) of the *Municipal Act, 2001* as amended as the subject matter pertains to a proposed or pending acquisition or disposition of land by the municipality or local board.

The complaint alleged that council should have provided the public with the address of the property to be discussed during this closed session. Our discussion with the Clerk and review of the meeting minutes confirmed that this closed session discussion focused on the potential sale of a specific, identified property in Ward 3.

Analysis

As noted above, municipalities are required to state in open session that a closed session will be held and note the general nature of the discussion. Councils will also often cite in their resolutions the exception under the Act that permits the closed session.

The resolution for this closed session identified that council would be discussing a proposed property sale in Ward 3. There is no general requirement that council provide the public with the address of the property to be discussed in closed session, and doing so may undermine the reason for having the discussion in private. In this instance, council's resolution sufficiently described the matter to be discussed in closed session and met the requirements of section 239(4)(a) of the Act.

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May 10, 2022 council meeting

On May 10, 2022, council met electronically at 1:00 p.m. At 6:28 p.m., council resolved to move to a closed session to discuss, among other things:

Agenda item 12.2. Information Memo - CS Litigation Update

pursuant to Section 239(2)(h)(e) of the *Municipal Act, 2001* as amended as the subject matter pertains to information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them and litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.

With respect to this item, the complaint alleged that council should have informed the public of the specific litigation matter(s) discussed in closed session. Our discussion with the Clerk and review of the meeting minutes confirmed that during this closed session, council received a litigation update on a specific matter. The Clerk informed us that the agenda item was described in this manner to protect sensitive information about the County's involvement in ongoing litigation.

Analysis

As noted above, council is required to state by resolution in open session that a closed meeting will be held and the general nature of the matter to be discussed. In this case, council identified that it would be discussing litigation during the closed session.

There is no general requirement that council inform the public of the particular litigation matter(s) to be discussed in closed session. This resolution sufficiently described the matter to be discussed in closed session and met the requirements of section 239(4)(a) of the Act.

Conclusion

My review has determined that council for Norfolk County met the requirements of section 239(4)(a) of the *Municipal Act, 2001* during its meetings on March 8, April 12 and May 10, 2022, as its resolutions sufficiently described the four matters to be discussed in closed session.

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

Sincerely,



Paul Dubé
Ombudsman of Ontario

cc: Teresa Olsen, Clerk, Norfolk County

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