



Ombudsman Report

**Investigation into a complaint about
a closed meeting held by the Municipality of
Northern Bruce Peninsula on January 22
2018**

**Paul Dubé
Ombudsman of Ontario
May 2018**

Complaint

- 1 In March 2018, my Office received a complaint about a closed meeting held by the Municipality of Northern Bruce Peninsula on January 22, 2018.
- 2 The complaint alleged that the municipality held a closed meeting that did not fit within the closed meeting exception for “personal matters about an identifiable individual” in section 239(2)(b) of the *Municipal Act, 2001* (the “Act”). At this meeting, council reviewed a notice of an application for first registration under the *Land Titles Act*¹ for a property located within the municipality.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 4 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.
- 5 The Ombudsman is the closed meeting investigator for the Municipality of Northern Bruce Peninsula.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality’s governing procedures have been observed.

Council procedures

- 7 The municipality’s procedure by-law (by-law no. 2018-01) states that all meetings shall be open to the public except as provided by section 239 of the Act.

¹ *Land Titles Act*, R.S.O. 1990, c. L.5

Investigative process

- 8 On March 9, 2018, we advised the municipality of our intent to investigate this complaint.
- 9 Members of my Office's staff reviewed relevant portions of the municipality's by-laws and policies, and the Act. We also reviewed the records from the open and closed sessions of the council meeting on January 22, 2018.
- 10 We interviewed members of council, the clerk, and the municipality's Chief Administrative Officer (CAO) who were present at the closed meeting.
- 11 My Office received full co-operation in this matter.

Background

The January 22, 2018 closed meeting

- 12 On January 22, 2018, during a regular meeting, council proceeded into closed session at 3:04 p.m. under the "personal matters" exception found in subsection 239(2)(b) of the Act. The resolution to proceed in camera lists "Notice of Application for Absolute Title" as the matter to be discussed in closed session.
- 13 According to the clerk, the municipality received notice of an application for first registration under the *Land Titles Act* (also known as an application for absolute title) for a property located in the municipality. The application sought to upgrade title for the property from qualified to absolute. The notice package consisted of a cover letter, prepared by a lawyer on behalf of the applicant, the notice form, and a draft reference plan showing the property. According to the cover letter, the municipality received notice because it owned a road that abuts the property. The property identification number (PIN) for the property was included in the cover letter.
- 14 The CAO told us that based on previous legal advice the municipality had received regarding another property-related matter, he understood that the application for first registration should be considered in closed session.
- 15 The purpose of the closed meeting was to inform council of the application and to allow council an opportunity to review the notice. Council was

provided with the cover letter and draft reference plan. The clerk told my office that council did not receive the notice form because it included the property owner's name.

- 16 When the closed session began, the clerk and the CAO provided background information to council regarding why the municipality had received the notice. Council reviewed the cover letter and the draft reference plan. Council's subsequent discussion focused on whether it had any interest in commenting on or objecting to the application.
- 17 According to the closed session minutes, the CAO brought up legal advice the municipality had previously received on another matter. While council, as well as staff, believed that the legal advice permitted council to discuss the notice of application in a closed session, the legal advice actually related to a separate set of circumstances under different pieces of legislation. We were told that the legal advice was only mentioned briefly by the CAO and was not discussed by council.
- 18 Council did not vote or provide any directions to staff, and emerged from the closed session at 3:18 p.m. Council did not report out after the closed session.

Analysis

Applicability of the "personal matters" exception

- 19 The municipality cited the "personal matters" exception when it moved into closed session to discuss the notice of application for first registration.
- 20 The Act does not define "personal matters" for the purposes of section 239. The Information and Privacy Commissioner (the "IPC") has found that the related term "personal information" is limited to information where it is reasonable to expect that the individual could be identified if the information was disclosed.² The Ontario Superior Court of Justice confirmed this interpretation, noting that, "[i]f there is a reasonable expectation that the individual can be identified from the information, then such information qualifies...as personal information".³

² Order PO-1880 2001 CanLII 26053 (ON IPC); upheld on appeal in *Ontario v. Pascoe*, 2002, OJ No 4300 at para 2.

³ *Ontario (Ministry of Correctional Services) v. Goodis* [2008] OJ No 289 at para 69.

- 21** In conducting an analysis of closed meeting cases, my Office has considered decisions of the Office of the Information and Privacy Commissioner. Although not binding on my Office, these cases can be informative.
- 22** In Order MO-2081, the IPC found that the legal description of a property in the context of a permit application does not qualify as personal information. In that case, the adjudicator determined that the legal description is information about the property rather than an individual:

With respect to the legal description of the property, I find this to be similar to a municipal address in that it identifies the location of a property. On its own, or in conjunction with other information about the property, there is nothing of an inherently personal nature about a legal description, and [the conclusions in Order MO-2053] about the municipal addresses of properties for which septic system applications had been made apply equally to the legal description of a property in connection with a building permit application. I find that this is not personal information.⁴

- 23** The adjudicator goes on to find that property information contained in a permit application may be used to discover the name of a property owner, however that information does not become personal in nature:

As well, the fact that the names of individual owners could be determined by search in the registry office or elsewhere does not convert the permit application information in this case from information about a property to personal information.⁵

- 24** In Order MO-1848, the IPC found that survey plans or maps do not qualify as personal information.⁶
- 25** In a letter to the Township of West Lincoln, our Office determined that general information about properties, including how many water valves were associated with the property, would not amount to personal matters about the property owner.⁷ In a report to the Township of Russell, our Office found that a list of potential heritage properties that did not identify specific

⁴ Order MO-2081, 2006 CanLII 50734 (ON IPC)

⁵ *Ibid.*

⁶ Order MO-1848, 2004 CanLII 56289 (ON IPC)

⁷ West Lincoln (Township of) (Re), 2015 ONOMBUD 34 (CanLII), online: <<http://canlii.ca/t/gtp7g>>

property owners by name did not qualify as personal information.⁸ Similarly, the IPC has determined that the municipal location and estimated market values of certain properties do not constitute personal information about the individual property owners.⁹

- 26 In this case, council reviewed the cover letter for the notice of application, which included the PIN for the property, and a draft reference plan showing the property's location, dimensions, and boundaries. Neither document identified the property owner by name. This information is not inherently personal in nature and does not constitute personal information about the property owner.
- 27 Council members told members of my Office that they knew who owned the property based on the property's location. However, council's in camera discussion entirely focused on examining the notice documents before it and determining if the municipality had any interest in commenting on the application. Council did not discuss the property owner or any other personal information relating to the property owner.
- 28 Accordingly, the discussion did not fit with the exception for personal matters about an identifiable individual.

Applicability of the "advice subject to solicitor-client privilege" exception

- 29 Although the municipality did not cite the "advice subject to solicitor-client privilege" exception on January 22, during our investigation the municipality raised that exception as applicable to council's discussion.
- 30 During the meeting, the CAO briefly referenced legal advice the municipality had previously received on a separate matter. Although staff believed that the legal advice was applicable to the *Land Titles Act* and the application it had received, the advice actually pertained to a different piece of legislation.
- 31 The exception for solicitor-client privilege in s. 239(2)(f) applies only to discussions where legal advice exists and is actually discussed during a meeting.¹⁰ In this case, the legal advice was only mentioned briefly by the CAO and was not discussed further by council.

⁸ Russell (Township of) (Re), 2016 ONOMBUD 1 (CanLII), online: <<http://canlii.ca/t/gt6qg>>

⁹ Order R-980015 (17 December 1998) 1998 CanLII 14229 (ON IPC) referencing Order 13.

¹⁰ Port Colborne (City of), 2015 ONOMBUD 32 (CanLII) online: <<http://canlii.ca/t/gtp7c>>

- 32 Accordingly, the discussion did not fit within the exception for “advice subject to solicitor-client privilege”.

Reporting back after closed session

- 33 It is not council’s practice to report back to the public after a closed session, even to provide general information about what occurred. Although there is no requirement in the Act for council to report back in public after the completion of a closed meeting, my Office recommends this practice to increase transparency of the closed meeting process.

Opinion

- 34 Council for the Municipality of Northern Bruce Peninsula contravened the *Municipal Act, 2001* and the municipality’s procedure by-law when it discussed an application for first registration under the *Land Titles Act* on January 22, 2018 in closed session under the “personal matters” exception to the open meeting rules.
- 35 I would like to acknowledge that the council and staff closed the January 22 meeting based on a belief that the previously obtained legal advice would be applicable to the circumstances. Unfortunately, the evidence provided to my Office indicates that belief was mistaken. However, I recognize that staff and council acted in good faith and did not intend to violate the open meeting rules when council met on January 22, 2018.

Recommendations

- 36 I make the following recommendations to assist the Municipality of Northern Bruce Peninsula in fulfilling its obligations under the *Municipal Act* and enhancing the transparency of its meetings.

Recommendation 1

All members of council for the Municipality of Northern Bruce Peninsula should be vigilant in adhering to their individual and collective obligation to ensure that council complies with its responsibilities under the *Municipal Act, 2001* and its own procedure by-law.

Recommendation 2

The Municipality of Northern Bruce Peninsula should ensure that no subject is discussed in closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

Recommendation 3

The Municipality of Northern Bruce Peninsula should adopt the best practice of reporting back in open session following an in camera meeting.

Report

- 37 The municipality was given the opportunity to review a preliminary version of this report and provide comments to our office. No comments were received.
- 38 My report should be shared with council and made available to the public as soon as possible, and no later than the next council meeting. In accordance with s.239.2(12) of the *Municipal Act, 2001*, council should pass a resolution stating how it intends to address this report.



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