

**BY EMAIL**

May 24, 2022

Mayor Ian Boddy  
Council for the City of Owen Sound  
808 Second Avenue East  
Owen Sound, ON, N4K 2H4

Dear Mayor Boddy:

**Re: Closed meeting complaint**

My Office received a complaint alleging that council for the City of Owen Sound (the “City”) violated the open meeting rules in the *Municipal Act, 2001*<sup>1</sup> (the “Act”) during a meeting on March 14, 2022. At the time, due to the ongoing COVID-19 pandemic, council chambers – where council and committee meetings are held by the City – were closed to members of the public; the public was, instead, given the option to watch the proceedings via livestream. In this specific case, the complaint alleged that the meeting held on March 14, 2022 was improperly closed because the public could not view, on-screen, which councillors were present at the meeting or how each councillor voted. The complaint also alleged that when a specific councillor declared a conflict of interest related to a certain item, it was not clear to the public whether or not they left the room during the vote.

I am writing to share the outcome of my review. For the reasons set out below, I have concluded that the meeting on March 14, 2022 was not closed to the public and that council for the City therefore did not contravene the open meeting requirements under the Act. I have also found that the City did not violate its procedural by-law at this meeting.

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<sup>1</sup> SO 2001, c 25.



## 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.<sup>2</sup> 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 City of Owen Sound.

In addition, my Office has authority to review complaints regarding the administrative conduct of public sector organizations, including municipalities, local boards, and municipally-controlled corporations.

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](http://www.ombudsman.on.ca/digest).

## Review

My Office reviewed the City's procedural by-law, as well as the agenda, minutes, and video recording for the March 14, 2022 meeting. We also spoke with the Clerk.

## Background

A regular meeting of council was called to order at 7:00 p.m. on March 14, 2022. The meeting took place in council chambers and was livestreamed to the public. Due to safety precautions related to the COVID-19 pandemic, members of the public were not given the option to attend the meeting in person. There was no formal closed session on this date and there were no technical issues with the live feed.

All members of council were present along with the Clerk and six other members of staff. According to the recording, no verbal role call was taken and there was no indication to the public of how many councillors were present. Throughout the recording, it is only possible to see who is present if and when the camera pans to that individual.

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<sup>2</sup> *Ibid* at s 239.1.



With respect to various council votes during the meeting, the Mayor verbally stated whether or not each motion was carried. There was no audio or visual indication of how each councillor voted, or how many voted in favour of or against the motion. Except where a recorded vote was requested, the minutes also do not indicate how each councillor voted. The Clerk told our Office that if a recorded vote is not requested, no record is kept of how each councillor voted on a specific motion.

When a recorded vote was requested during the meeting, the Clerk asked each councillor in alphabetical order for their vote, per the procedure outlined in section 167 of the City's procedural by-law. Each councillor responded verbally. The Clerk then indicated if the resolution passed, as well as how many councillors voted for and against the motion. During this process, the camera panned to each councillor as his or her name was called by the Clerk.

With respect to the councillor who declared a conflict, the recording indicates that the councillor declared a conflict of interest at item 12.c. The minutes indicate that the councillor left the council chambers and returned to their chair following the vote. There is no visual or audio indication of this happening on the recording. The camera is focused on the Mayor during this time and it is not possible for the public to see that the councillor left the room.

## Analysis

### *Verbal roll call*

The complainant alleged that council's March 14, 2022 meeting was effectively closed to the public as the public was not able to view which councillors were present.

Neither the Act nor the City's procedural by-law requires a verbal roll call at the beginning of a council meeting. There is no requirement that the City announce if there is quorum, or state how many council members are present. However, section 82 of the City's procedural by-law requires that the minutes of each meeting identify who is present, among other things. The minutes for the March 14, 2022 meeting include all the information required by the procedural by-law.

Accordingly, the City did not contravene either the Act or its procedural by-law in failing to take a verbal roll call at the beginning of the meeting.

483 Bay Street, 10<sup>th</sup> Floor, South Tower / 483, rue Bay, 10<sup>e</sup> étage, Tour sud  
Toronto, ON M5G 2C9

Tel./Tél. : 416-586-3300 Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211  
[www.ombudsman.on.ca](http://www.ombudsman.on.ca)

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## *Voting*

The complainant alleged that the meeting was effectively closed to the public as the public was not able to view how each councillor voted.

In the recording of the March 14, 2022 meeting, it is not possible to see or hear how each councillor votes unless a recorded vote is requested. During each vote, the Mayor announces if a motion is passed without providing additional information. The minutes also indicate the results of each vote.

My Office has previously found that, even where the public is not able to view how each member voted, the meeting is not considered to be closed to the public if the overall result of the vote is revealed during the meeting.<sup>3</sup>

In this case, the result of each vote was announced during the meeting. The Act does not require the municipality to provide a breakdown of how each council member voted, either in the public session or in the minutes. The City's procedural by-law requires that, unless a recorded vote is called for, all voting is done by a show of hands. There is generally no requirement that council members verbally indicate how they are voting, and the minutes do not need to contain this information. Accordingly, the City's approach to voting did not contravene the Act or its own internal rules.

## *Conflict of interest*

The complainant also alleged that members of the public, who could only view the meeting via livestream, were not able to see if a certain councillor, who declared a conflict of interest on item 12.c of the agenda, voted on that item or if he left council chambers while it was discussed.

Neither the Act nor the City's procedural by-law requires a councillor who declares a conflict of interest to leave the room. There is also no requirement that a councillor who declares a conflict be seen to be leaving the room. However, the minutes indicate that the councillor left the room after item 12.b was discussed and returned just prior to the discussion on item 12.d.

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<sup>3</sup> Letter from the Ontario Ombudsman to the City of Hamilton (2 February 2022), online: <<https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/resources/Municipal-Meetings/Ombudsman-Ontario-Hamilton-Board-of-Health-February-2022-accessible.pdf>>.



Section 5 of the *Municipal Conflict of Interest Act* states that, when there is a conflict of interest, the individual declaring the conflict cannot vote on the matter and cannot influence the voting of another.<sup>4</sup> In this case, the minutes indicate that the councillor did not vote and there is no evidence to suggest that he attempted to influence the voting of any other member of council.

The City did not contravene any legislative requirement in failing to show in the livestream that the councillor left council chambers during the discussion on item 12.c.

Although my Office has found that the City did not contravene the requirements of the *Municipal Act, 2001* or its own procedural by-law, the City may wish to consider, as a best practice, using different camera angles during different portions of the council meeting. The Supreme Court of Canada has found that the public has the right to observe municipal meetings in process, and that this right is at the foundation of the open meeting rules.<sup>5</sup>

The COVID-19 pandemic has changed the way the public can observe municipal decision-making, but it has not changed the public's fundamental right to do so. In order to enhance the accountability and transparency of future electronic meetings, the City should consider providing a wider camera angle so the public is able to see who is participating in the meeting, how each councillor votes, and whether or not a councillor leaves the room. Providing a more complete view of council chambers during electronic meetings would serve to resolve concerns about attendance and voting as the public would be able to see who is in the room.

The City opened its council chambers for in person attendance beginning with the April 25, 2022 council meeting. A media advisory was published advising that the public can now attend council and committee meetings in person.<sup>6</sup>

## Conclusion

Council for the City of Owen Sound did not contravene the *Municipal Act's* voting or open meeting requirements on March 14, 2022. Additionally, council did not contravene its internal procedural requirements as found in the City's procedural by-law.

<sup>4</sup> *Municipal Conflict of Interest Act*, RSO 1990, c M.50 at s 5.

<sup>5</sup> *RSJ Holdings Inc v. London (City)*, 2007 SCC 29, at para 19.

<sup>6</sup> City of Owen Sound, "Council Chambers Reopening to the Public," (21 April 2022) online: <<https://www.owensound.ca/Modules/News/index.aspx?newsId=a1559bd8-fb41-4ec2-ba95-7cf69f895641>>.



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

Sincerely,



Paul Dubé  
Ombudsman of Ontario

Cc. Briana Bloomfield, Clerk

483 Bay Street, 10<sup>th</sup> Floor, South Tower / 483, rue Bay, 10<sup>e</sup> étage, Tour sud  
Toronto, ON M5G 2C9

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