



Ombudsman Report

**Investigation into meetings
held by the Region of Waterloo**

**Paul Dubé
Ombudsman of Ontario**

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Overview

- 1 My Office received complaints that meetings held by the Region of Waterloo (the “Region”) did not adhere to the open meeting rules in the *Municipal Act, 2001* (the “Act”).¹ One complaint alleged that the Region’s Strategic Planning and Budget Committee held a closed session discussion on December 13, 2023 that did not fit within the open meeting exceptions. We also received complaints that Regional council and Regional committees did not include sufficient information in their resolutions to move into closed session during the following meetings held in 2023 and 2024:
 - Meetings held by council on June 21, 2023, September 27, 2023, October 25, 2023, November 8, 2023, January 24, 2024, May 22, 2024, and June 4, 2024
 - Meetings held by the Community and Health Services Committee on November 7, 2023 and June 19, 2024
 - Meetings held by the Planning and Works Committee on August 15, 2023, December 5, 2023, April 9, 2024, May 7, 2024, and June 4, 2024
 - Meetings held by the Administration and Finance Committee on March 5, 2024 and April 24, 2024
 - Meetings held by the Strategic Planning and Budget Committee on November 22, 2023, and December 13, 2023
- 2 My investigation determined that the Strategic Planning and Budget Committee’s closed session discussion on December 13, 2023 fit within the open meeting exception for acquisition or disposition of land.
- 3 My investigation also determined that the resolutions to move into closed session passed by council on September 27, 2023 and by the Strategic Planning and Budget Committee on November 22, 2023 contravened s. 239(4)(a) of the *Municipal Act, 2001* by failing to provide a description of the general nature of the matter to be discussed in closed session. The remaining resolutions contained sufficient information and did not contravene the Act.

Ombudsman jurisdiction

- 4 Under the Act, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.

¹ SO 2001, c 25.

- 5 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 6 The Ombudsman is the closed meeting investigator for the Region of Waterloo.
- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality's procedure by-law have been observed.
- 8 Our 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/en/info-public-bodies-and-officials/municipal-government/municipal-meeting-digest.
- 9 The Ontario Ombudsman also has the authority to conduct impartial reviews and investigations of hundreds of public sector bodies. This includes municipalities, local boards, and municipally-controlled corporations, as well as provincial government organizations, publicly funded universities, and school boards. In addition, the Ombudsman's mandate includes reviewing complaints about the services provided by children's aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*. Read more about the bodies within our jurisdiction here: www.ombudsman.on.ca/en/make-complaint/what-we-can-help-you/organizations-you-can-complain-about.

Investigative process

- 10 On October 24, 2025, my Office advised the Region of our intent to investigate the complaints.

- 11 We reviewed materials from the meetings listed in the complaints such as the meeting recordings and minutes from the open and closed sessions. We spoke with the Region’s former Clerk, former solicitor, and the current Clerk. My Office received full co-operation during this investigation.

Strategic Planning and Budget Committee meeting on December 13, 2023

Background

- 12 The Region’s Strategic Planning and Budget Committee is composed of all members of council. Its mandate is to consider issues related to the Region’s annual budget.²
- 13 The Committee met on December 13, 2023 to review the Region’s budget for the upcoming year. During the Committee’s discussion about the Region’s general industrial land readiness strategy, a council member requested that the discussion move into closed session to discuss the Region’s potential acquisition of land. The Committee subsequently passed a resolution to move into closed session with the description of the matter to be discussed as “potential acquisition of land.”
- 14 According to the meeting minutes and the former Clerk, the Committee’s closed session discussion was about the financial impact of the potential acquisition of land by the Region on its budget. The Committee discussed the potential cost of the land transaction and the arrangements to fund the purchase price of the land from a budgetary perspective. Staff responded to questions from the Committee about the status of the potential acquisition of land and the financial arrangements with other levels of government regarding the purchase. The Committee returned to open session at 1:25 p.m.

Analysis

- 15 The Strategic Planning and Budget Committee fits within the definition of “committee” in the Act and is subject to the open meeting rules. Section 238(1) of the Act defines “committee” as any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also

² Region of Waterloo, *Committees*, online: <<https://www.regionofwaterloo.ca/en/regional-government/committees.aspx#Strategic-Planning-and-Budget-Committee>>.

members of one or more councils or local boards. The Strategic Planning and Budget Committee is composed of all members of council.

- 16 The exception for acquisition or disposition of land is primarily intended to protect a municipality's bargaining position during the process of buying or selling municipal land. For the exception to apply, a municipality must be party to the transaction and the discussion must involve an actual land transaction that is either pending or has been proposed.³ The exception does not cover discussions about speculative land transactions, such as those that may or may not happen in the future.⁴
- 17 At the time of the December 13, 2023 meeting, the acquisition of land by the Region was not speculative. The Region had identified the land it targeted for acquisition and the potential cost of the land.
- 18 The closed session discussion also included information about financial arrangements for the purchase, specifically, the ramifications for the Region's budget and arrangements with other levels of government to fund the purchase. This type of information, on its own, would not normally fit within the exception for acquisition or disposition of land. However, the discussion included information about the potential purchase price for the land. Had this information been made public, the Region's bargaining position as a prospective purchaser would have been affected.
- 19 Accordingly, the discussion fit within the exception for acquisition or disposition of land.

Insufficient information in resolutions to move into closed session

- 20 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.⁵

³ *Fort Erie (Town of) (Re)*, 2018 ONOMBUD 2 at para 31, online: <<https://canlii.ca/t/hvmtm>>.

⁴ *Fort Erie (Town of) (Re)*, 2015 ONOMBUD 12 at paras 22–23, online: <<https://canlii.ca/t/gtp5w>>.

⁵ *Farber v. Kingston (City)*, 2007 ONCA 173, [*Farber*], online: <<https://canlii.ca/t/1qtzl>>.

- 21 Municipalities are required to add a “level of informative detail” to the resolution to close a session to the public, and I have previously recommended that councils provide more substantive detail in resolutions authorizing closed sessions.⁶ I have found that, generally speaking, only stating the open meeting exception relied upon to close a meeting does not satisfy the requirements of the open meeting rules.⁷ However, I have previously noted that there may be instances where a council cannot provide any such additional information, although such cases are a rarity.⁸ For example, with respect to the exception for advice subject to solicitor-client privilege at section 239(2)(f) of the Act, the Court of Appeal observed that “there may be circumstances where the need for confidentiality encompasses even the information that such advice has been obtained on a specific issue.”⁹
- 22 The complaints to my Office suggested that 18 meetings held by the Region’s council and various committees in 2023 and 2024 did not include sufficient information in the resolutions to move *in camera*. The complainants said they believed that the closed session discussions related to the Region’s assembly of land in the Township of Wilmot.¹⁰
- 23 Sixteen of the 18 resolutions my Office reviewed did include a general description of the matters to be discussed in closed session. These resolutions provided an informative level of detail about the closed session discussions. For example, the resolution passed by council on November 8, 2023 stated that the meeting would be closed to consider “receiving advice that is subject to solicitor-client privilege related to a proposed acquisition of lands.” These resolutions satisfy the requirements of the Act.
- 24 Of the 18 resolutions reviewed, my Office identified two resolutions that only cited the exception for solicitor-client privilege as being relied upon to move into closed session and did not provide further information on the matters to be considered, namely, a resolution passed by council on September 27, 2023 and a resolution passed by the Strategic Planning and Budget Committee on November 22, 2023.

⁶ *Emo (Township of) (Re)*, 2020 ONOMBUD 6, online: <<https://canlii.ca/t/jb1g6>>.

⁷ *Brockville (City of) (Re)*, 2022 ONOMBUD 12, online: <<https://canlii.ca/t/jrhjr>>.

⁸ *Casselman (Municipality of) (Re)*, 2022 ONOMBUD 14, online: <<https://canlii.ca/t/jrnx7>>.

⁹ *Farber* at para 21.

¹⁰ Region of Waterloo, *Land Assembly in Wilmot*, online: <<https://www.regionofwaterloo.ca/en/doing-business/land-assembly-in-wilmot.aspx>>.

- 25 The closed session minutes for the September 27, 2023 council meeting record that council received legal advice regarding a Regional by-law. The closed session minutes for the November 22, 2023 Strategic Planning and Budget Committee meeting show that the Committee received legal advice related to the *Police Services Act*.¹¹ When we spoke with the former Clerk, he agreed that the Region could have provided more information about the topic of discussion in each of the resolutions without undermining the reasons for excluding the public.
- 26 Accordingly, these two resolutions contravened section 239(4)(a) of the Act by failing to provide a description of the general nature of the matter to be considered in each of the closed meetings.

Opinion

- 27 The Strategic Planning and Budget Committee did not contravene the open meeting rules when it met in closed session to discuss land acquisition in closed session on December 13, 2023.
- 28 The resolutions to move into closed session passed by council on September 27, 2023 and by the Strategic Planning and Budget Committee on November 22, 2023 contravened s. 239(4)(a) of the *Municipal Act, 2001* by failing to provide a description of the general nature of the matter to be discussed in closed session.

Recommendations

- 29 I make the following recommendations to assist the Region of Waterloo in fulfilling its obligations under the *Municipal Act, 2001* and enhancing the transparency of its meetings:

Recommendation 1

All members of council and committees for the Region of Waterloo should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001*.

¹¹ *Police Services Act*, R.S.O. 1990, c. P.15.

Recommendation 2

In accordance with the *Municipal Act, 2001*, the Region of Waterloo should provide as much information as possible about the general nature of the matters to be considered in its resolutions to go into a closed meeting, without compromising the reason for holding a closed meeting.

Report

- 30 The Region of Waterloo was given the opportunity to review a preliminary version of this report and provide comments to my Office. No comments were received.
- 31 This report will be published on my Office's website and should also be made public by the Region of Waterloo. In accordance with subsection 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario

Ce rapport est aussi disponible en français