



J. Paul Dubé, Ombudsman

SENT BY EMAIL

May 10, 2023

Council
Township of Douro-Dummer
894 South Street, P.O. Box 92
Warsaw Ontario, K0L 3A0

Dear Members of Council for the Township of Douro-Dummer:

Re: Complaint concerning the October 5, 2021 council meeting

The Ombudsman received a complaint about a special meeting of council for the Township of Douro-Dummer (the “Township”) held on October 5, 2021. The complaint raised concerns that council’s closed session discussion about the effects of building activity on a road within the community did not fit into the closed meeting exceptions cited by council.

Ombudsman’s role and authority

As of January 1, 2008, the *Municipal Act, 2001*¹ 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. The Ombudsman is the closed meeting investigator for the Township of Douro-Dummer.

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 closed 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

¹ SO 2001, c 25.

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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.

Our review

In response to the complaint, my Office reviewed the meeting records from council meetings on September 7 and October 5, 2021, including the agenda and the closed and open meeting minutes. We also reviewed the Township's procedure by-law and spoke to the Township's Clerk.

Background

During a council meeting on September 7, 2021, a member of the community delegated to council about the negative effects that building activity was having on a road located in the Township. The meeting minutes state that after receiving the delegation, council directed the Township's Chief Administrative Officer to "report back to council in caucus at a future meeting" on the matter.

A special meeting of council was called on October 5, 2021. According to the meeting minutes, council passed a resolution to proceed into closed session under the "personal matters" and "advice subject to solicitor-client privilege" exceptions to the open meeting rules. The resolution did not include a general description of the matter to be discussed in closed session. However, the meeting agenda indicated that a staff report on the issues raised by the delegation on September 7 would be considered in the closed session.

The Clerk told my Office that while in closed session, council discussed the information contained in the staff report. Council's discussion also included personal information about identifiable individuals. The Clerk confirmed that the Township's lawyer was present during the closed session and provided council with legal advice regarding the matter. The closed session minutes reflect the Clerk's recollection of the meeting.

Analysis

The resolution to move into closed session

Section 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

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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

In this case, the agenda for the October 5 meeting contained a description of topics to be discussed in closed session. However, the resolution passed by council to move into closed session failed to provide any description of the items to be discussed, and only cited the exceptions relied on. In future, council should ensure that its resolution to proceed in camera provides the general nature of the matter to be discussed as required by the Act.

The closed session discussion

Council relied on the exceptions for personal matters and advice subject to solicitor-client privilege to discuss the staff report in closed session.

The “personal matters” exception, found in section 239(2)(b) of the Act, applies to discussions that reveal personal information about an identifiable individual. In order to qualify as personal information, it must be reasonable to expect that an individual could be identified if the information were disclosed publicly.³ The exception for advice subject to solicitor-client privilege, found in section 239(2)(f) of the Act, applies where the discussion includes communications between the municipality and its solicitor in seeking or receiving legal advice intended to be confidential. The purpose of the exception is to ensure that municipal officials can speak freely about legal advice without fear of disclosure.

In this case, council’s *in camera* discussion focused on the staff report that reviewed the issues raised by the delegation at the September 7, 2021 meeting. The discussion also included detailed personal information about identifiable individuals. As mentioned above, our review confirmed that the Township’s lawyer was present throughout the discussion and provided council with legal advice.

Accordingly, council’s discussions fit within both the exceptions for personal matters about an identifiable individual and advice subject to solicitor-client privilege.

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

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



Conclusion

My review has determined that council for the Township of Douro-Dummer did not contravene the open meeting rules in the *Municipal Act, 2001* when it discussed the effects of building activity on a road in closed session on October 5, 2021. However, council must provide a general description of the issue to be discussed in its resolution to move *in camera*.

I thank the Township 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

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