



Open Meetings

Guide for Municipalities

INFORMATION AND BEST PRACTICES

FIFTH EDITION

Independent Impartial Confidential Free

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1-800-263-1830

Top 10 tips for municipal officials

1. Make a commitment to open government and to promoting transparency, accountability and accessibility.
2. Know and follow the *Municipal Act, 2001* and your procedure by-law's open meeting requirements.
3. Make sure you have a procedure by-law that complies with the *Municipal Act, 2001* – every municipality and local board is required to have one.
4. Give adequate advance public notice of all meetings, including the time and location of all meetings. For electronic meetings, provide access instructions (including a link), monitor broadcast quality throughout the meeting, and have a plan to stop the meeting if there are technical issues.
5. Keep meetings open to the public unless closure is specifically authorized under the *Municipal Act, 2001* and there is a real need to exclude the public.
6. Pick the right s. 239 exception before closing a meeting.
7. Pass a resolution in public that includes meaningful information about the issue to be considered (not just the exception) *before* closing the doors.
8. Record the meeting, including all decisions, by taking minutes, and preferably also by recording audio or video.
9. Do not hold a vote in closed session unless it is for a procedural matter or to give directions to staff or officials.
10. To the extent possible, report back publicly in open session about what occurred in closed session.

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This guide, along with the Ombudsman's open meeting reports and letters, can be downloaded and printed from the Ombudsman's website, www.ombudsman.on.ca. To request hard copies, email thewatchdog@ombudsman.on.ca.

See also the regularly updated digital **digest of open meeting cases** on the Ombudsman's website to search cases by subject, municipality or keyword, www.ombudsman.on.ca/digest.

Please note that this guide is provided for information purposes only and should not be considered or relied upon as legal advice.

Message from the Ombudsman

Government transparency and the ability to observe the political process are foundational to democracy. To that end, local governments must comply with the open meeting rules in the *Municipal Act, 2001*. It is imperative that municipal councils and staff understand these legal requirements, and that they build best practices for compliance into their procedures.

My team and I are committed to helping municipal staff and councils in that regard. This guide is intended as a quick reference to Ontario's open meeting rules, as set out in legislation. The guiding principle has always been that municipal councils must meet in public, except in certain specific circumstances. The spirit of the law can be summed up in six words: **When in doubt, open the meeting.**

Municipalities have been required to hold open meetings throughout Ontario's history – and rightly so, given the importance of local governments to our everyday lives. However, members of the public had little recourse to question meetings that were closed to the public until a complaints system was established in 2008.

Since then, all municipalities have been required to have an investigator to deal with complaints about closed meetings and determine whether or not the open meeting rules were violated. The Ombudsman is the investigator for all municipalities that have not appointed their own.

Over the years, this Office's hundreds of investigations and reports have made a significant contribution to the field of what many jurisdictions call "sunshine law." In

some cases, we validate the actions of municipal officials, while in others we provide constructive feedback on how to optimize compliance with the rules.

Recognizing the evolving challenges that municipalities face, we keep this informative guide updated regularly and provide it to all municipal clerks and council members, whether or not they use the Ombudsman as their investigator.

To further assist municipal officials in fulfilling their transparency obligations, we have also created a searchable, regularly updated digital digest of our open meeting cases. Our **Open Meetings Case Digest**, available on our website, can be searched by topic, keyword and municipality, and is the first such resource of its kind in Ontario.

Both of these tools are intended to promote transparency and facilitate compliance with the *Municipal Act, 2001* in communities across the province.

On that note, I want to remind all Ontarians that our Office can also help them with general complaints about municipalities or any of the more than 1,000 provincial government and broader public sector bodies that we oversee. Please feel free to consult our website or call our staff at 1-800-263-1830 to find out how we can help.



Paul Dubé
Ombudsman of Ontario



Ontario's open meeting requirements

GENERAL QUESTIONS

What are the objectives of the open meeting rules?

The open meeting requirements set out in section 239 of the *Municipal Act, 2001* **permit the public to observe municipal government in progress**. The Supreme Court of Canada answered this question in its decision in the 2007 case, *London (City) v. RSJ Holdings Inc.* The judges noted “the public’s demand for more accountable municipal government” and stated that open meetings are essential to “robust democratic legitimacy” of local administrations. They also observed that s. 239 of the *Municipal Act, 2001* “was intended to increase public confidence in the integrity of local government by **ensuring the open and transparent exercise of municipal power.**”

Must all municipal meetings be open to the public?

Yes, **with some limited exceptions**. The Act recognizes that there may be situations in which the privacy of an individual should be respected, or where open meetings would not serve the public interest or the interests of the municipality.

If a subject fits within one of the exceptions, it can be discussed in a closed meeting, provided that the municipality follows all the procedural rules, including giving notice of the meeting, passing a resolution in public to close the meeting, and keeping minutes of the closed meeting. During the closed meeting, the discussion should stay on topic and be limited to the subject area stated in the resolution.

What are the exceptions?

A municipal or local board meeting, or part of a meeting, **may be closed** to the public if the subject of the meeting falls within one of the **14** exceptions set out in s. 239 of the Act. In brief, these include matters that relate to:

- The security of the property of the municipality
- Personal matters about an identifiable individual
- Acquisition or disposition of land
- Labour relations
- Litigation
- Advice subject to solicitor-client privilege
- Information supplied in confidence to the municipality by another level of government
- A trade secret or certain specific information supplied in confidence to the municipality, or that belongs to the municipality and has monetary value
- A plan or instruction to be applied to negotiations
- Education or training

For more on the exceptions, see pages 17-32, the section “Exceptions to the open meeting rules.”

Must meetings be closed if they fall within those exceptions?

Not always. In fact, 12 of the 14 exceptions are **discretionary**, meaning that whenever possible, municipalities should opt to discuss these subjects in public, in the interest of transparency. The legislation leaves them the flexibility to **keep the doors open**.

The two exceptions that state meetings **must** be closed relate to:

- Requests under the *Municipal Freedom of Information and Protection of Privacy Act*
- An ongoing investigation by the Ontario Ombudsman or the municipality’s closed meeting investigator or local ombudsman

TERMS AND DEFINITIONS

What is a “meeting”?

The *Municipal Act, 2001*, s. 238(1) defines “meeting” as any regular, special or other meeting of a council, of a local board or of a committee of either of them, where:

- a) A quorum of members is present, and
- b) Members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board, or committee.

To determine whether a discussion “materially advances” council business or decision-making, the Ombudsman considers the extent to which the discussions moved forward the business of the municipality. Discussions, debates or decisions that are intended to lead to specific outcomes are likely to materially advance business or decision-making, whereas mere receipt or exchange of information is unlikely to do so.

What is a “quorum”?

A quorum is the minimum number of members of a body **required to be present** at a meeting in order for a body to exercise its power or authority. Often, this number is 50% plus one, but quorum may be defined differently by legislation or by-law.

Does the term “meeting” include informal gatherings outside of council chambers?

Informal gatherings for social purposes are **not** considered to be “meetings.” However, if participants in the gathering **discuss business** of the council, local board or committee and/or make decisions, it is more likely to be deemed a “meeting” that is subject to the open meeting requirements.

The purpose of the open meeting rules is not to discourage council members from informal or social interactions, but to ensure such gatherings are not used as a pretext for conducting council business away from public view.

Can meetings be held electronically, including over teleconference or video conference?

Yes, the *Municipal Act, 2001* was amended in 2020 to permit councils, local boards, and committees to hold meetings electronically if permitted by their procedure by-law. This change was made in response to the COVID-19 pandemic, but has remained in the Act, giving municipalities more flexibility in their meeting styles.

All of the open meeting rules continue to apply to electronic meetings. Notice must be provided and should include directions for how the public can access the meeting, such as a link. Minutes must be recorded and a resolution must be passed in public before a meeting can be closed. Municipalities should monitor any broadcast or livestream to ensure that the meeting is stopped if there are technical issues, and should consider putting a back-up broadcast method in place.

What about meetings conducted informally over the phone, text or by email?

As the definition of meeting requires a quorum of members to be present, a meeting cannot occur over email or other remote forms of communication (except as permitted by a procedure by-law, as set out above).

Although emails and other remote forms of communication are not subject to the open meeting rules, municipalities should endeavour to apply consistent standards of transparency and openness, regardless of the means of communication. The open meeting rules call for discus-

sions that advance council business or decision-making to take place in public. Any exchange wherein council votes, reaches consensus, provides direction or input to staff, or discusses or debates a proposal, course of action or strategy should be reserved for official meetings of a council, local board, or committee.

What is a “committee”?

For the purposes of the open meeting provisions, a committee is defined as **any advisory or other committee**, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards. A procedure by-law can also designate certain bodies to be committees.

Committees must follow the open meeting rules, including providing public meeting notice, recording minutes, passing a resolution before closing a meeting, and restricting the discussion during the closed meeting to matters that fit within the exceptions. Municipalities should ensure all committee members receive support and training to enable them to comply with the rules.

What are “local boards”?

Local boards subject to the open meeting requirements include municipal service boards, transportation commissions, boards of health, planning boards, and any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities. For instance, the board of management for a business improvement area (BIA) is a local board.

Bodies that are **not** considered local boards under the *Municipal Act, 2001* and/or that are not subject to the open meeting requirements include:

- School boards
- Conservation authorities
- Police services boards

- Public library boards
- Hydro companies incorporated by municipalities under s. 142 of the *Electricity Act*
- Certain municipal corporations

In 2018, the Ontario Court of Appeal found that the City of Hamilton's Property Standards Committee and Election Compliance Audit Committee were not local boards for the purposes of the open meeting rules, because neither body provided "services which are integral to the day-to-day operation of the business" of the city. In 2021, Ontario's Divisional Court provided additional guidance, finding that the City of Hamilton's Lesbian, Gay, Bisexual, Transgender and Queer Advisory Committee was a local board. The decision noted that the function of the Committee related to the city's "affairs and purposes" by helping the city meet its obligations to all members of the community. The Court found the committee was not an "independent and/or adjudicative" body, and was also not an *ad hoc* informal committee.

Municipalities should assess all local bodies to determine if they might be a committee or local board. Remember: **When in doubt, open the meeting.**

PROCEDURE BY-LAWS AND PUBLIC NOTICE

What is a municipality required to address in its procedure by-law?

Every municipality and local board is required to **pass a procedure by-law** governing the calling, place and proceedings of meetings. The procedure by-law must also provide for **public notice** of meetings. This should set out the method of giving notice and how far in advance the notice will be given. For example, it might specify that notice of a meeting shall be provided 72 hours in advance by posting the agenda on the municipality's website.

If a municipality chooses to hold electronic meetings, it must provide for that practice in its procedure by-law.

When a municipality decides to close a meeting or part of a meeting, it has to comply not only with the requirements of the *Municipal Act, 2001*, but **also with any additional requirements of its procedure by-law.**

What specific procedure must be followed to close a meeting?

The municipality, local board, or committee must state **by resolution in open session** that a closed meeting will be held and state the general nature of each matter to be considered at the closed meeting. The resolution authorizing a closed meeting must be made in advance and the public must be able to observe its passage in real time (even if the meeting is being held electronically).

The 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 excluding the public.** When meetings are closed for the purpose of **educating or training** members, the relevant subsection of the Act must also be cited. However, as a best practice, the relevant exceptions **should always be indicated in the resolution**, in addition to each subject for discussion. The resolution should clearly identify which exception pertains to which subject.

What information should be included in a public notice of a meeting?

The *Municipal Act, 2001* requires municipalities to establish a procedure by-law that provides for public notice of meetings, but the Act **does not specify the notice content.** This should be set out in the municipality's procedure by-law.

For example, many procedure by-laws require that an agenda be publicly posted in advance of a meeting,

listing the matters to be discussed. **Adequate notice should include the date, time and place of the meeting**, to facilitate the public's right to attend and observe. For electronic meetings, the notice should include access instructions, such as a link.

It is the Ombudsman's view that, wherever possible, advance public notice should include information about all open and closed portions of a meeting, and meaningful information about **all items to be considered**. The Ombudsman discourages the practice of having "standing" closed sessions and recommends that notices and agendas accurately reflect the specific matters intended to be discussed at a particular meeting.

VOTING AND RECORDS

Can votes be taken during a closed meeting?

Generally, meetings cannot be closed to the public during the taking of a vote. Voting in a closed meeting is only permitted if the closed meeting **is otherwise authorized and** the vote is for a **procedural matter** or for **giving directions or instructions** to officers, employees, agents of the municipality, or persons under contract. All votes should be taken formally, in accordance with the procedure by-law, and recorded in the closed meeting minutes. Decisions should **not** be made by straw poll, show of hands or general consensus.

Are members of the public entitled to participate in a meeting?

There is **no automatic right to speak or participate** in a meeting. There is a distinction between a citizen's right to participate and their right to observe municipal government in progress. The open meeting requirements set out in s. 239 of the *Municipal Act, 2001* permit the public to **observe the political process**.

Each municipality is required to have a procedure by-law, which may set out a process for members of the public to address council. Questions about the process should be referred to the municipal clerk.

Must a record be kept of the closed meeting?

All resolutions, decisions and other proceedings that take place must be recorded, **whether the meeting is open or closed.**

The Act does not require municipalities to create verbatim transcripts of meetings, but minutes should be more detailed than just a list of resolutions. The record of a closed meeting should include reference to the location, format (e.g., in person or electronic), time of commencing and adjourning the meeting, and the names of attendees. There should also be a detailed description of the substantive and procedural matters discussed, including reference to any specific documents considered, motions (including names of the movers and seconders), and all votes taken or direction given.

The Ombudsman recommends that all municipalities also make audio or video recordings of all meetings – open and closed – to ensure the most thorough record possible. After meeting behind closed doors, the Ombudsman recommends reporting back in the open session on what transpired in the closed session, providing as much detail as the subject matter permits.

The Ombudsman and closed meeting investigations

Who is the Ombudsman?

The Ombudsman is an impartial officer of the Ontario Legislature, independent of the government and all political parties. The Ombudsman resolves and investigates complaints from the public about the administrative conduct of provincial government organizations, municipal sector entities, publicly funded universities, and school boards, as well as 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*. The Ombudsman's role and powers are set out in the *Ombudsman Act* and the *French Language Services Act*.

What does the Ombudsman do?

The role of the Ombudsman is to enhance governance by promoting transparency, accountability and fairness in government and the public sector, and the protection of French language service rights and the rights of children and youth in care.

Most of the Ombudsman's work involves receiving and assessing complaints in an impartial manner and resolving them informally wherever possible. The Ombudsman does not advocate for complainants and investigations are undertaken only when matters cannot be otherwise resolved. Investigations – including those that may involve broad systemic issues – are evidence-based and objective. When appropriate, the Ombudsman makes recommendations for constructive change.

Although the Ombudsman's recommendations are not binding, they have been overwhelmingly accepted and implemented, prompting significant bureaucratic reforms.

In the field of open meetings, the Ombudsman makes findings on whether or not municipal meetings complied with the open meeting rules, and may make recommendations or suggest best practices for improvement. Ombudsman staff who specialize in open meetings can also provide guidance and education to municipalities and members of the public on the open meeting requirements and best practices.

Who can complain about a closed meeting?

Anyone can file a complaint; it is not necessary to be a resident of the municipality in question.

Section 239.1 of the *Municipal Act, 2001* provides that a person may request an investigation into whether a municipality or local board has:

- complied with s. 239 of the Act (which sets out the open meeting requirements) or
- complied with the municipality's procedure by-law

in respect of a meeting or a part of a meeting that was closed to the public.

What does it cost?

The Ombudsman does not charge fees to complainants, or to any organization that is the subject of a complaint. Fees are discouraged by ombudsmen around the world because they can act as a barrier to legitimate complaints.

Are complainants identified?

No. Complaints to the Ombudsman are confidential, and **the identity of complainants is not released** in any of our cases without consent. The complainant's identity is not usually relevant to a closed meeting investigation, which focuses only on whether or not the meeting was closed according to the law.

Does the Ombudsman investigate closed meetings in all municipalities?

No. All municipalities must have a closed meeting inves-

tigator – either the Ombudsman or another investigator of their choice. If another investigator is appointed, the Ombudsman cannot review complaints about closed meetings in that municipality.

Anyone can find out who the investigator is for a particular municipality by consulting the database in our website's **Municipal Closed Meetings** section, by calling our Office, or by calling the municipality in question.

How are complaints about closed meetings different from complaints to the Ombudsman about other municipal issues?

The Ombudsman's role is to resolve and investigate complaints about entities within his jurisdiction, as an office of last resort. Complaints about municipalities can result in informal resolutions, referrals, best practice suggestions, or formal investigations and recommendations to improve and strengthen local governance and accountability.

This role is distinct from the Ombudsman's function as a closed meeting investigator, which focuses narrowly on whether or not the open meeting rules were followed. More information about our work on general municipal issues is available on our website and in the Ombudsman's reports, including Annual Reports and reports on specific municipal investigations.

What happens in a closed meeting investigation?

Our first step is to determine whether or not the Ombudsman is the closed meeting investigator for the municipality in question. If the municipality has appointed its own investigator, the complaint is referred accordingly.

If the Ombudsman is the investigator, our staff review the complaint, contact the municipality's clerk and obtain meeting documents and other relevant information for

the Ombudsman to determine whether an investigation is warranted.

If the Ombudsman decides to proceed with an investigation, the usual process involves the following:

- The municipality is notified in writing.
- Ombudsman staff gather relevant information, including interviewing witnesses and reviewing documents as warranted. (The *Ombudsman Act* requires that our investigations be conducted in private.)
- Based on the evidence gathered, the Ombudsman makes findings that are shared with the municipality before being made public.
- The Ombudsman's final letter or report is sent to the municipality, which is expected to make it public as soon as possible. It is also published on the Ombudsman's website, and complainants are informed of the outcome of the case.

If the investigation finds that the municipality violated the open meeting rules, the *Municipal Act, 2001* requires council or the local board to pass a resolution stating how it intends to address the report.

What are the consequences for the municipality?

Unlike in some U.S. jurisdictions, where breaking the open meeting laws can result in a fine or even jail time, there are no penalties in Ontario for holding an illegal closed meeting.

If the Ombudsman finds a municipality violated the open meeting rules, the municipality must make the Ombudsman's report public, and it must pass a resolution setting out how it intends to address the report. Ombudsman recommendations are not binding; it is up to the municipality to decide whether or not to accept and implement them.

Exceptions to the open meeting rules

GENERAL INFORMATION

All meetings of a council, local board, or committee of either must be open to the public, unless the subject matter fits within one of the 14 exceptions to that rule, identified in s. 239 of the *Municipal Act, 2001*. The exceptions should be interpreted narrowly.

Discretionary exceptions:

Twelve of the exceptions are discretionary, meaning it is not mandatory to close meetings to deal with these subjects. **When in doubt, open the meeting.**

Meetings may be closed if the discussion is about:

1. The security of the property of the municipality [s. 239(2)(a)]
2. Personal matters about an identifiable individual, including municipal employees [s. 239(2)(b)]
3. A proposed or pending acquisition or disposition of land by the municipality [s. 239(2)(c)]
4. Labour relations or employee negotiations [s. 239(2)(d)]
5. Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality [s. 239(2)(e)]
6. Advice that is subject to solicitor-client privilege, including communications necessary for that purpose [s. 239(2)(f)]
7. A matter in respect of which a council, board, committee or other body may hold a closed meeting under another piece of legislation [s. 239(2)(g)]
8. Information supplied in confidence to the municipality by another level of government [s. 239(2)(h)]

9. Third-party information supplied in confidence to the municipality, which, if disclosed, could significantly prejudice a competitive position or interfere with negotiations (e.g., a trade secret or scientific, technical, commercial, financial or labour relations information) [s. 239(2)(i)]
10. Information (e.g., a trade secret or scientific, technical, commercial, or financial information) that belongs to the municipality and has monetary value [s. 239(2)(j)]
11. A position, plan, procedure, criteria, or instruction to be applied to negotiations [s. 239(2)(k)]
12. Educating or training members of the council, a local board or committee [s. 239(3.1)]

Mandatory exceptions:

The other two exceptions are mandatory. Meetings **must be closed** if they are about:

13. The consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or body is the head of an institution for the purposes of that Act [s. 239(3)(a)]
14. An ongoing investigation respecting the municipality by the Ontario Ombudsman, an appointed municipal ombudsman, or an appointed closed meeting investigator [s. 239(3)(b)]

GUIDE TO THE DISCRETIONARY EXCEPTIONS

Although every case is assessed on its own merits, here are some guidelines to the exceptions and examples of how the Ombudsman has interpreted them in investigations. For the latest case examples and full letters and reports, please see the digital **digest of open meeting cases** on our website, which can be searched by keyword, topic and municipality.

Note: Each exception is discussed in brief in this section; for the full text of the exceptions as they appear in the legislation, see pages 33-41, the section “Excerpts of relevant legislation.”

Security of municipal property – s. 239(2)(a)

Includes discussions about:

- Protection of municipally owned property from physical loss, theft or damage
- Loss, theft or damage can be corporeal (like vandalism) or incorporeal (like fraud)

Does not include discussions about:

- The financial interests of the municipality
- Strategy with respect to municipal infrastructure or growth
- Strategy with regard to municipal property, including its purchase or sale

Case examples:

- **Bruce County (May 2022):** A meeting about a project related to a nuclear innovation institute, including potential locations for the institute, did not fit within the exception for security of municipal property as no security implications were discussed.
- **Municipality of St.-Charles (February 2016, October 2019):** Discussions about a municipality’s finances that did not relate to the protection or security of those assets did not fit within the exception.
- **Town of Amherstburg (June 2018):** Discussion about seeking bids for policing services did not fit within the exception, as it did not deal with potential threats, loss, or damage to municipal property.
- **Town of Grimsby (November 2016):** Discussion about obtaining a valuation of a municipally controlled corporation did not fit within the exception since there was no apparent threat of loss or damage.

- **City of Port Colborne (November 2015):** Discussion about the potential sale of municipally owned shares did not fit within the exception. Even if a public discussion could have affected the value of shares, it was not about the security of municipal property.
- **Village of Burk's Falls and Armour Township (October 2015):** A closed meeting to discuss a potential amalgamation did not fit within the exception, despite a potential depreciation of municipal assets, because it did not relate to any specific property owned by the municipalities and the protection of that property.
- **City of Welland (November 2014):** Discussions of a marketing plan did not fit within the exception despite the city wanting to protect its competitive position relative to other municipalities; the discussion was not about protecting the marketing plan from loss or damage.

Personal matters about an identifiable individual – s. 239(2)(b)

Includes discussions about:

- Scrutiny of an individual's performance or conduct, including municipal staff
- Candidates for a job or committee, including education and employment history
- Allegations of an individual's possible violation of law

Does not include discussions about:

- An individual in their professional or official capacity
- Council members' remuneration or expenses and related policy
- General working relations between council and staff
- Salary bands, a hiring process, or staff reorganization
- Information already in the public realm

Case examples:

- **Municipality of Temagami (February 2021):** A statement about the fact of a harassment investigation did not fit within the exception for personal matters because neither the individual nor the nature of the complaint were discussed. A meeting cannot be closed just because the subject is sensitive.
- **City of Hamilton (October 2019):** Conducting interviews and discussing the suitability of individual candidates for the City Manager position was permitted in closed session.
- **Municipality of St.-Charles (October 2019):** Discussions about individual personal matters should have been parsed from broader discussions about finances.
- **Town of Plympton-Wyoming (February 2021):** Discussion about how to fill a council vacancy did not belong in closed session although a portion involving the qualifications of particular individuals did fit within the exception.
- **Municipality of Northern Bruce Peninsula (May 2018):** A discussion revealing a property identification number and the property's location, dimensions and boundaries did not constitute personal information and did not fit within the exception.
- **Township of Tehkummah (April 2018):** Discussion of employment status and job performance of an individual staff member constituted personal information.
- **Township of North Huron (January 2018):** Discussion about the conduct of municipal employees fit within the exception because the conduct fell outside the scope of their professional roles and was therefore personal information.
- **Township of Lanark Highlands (January 2018):** Scrutiny of a council member's conduct and

behaviour went beyond professional information and fit within the exception.

- **Town of Georgina (November 2017):** Discussion of an organizational review as part of a service delivery review would not have fit within the exception except that council discussed the performance of specific employees (i.e., personal matters) in relation to restructuring options.
- **Town of Petrolia (May 2018):** Discussion about unproven allegations against a member of council fit within the exception.

Acquisition or disposition of land – s. 239(2)(c)

Includes discussions about:

- Proposed or pending purchase or sale of municipal land, when the bargaining position of the municipality could be impacted by a public discussion of the matter
- Leased property, easements, or subdivision agreements relating to the municipality's property interests

Does not include discussions about:

- Speculation regarding prospective acquisition or disposition of land, where no bargaining position yet exists
- Real estate market volatility and its impact on land values in general
- Discussions when the other party to a transaction is present

Case examples:

- **Bruce County (May 2022):** Speculative and preliminary discussions about acquiring land did not fit within the exception as the county had no bargaining position to protect at that time. The exception also did not apply when the county discussed using a property it already owned for a project.

- **Norfolk County (March 2021):** Discussion about setting a target price per acre for specific parcels of land fit within the exception even though the land was not yet for sale.
- **Town of Carleton Place (November 2018):** Discussion about extended municipal water and sewer services to municipal properties fit within the exception because they were inextricably linked to the town's future bargaining position.
- **City of Timmins (April 2017):** Discussion about a proposed land transaction did not fit within the exception because the other party to the transaction was present at the meeting.
- **City of Port Colborne (November 2015):** Discussion about a non-profit organization buying a house from a private individual did not fit within the exception because the municipality was not a party to the transaction and therefore had no bargaining position to protect.

Labour relations or employee negotiations – s. 239(2)(d)

Includes discussions about:

- Unionized and non-unionized employees
- Compensation, benefits or vacation for specific employees
- Staff performance, conduct, discipline, hiring and firing
- Changes to workload or roles of specific employees
- Grievances under a collective agreement

Does not include discussions about:

- Council members, including their remuneration
- Organizational reviews or restructuring

Case examples:

- **City of Niagara Falls (March 2022):** Discussion about establishing a CAO recruitment sub-com-

mittee and procuring a third-party recruitment firm was not about the city's relationship with an employee and did not fit within the exception.

- **City of St. Catharines (February 2019):** Discussion about the role and nature of a proposed staff position, including the position's general responsibilities, salary and contract length, did not fit within the exception as it did not relate to any specific individuals or the city's employment relationship with them.
- **Town of Petrolia (May 2018):** Discussion about terminating employees of a community centre fit within the exception, despite no staff members being named individually, because all community centre employees would have been affected.
- **Town of Pelham (April 2018):** Discussion about the conduct and performance of a town employee fit within the exception.
- **Township of North Huron (January 2018):** When dozens of firefighters attended a closed meeting to talk to council about their working conditions, the discussion fit within the exception as it occurred during an ongoing labour dispute.
- **Town of Georgina (November 2017):** Discussion about the performance of particular employees in the context of organizational restructuring fit within the exception.

Litigation or potential litigation – s. 239(2)(e)

Includes discussions about:

- Ongoing litigation involving the municipality, including proceedings before administrative tribunals
- Litigation that is a real prospect, against or by the municipality
- Deciding whether or not to litigate in a specific case

Does not include discussions about:

- Speculation that litigation may arise in future, or where there is no evidence of any current or future legal proceedings
- Litigation that has concluded

Case examples:

- **Township of Russell (February 2021):** Discussion about specific verbal threats of litigation related to a zoning dispute was permitted in closed session.
- **Township of Brudenell, Lyndoch and Raglan (October 2021):** Council was permitted to ask staff in closed session for an update on ongoing litigation; council need not receive legal advice or discuss litigation strategy for the exception to apply.
- **Town of Carleton Place (October 2017):** Discussion about a contentious public statement by the mayor did not fit within the exception as there was no evidence of any reasonable prospect of litigation.
- **Municipality of St.-Charles (June 2017):** Discussion of written legal advice pertaining to ongoing legal proceedings fit within the exception.
- **City of Timmins (May 2017):** Discussion of council's concerns about an unsuccessful bidder in a procurement process did not fit within the exception as it was mere speculation that litigation might occur.
- **Norfolk County (November 2016):** Discussion about the development of a site-specific zoning by-law fit within the exception because an identifiable individual planned to file an appeal of the by-law to the tribunal.

Advice subject to solicitor-client privilege – s. 239(2)(f)

Includes discussions about:

- Communication between the municipality and its

solicitor, to seek or receive legal advice intended to be confidential (to ensure municipal officials can speak freely with their lawyer without fear of disclosure)

- Legal advice where the lawyer is not present, such as where advice is provided in writing or through staff

Does not include discussions about:

- A topic where the privilege has been waived, such as where a third party is present
- A topic other than the legal advice itself
- Whether or not to seek legal advice

Case examples:

- **Town of Collingwood (January 2022):** Discussions about quotes for legal fees containing specific information, such as suggested strategy, constituted advice subject to solicitor-client privilege and fit within the exception.
- **Municipality of Northern Bruce Peninsula (May 2018):** Brief mention of previously received legal advice did not make the entire discussion permissible in closed session.
- **Town of Pelham (April 2018):** Discussion of a report by an external consultant on the town's financial information fit within the exception because the consultant acted as an interpreter to allow the lawyers to provide legal advice.
- **Township of Lanark Highlands (January 2018):** Discussion of written advice from the township's solicitor fit within the exception, but at several points went beyond the legal advice; those portions of the meeting did not fit within the exception.
- **Town of Petrolia (May 2018):** Discussion about a third-party proposal did not fit within the exception; council had received legal advice on the subject in the past, but it was not discussed during the meeting.

- **Township of The North Shore (July 2020):** Having a third party attend a meeting will generally mean that solicitor-client privilege has been waived, but in this case, an external governance consultant attended to assist the solicitor in providing advice, so privilege was not waived.

Matters that can be discussed in closed session under another Act – s. 239(2)(g)

Includes discussions:

- That are explicitly permitted to be discussed in a closed meeting by an Act other than the *Municipal Act, 2001*

Does not include discussions:

- Where another Act might imply that a matter is sensitive, but does not explicitly state that the matter can be discussed in a closed meeting

Case examples:

- **Town of Amherstburg (June 2018):** While staff suggested this exception applied because a request for proposals (RFP) could have been discussed in private under the *Police Services Act*, there was no evidence that council considered the application of this exception, or that the RFP had been discussed in closed session by the town's police services board.
- **Municipality of Brockton (February 2017):** A closed information session attended by a quorum of council under the *Drainage Act* did not fit within the exception as that Act does not provide for holding a closed meeting.
- **Town of Grimsby (May 2017):** A meeting council attended of shareholders for a municipally controlled hydro company did not fit within the exception because the *Business Corporations Act* does not permit a closed meeting.

- **City of Hamilton (April 2015):** Discussion by council fit the exception because it was a matter that a police services board is allowed to discuss in closed session under the *Police Services Act*.

Information supplied in confidence by another level of government – s. 239(2)(h)

Includes discussion about information:

- Provided to the municipality by another level of government (Canada, a province or territory, or a Crown agency) and
- Explicitly supplied to the municipality or local board in confidence, i.e., marked confidential by the other level of government

Does not include discussions:

- Where the municipality determines the matter should be confidential, rather than the other level of government
- Where the information was provided by another municipality

Case examples:

- **Bruce County (May 2022):** Information supplied by another municipality does not fall within this exception as the exception applies only to information provided by Canada, a province or territory, or a Crown agency.
- **Township of Russell (December 2021):** Discussion was allowed in closed session because another level of government asked the township explicitly, in writing, to keep the information discussed confidential.
- **City of Niagara Falls (April 2020):** Information about a development and funding proposal was permitted in closed session because it was explicitly supplied in confidence by the federal government.

Information supplied in confidence by a third party – s. 239(2)(i)

Includes discussions about information that:

- Falls into one of the listed types: trade secret, scientific, technical, commercial, financial or labour relations information
- Was supplied confidentially, whether explicitly or implicitly, to the municipality by a third party and
- If disclosed, could reasonably be expected to cause harm, either by prejudicing significantly the competitive position or interfering significantly with the contractual or other negotiations of a person, group of persons or organization

Does not include discussions:

- Where the information did not belong to a third party
- Where there is only a merely possible or speculative risk of harm if the information were to be disclosed

Case examples:

- **Town of Pelham (June 2022):** There was no evidence that disclosure of information related to the future management and development of a local airport would cause significant harm.
- **Bruce County (May 2022):** Information about a proposed nuclear innovation institute did not fit in this exception because it was neither a trade secret nor scientific, technical, commercial, financial or labour relations information.
- **City of Greater Sudbury (May 2021):** Discussion about confidential commercial and financial information belonging to a third party was permitted in closed session, as it could have prejudiced the parties' competitive position and negotiations if disclosed.

- **Municipality of St.-Charles (October 2019):** A report commissioned by the municipality about its own finances did not fit within the exception as the exception is not intended to apply to information belonging to the municipality.

Information belonging to the municipality – s. 239(2)(j)

Includes discussions about information that:

- Falls into one of the listed types: trade secret, scientific, technical, commercial or financial information
- Belongs to the municipality or local board and
- Has monetary value or potential monetary value

Does not include discussions where:

- The municipality or local board has no proprietary or ownership interest in the information
- There is no evidence that the municipality or local board could sell the information for money

Case examples:

- **Township of Leeds and the Thousand Islands (April 2022):** Discussion about a study related to implementing high-speed internet was permitted because the information had monetary value and could have been sold.
- **City of Hamilton (June 2019):** While the city might have suffered economic loss if information about its Grey Cup bid were made public, there was no evidence that this information could have been sold by the municipality.

Plans and instructions for negotiations – s. 239(2)(k)

Includes discussions:

- About a position, plan, procedure, criteria or instruction

- Where the information is intended to be applied to negotiations carried on by the municipality or local board and
- The negotiations are ongoing or will be carried out in the future

Does not include discussions:

- In the absence of related negotiations
- Where negotiations are concluded

Case examples:

- **Town of Pelham (June 2022):** There was no evidence that any negotiations were pending or ongoing when council discussed the future of a local airport.
- **City of Pickering (September 2020):** Staff were permitted to update council in closed session on the status of ongoing negotiations with the province and other municipalities related to a local development project.
- **Town of Saugeen Shores (August 2020):** Council was permitted to provide staff in closed session with directions for how to proceed in ongoing lease negotiations for municipal property.
- **City of St. Catharines (February 2019):** Discussion about creating a government relations advisor position at the city did not fit within the exception. While the advisor might eventually have affected the city's negotiations with government, this discussion was not about formulating a detailed course of action with respect to any specific current or future negotiations.

Education or training – s. 239(3.1)

Includes discussions:

- Held solely for the purpose of educating and/or training council members; presenters and trainers should be advised in advance of the permissible

scope of the meeting and their materials vetted to ensure they do not materially advance decision-making

Does not include discussions:

- That materially advance council business or decision-making
- About subjects that are not for the purpose of educating or training

Case examples:

- **Township of Pelee (January 2022):** A gathering that does not materially advance council business or decision-making is not a meeting, but the Ombudsman commended council for going beyond the formal requirements of the Act and maximizing information available to the public by providing notice and recording minutes.
- **Municipality of West Nipissing (October 2019):** A discussion about the relationship between council and staff did not involve any education or training, focusing instead on divisions within council, council member conduct and interpersonal disputes.
- **City of Oshawa (July 2016):** A meeting with representatives of a local utilities company to discuss a potential merger did not fit within the exception because the information presented and the questions asked materially advanced council's business and decision-making.
- **Township of Russell (January 2016):** A closed session to train council on the principles of strategic planning fit within the exception as there was no decision-making or discussion of specific municipal priorities or plans.
- **City of Oshawa (March 2009):** A municipality cannot circumvent the open meeting law by characterizing a subject normally considered in open session as "educational."

Excerpts of relevant legislation

(Current to January 2023)

MUNICIPAL ACT, 2001

The open meeting provisions apply to municipal councils, local boards, and committees of either.

Interpretation

s. 1(1) “local board” means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority; (“conseil local”)

Municipalities and local boards are required to have a procedure by-law relating to meetings. These by-laws must make provision for public notice of meetings.

Procedure by-law

Definitions

238 (1) In this section and in sections 239 to 239.2,

“committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards; (“comité”)

“local board” does not include police services boards or public library boards; (“conseil local”)

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee. (“réunion”)

Procedure by-laws respecting meetings

(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings.

Notice

(2.1) The procedure by-law shall provide for public notice of meetings.

Outside municipality

(3) The procedure by-law may provide that meetings be held and public offices be kept at a place outside the municipality within an adjacent municipality.

Electronic participation

(3.1) The applicable procedure by-law may provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting to the extent and in the manner set out in the by-law.

Same

(3.3) The applicable procedure by-law may provide that,

- (a) a member of a council, of a local board or of a committee of either of them who is participating electronically in a meeting may be counted in determining whether or not a quorum of members is present at any point in time; and
- (b) a member of a council, of a local board or of a committee of either of them can participate electronically in a meeting that is open or closed to the public.

Special meeting, amend procedure by-law re electronic participation

(3.4) A municipality or local board may hold a special meeting to amend an applicable procedure by-law for the purposes of subsection (3.3).

Same, quorum

(3.5) A member participating electronically in a special meeting described in subsection (3.4) may be counted in determining whether or not a quorum of members is present at any time during the meeting.

...

The open meeting provisions set up the general obligations and exceptions.

Meetings open to public

239 (1) Except as provided in this section, all meetings shall be open to the public.

Exceptions

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
- (h) 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;
- (i) 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 significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- (k) 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.

Other criteria

- (3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,
 - (a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or
 - (b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the *Ombudsman Act*, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1).

Educational or training sessions

(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Resolution

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

- (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
- (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

Voting

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote.

Exception

(6) Despite section 244, a meeting may be closed to the public during a vote if,

- (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
- (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or com-

mittee of either of them or persons retained by or under a contract with the municipality or local board.

Minutes

(7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.

Same

(8) The record required by subsection (7) shall be made by,

- (a) the clerk, in the case of a meeting of council; or
- (b) the appropriate officer, in the case of a meeting of a local board or committee.

The following sections relate to closed meeting complaint investigations.

Investigation

239.1 A person may request that an investigation of whether a municipality or local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public be undertaken,

- (a) by an investigator referred to in subsection 239.2 (1); or
- (b) by the Ombudsman appointed under the *Ombudsman Act*, if the municipality has not appointed an investigator referred to in subsection 239.2 (1).

Investigator

239.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investi-

gator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation.

...

Report and recommendations

(10) If, after making an investigation, the investigator is of the opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit.

Publication of reports

(11) The municipality or local board shall ensure that reports received under subsection (10) by the municipality or local board, as the case may be, are made available to the public.

Requirement to pass resolution re report

(12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local board, as the case may be, shall pass a resolution stating how it intends to address the report.

OMBUDSMAN ACT

Specific powers of investigation re municipalities, local boards

14.1 (3) If a person makes a request under clause 239.1 (b) of the *Municipal Act, 2001* or clause 190.1 (1) (b) of the *City of Toronto Act, 2006*, the Ombudsman may, as the case may be, investigate,

- (a) whether a municipality or local board of a municipality has complied with section 239 of the *Municipal Act, 2001* or a procedure by-law under subsection 238 (2) of that Act in respect of a meeting or part of a meeting that was closed to the public; or
- (b) whether the City of Toronto or a local board of the City has complied with section 190 of the *City of Toronto Act, 2006* or a procedure by-law under subsection 189 (2) of that Act in respect of a meeting or part of a meeting that was closed to the public.

...

Report and recommendations

(7) If, after completing an investigation under subsection (3), the Ombudsman is of opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 of the *Municipal Act, 2001* or to a procedure by-law under subsection 238 (2) of that Act or contrary to section 190 of the *City of Toronto Act, 2006* or to a procedure by-law under subsection 189 (2) of that Act, as the case may be, the Ombudsman shall report his or her opinion, and the reasons for it, to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit.

Reports to be public

(8) The municipality or local board shall ensure that reports received under subsection (7) by the municipality or local board, as the case may be, are made available to the public.

Ombudsman may publish report

(9) The Ombudsman may, after making a report under subsection (7), publish the report or otherwise make it available to the public.

Making a complaint

Anyone can complain about a closed municipal meeting. Here's how:

Find out who the investigator is for the municipality by:

- Calling the municipality
- Checking the “**Municipal Closed Meetings: Investigators and Cases**” page on the Ombudsman’s website, or
- Calling our Office at 1-800-263-1830

If the municipality has appointed its own investigator, the Ombudsman does not have jurisdiction to handle the complaint. Our Office will refer such complaints to the municipality or the relevant investigator.

If the Ombudsman is the investigator for the municipality, our Office can take the complaint via:

- Our complaint intake telephone line: 1-800-263-1830, Monday to Friday, 9 a.m. to 4:30 p.m. or TTY: 1-866-411-4211
- The confidential complaint form on our website: www.ombudsman.on.ca
- E-mail: info@ombudsman.on.ca
- Fax: (416) 586-3485
- Mail:
Office of the Ontario Ombudsman
483 Bay Street
10th Floor, South Tower
Toronto, Ontario M5G 2C9

General questions about our process or the open meeting rules are also welcome via our website, email or 1-800 line.



“The democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public, and mandated by law.”

*Hon. Madam Justice Louise Charron,
Supreme Court of Canada*

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