

BY EMAIL

February 1, 2023

Council for the Township of Adjala-Tosorontio
c/o Mayor Scott Anderson
Township of Adjala-Tosorontio
7855 30th Sideroad
Alliston ON L9R 1V1

Dear Members of Council for the Township of Adjala-Tosorontio:

Re: Closed meeting complaint

My Office received a complaint about gatherings held by the newly elected council for the Township of Adjala-Tosorontio (the “Township”) on November 15, 24, and 29, 2022. The complaint alleged that the newly elected council for the Township improperly held closed meetings before the new council members had taken office. The complaint further alleged that public notice was not provided for these meetings.

I am writing to share the outcome of my review of this complaint. For the reasons set out below, I have determined that these three gatherings of the newly elected council did not contravene the open meeting rules in the *Municipal Act, 2001*¹ (the “Act”). At the time of the gatherings, four of the seven council members had not yet taken office. As such, a quorum of what is now the current council was not present, and the gatherings therefore did not meet the definition of a meeting in the Act. As the gatherings were not meetings as defined in the Act, the Act’s open meeting rules did not apply.

¹ 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. 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 Township of Adjala-Tosorontio.

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.

Review

My Office spoke with the Clerk and reviewed relevant portions of the City's procedure by-law, as well as the Act. We also reviewed an agenda outlining the newly elected council's training schedule and slides from a PowerPoint presentation given at the November 29, 2022 gathering.

According to our review, at the time of the gatherings on November 15, 24, and 29, 2022, the newly elected council was comprised of three incumbent council members and four new council members who had not yet taken office. The current council held its inaugural council meeting on November 30, 2022, at which time the new council members took the declaration of office.

We were told that beginning on November 15, 2022, the Township held a series of training workshops for members of the newly elected council.

On November 15, 2022, the Township held a workshop on the Township's departments and initiatives. On November 24, 2022, the Township held workshops concerning the Township's Integrity Commissioner and the *Municipal Freedom of Information and Protection of Privacy Act*. On November 29, 2022, the Township held a workshop on local development.

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The Clerk indicated that these training workshops were not treated as meetings of council since the new council members had not yet taken office and the newly elected council did not materially advance its business or decision-making at these gatherings.

The Clerk indicated that the Township's regular meeting procedures, such as providing public notice, were not followed in the circumstances.

Analysis

Subsection 239(1) of the *Municipal Act, 2001* requires that all meetings of a municipal council, local board, or committee of either be open to the public, subject to prescribed exceptions. Under section 239(3.1) of the Act, a meeting may be closed to the public if it is both (1) held for the purpose of educating or training members of council, and (2) members do not discuss a matter in a way that materially advances the business or decision-making of council.

The definition of meeting in the Act requires that a quorum of council members materially advance the business or decision-making of council.² Subsection 237(1) of the Act and the Township's procedure by-law each state that a majority of the members of a municipal council is necessary to form a quorum, subject to prescribed exceptions. Subsection 232(1) of the Act states that a person shall not take a seat on council until the person takes the declaration of office. My Office has previously found that gatherings of newly elected council members did not violate the Act, as a majority of the council members had not yet taken office and there was therefore no quorum of council present.³

In this case, we were told that members of the newly elected council attended educational workshops on November 15, 24, and 29, 2022, for the purpose of receiving training related to their upcoming council responsibilities. Four of the seven members of the newly elected council had not yet taken the declaration of office, and therefore had not yet taken their seats on council. Accordingly, a quorum of the current council was not present at these education workshops, as required by the definition of a meeting, and the Act's open meeting rules therefore did not apply.

² *Pelee (Township of) (Re)*, 2022 ONOMBUD 2 at paras 30-31, online: <<https://canlii.ca/t/jm1f5>>.

³ Letter from the Ontario Ombudsman to Town of Kearney (17 January 2011), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2011/town-of-kearney>>.

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Conclusion

My review has determined that council for the Township of Adjala-Tosorontio did not contravene the open meeting rules in the *Municipal Act, 2001* when members of the newly elected council attended educational workshops on November 15, 24, and 29, 2022. I would like to thank the Township of Adjala-Tosorontio for its co-operation during my review. The Clerk confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario

cc: Dianne Gould-Brown, Clerk, Township of Adjala-Tosorontio

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