

BY EMAIL

November 8, 2024

Council for the Township of Black River-Matheson
c/o Dave Dymont, Mayor
367 Fourth Avenue, P.O. Box 601
Matheson, ON P0K 1N0

Dear members of Council for the Township of Black River-Matheson:

Re: Closed meeting complaints

My Office received complaints about a special meeting held by council for the Township of Black River-Matheson (the “Township”) on February 20, 2024, and about alleged gatherings of a quorum of councillors held prior to that meeting. That complaint raised concerns that these alleged gatherings were “meetings” of council, held contrary to the open meeting rules in the *Municipal Act, 2001* (the “Act”).¹ None of the complaints we received raised concerns about whether or not the subjects discussed by council *in camera* on February 20, 2024 fit within the exceptions to the open meeting rules.

I am writing to share the outcome of my investigation with the Township. I have determined that during the meeting on February 20, 2024, council held a vote *in camera* that was contrary to the Act because it was not for a procedural matter or a direction to staff, although the subject matter of the vote fit within the exceptions to the open meeting rules. In addition, I have determined that council contravened the Act by failing to describe in its resolution to go into closed session the general nature of all items to be discussed. Finally, my investigation revealed no evidence to substantiate the allegation that a quorum of councillors held informal gatherings contrary to the Act.

I acknowledge the recent difficulties the Township has faced, including the appointment of an interim manager by the Minister of Municipal Affairs and Housing, and the election of a new council. I am hopeful that the findings and best practices shared in this letter will assist

¹ SO 2001, c 25, s 1.

the new Township council in holding accountable and transparent meetings under the Act.

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 Black River-Matheson.

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.

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/have-a-complaint/who-we-oversee.

Our review

On March 19, 2024, my Office notified the Township of our intent to investigate these complaints. We reviewed the open and closed meeting agendas and minutes from the February 20, 2024 meeting, as well as the audio/video recording of the open session. There is no recording of the closed session. We interviewed the current and former members of council who were present at the meeting on February 20, 2024, as well as the former Clerk.

Background

On February 20, 2024, council met at the Vern Miller Memorial Community Centre at 6:00 p.m. for a special council meeting. At 6:05 p.m., council passed a resolution to move into closed session to discuss two agenda items, described as "Security of the Property of the

Municipality and Personal (Identifiable Individual) and Litigation or Potential Litigation Affecting the Municipality re: OHSa Complaints” and “Labour Relations or Employee Negotiations re: CUPE Local 1490.”

While in closed session, council discussed these two topics and three other items that were not described in the resolution to proceed *in camera*. The first of those items involved a council member’s resignation, the second was related to members of staff, and the third item, which was unconnected to the other agenda topics, was related to a member of staff and also involved a recorded vote held during the closed session.

According to the minutes, the meeting adjourned in closed session around 8:00 p.m. as quorum was lost.

Analysis

Resolution to proceed into closed session

The Act requires a municipality to state by resolution the general nature of the matter to be considered at the closed meeting before going into closed session.²

The Ontario Court of Appeal noted that a resolution to go into a closed session 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.³

In this case, the resolution indicated that two items would be discussed in closed session: the *Ontario Health and Safety Act* (OHSa) complaints and the union negotiations. However, the additional items discussed by council while *in camera* were not included in the resolution to go into closed session, contrary to the Act. In future, should council wish to add items to a closed session agenda, it should take care to pass a public resolution in accordance with section 239(4)(a) of the Act prior to holding the closed session discussion.

Vote in closed session

The Act does not allow voting during closed session unless the meeting was permitted to be closed under one of the open meeting exceptions. In addition, the vote must be for a “procedural matter or for giving directions or instructions to officers, employees or agents of

² *Ibid*, s 239(4)(a).

³ *Farber v Kingston (City)*, 2007 ONCA 173 at para 21, online: <<https://canlii.ca/t/1qtz/>>.

the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board.”⁴

In this case, council held a recorded vote during the closed session on a matter related to a staff member. This matter was not included in the resolution to proceed *in camera*, and council did not identify which open meeting exception it was relying on for this discussion. However, my Office considered whether council’s discussion and subsequent vote would come within the exception for labour relations or employee negotiations in section 239(2)(d) of the Act.

The purpose of the exception for labour relations or employee negotiations is to protect discussions relating to the relationship between a municipality and its employees. The phrase “labour relations” is interpreted expansively to include matters involving unionized or non-unionized staff.⁵ In a report to the Township of Tehkummah, my Office found that an *in camera* discussion relating to decisions with respect to identifiable township employees fit within the exception for labour relations or employee negotiations.⁶

In this case, with respect to the matter voted on in closed session, council was discussing its relationship with an identified staff member and therefore the exception for labour relations applied. Nonetheless, although the subject matter of the vote was permitted under the exceptions to the open meeting rules, my investigation determined that council voted to take a direct action, rather than directing staff or legal counsel to carry out this action. This was contrary to the voting requirements in section 239(6) of the Act.

Alleged informal gathering(s) of a quorum of councillors prior to February 20, 2024

Section 238(1) of the Act 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 quorum of members is present, and 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.”

We spoke to members of council about the allegation that informal gatherings had occurred prior to the February 20, 2024 meeting. These councillors told my Office that gatherings or informal meetings of council did not take place. My investigation found no additional evidence that council members contravened the Act’s open meeting provisions by holding informal gatherings.

⁴ *Municipal Act, 2001*, SO 2001, c 25, s 239(6).

⁵ *Niagara Falls (City of) (Re)*, 2022 ONOMBUD 3 at para 35, online: <<https://canlii.ca/t/jn3rj>>.

⁶ *Tehkummah (Township of) (Re)*, 2018 ONOMBUD 3 at para 41, online: <<https://canlii.ca/t/hvmtpt>>.

Conclusion

I appreciate the Township was experiencing unprecedented circumstances at the time of the meeting on February 20, 2024.

In light of the recent by-election, I encourage all newly elected members of council to familiarize themselves with the open meeting rules and be mindful of the requirements in the Act in order to promote openness and transparency. My Office has resources available, including our Open Meeting Guide for Municipalities, which [can be accessed on our website here](#). You can also contact us directly to order copies at info@ombudsman.on.ca.

I would like to thank the Township of Black River-Matheson for its co-operation during my investigation. The Interim Clerk has confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Dubé', written in a cursive style.

Paul Dubé
Ombudsman of Ontario

cc: James Lefebvre, Interim Clerk/Treasurer, Township of Black River-Matheson

Cette lettre est aussi disponible en français