

September 23, 2020

Council for the City of Pickering
One The Esplanade
Pickering, Ontario
Canada L1V 6K7

Sent via email: council@pickering.ca

Dear Council:

Re: Closed meeting complaint

My Office received a complaint about a closed meeting held by council for the City of Pickering on August 10, 2020. The complaint alleged that portions of council's discussion did not fit within the *Municipal Act's* (the Act's) closed meeting exceptions.

I am writing to advise that my review has determined council was entitled to go into closed session on August 10, 2020, to discuss the proposed purchase of real estate and ongoing negotiations with the province, the Region of Durham, and the Town of Ajax.

Closed meeting investigator

As of January 1, 2008, the *Municipal Act* gives citizens the right to request an investigation into whether a municipality or its local boards have complied with the Act in closing a meeting to the public.¹ Municipalities and local boards may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. I am the closed meeting investigator for the City of Pickering.

To assist municipal councils, staff, and citizens, we have developed an online digest of open meeting decisions that contains summaries of the Ombudsman's open meeting cases. This searchable repository was created to provide interested parties with easy access to the Ombudsman's past 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 a matter should or may be discussed in closed session, as well as issues related to open meeting procedure. Summaries of previous Ombudsman decisions can be found in the digest at www.ombudsman.on.ca/digest.

¹ *Municipal Act*, SO 2001, c 25, s 239.1.

Review

My Office reviewed the relevant meeting agenda, open and closed session minutes, and other closed session meeting materials provided by the City. We also reviewed the municipality's procedure by-law and spoke with the Clerk, Deputy Clerk, and City Solicitor.

The complaint we received alleged that council's discussion of two matters on August 10, 2020, did not fit within the closed meeting exception. These matters were described in the agenda as:

- 3.1 Director, Corporate Services & City Solicitor, Confidential Report LEG 07-20 Proposed Land Acquisition, Notion Road Fly-over Project
- 3.2 Verbal update from the Deputy Mayor and Interim Chief Administrative Officer Re: Discussions with the Province of Ontario, Region of Durham and Town of Ajax regarding the MZO for Durham Live

Council cited three closed meeting exceptions from the *Municipal Act* in its resolution to proceed *in camera*. These included the exceptions for the acquisition or disposition of land (s. 239(2)(c)), advice subject to solicitor-client privilege (s. 239(2)(f)), and plans or instructions for negotiations (s. 239(2)(k)). The resolution did not specify which closed meeting exception related to which closed session matter.

However, the Clerk told our Office that the acquisition or disposition of land exception related to agenda item 3.1 (proposed land acquisition) and the ongoing negotiation exception related to agenda item 3.2 (discussions with the province, region, and Town of Ajax). We were told that the advice subject to solicitor-client privilege exception related to a third matter discussed *in camera* that is not part of the complaint we received. While the *Municipal Act* does not require council to specifically indicate which exception it intends to rely on for each matter discussed in closed session, I have encouraged other municipalities to consider this a best practice and encourage the City to adopt this practice to enhance the accountability and transparency of its meetings.

Proposed land acquisition, Notion Road Fly-over Project

According to our discussion with the City, as well as the closed session minutes and materials, once in closed session council discussed information related to a specific piece of land the municipality was considering purchasing. Once council returned to open session, it resolved to purchase the plot of land at a specific price and directed staff to execute an Agreement of Purchase and Sale and take other steps to finalize the sale.

The acquisition or disposition of land exception in section 239(2)(c) of the Act allows council to discuss the sale, lease, or purchase of land within a closed session, with the primary purpose being to protect the municipality's bargaining position in property negotiations.² Our review indicates that council was considering information related to the potential purchase of a specific piece of property and deciding how to proceed. Ultimately, council returned to open session and decided to purchase the land. Accordingly, the discussion was permitted *in camera*.

Discussions with the province of Ontario, Region of Durham and Town of Ajax regarding the MZO for Durham Live

Regarding council's second *in camera* agenda item, our review indicates that staff provided an update about ongoing negotiations with the province, the Region of Durham and the Town of Ajax related to the Durham Live development and the potential issuance of a Ministerial Zoning Order. We were provided with information about the specific topics subject to ongoing negotiation between the parties and the positions of different parties, including the City, regarding those matters.

Section 239(2)(k) of the Act allows municipal councils to discuss "plans and instructions for negotiations". The purpose of this exception is to allow a municipality to protect information that could undermine its bargaining position or give another party an unfair advantage over the municipality during an ongoing negotiation. In order for the exception to apply, the municipality must show that:

1. The *in camera* discussion was about positions, plans, procedures, criteria, or instructions;

² [Letter from Ombudsman of Ontario to Town of Ajax](#) (28 March 2014), online.

2. The positions, plans, procedures, criteria, or instructions are intended to be applied to negotiations;
3. The negotiations are being carried on currently, or will be carried on in future; and
4. The negotiations are being conducted by or on behalf of the municipality.³

My review indicates that on August 10, 2020, council was discussing its position regarding ongoing negotiations with the province, region, and Town of Ajax. Accordingly, this discussion was permissible under section 239(2)(k) of the *Municipal Act*.

I would like to thank the City for its co-operation during my review. The Mayor confirmed that this letter would be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé
Ontario Ombudsman

cc: Clerk Susan Cassel, scassel@pickering.ca

³ *St. Catharines (City of) (Re)*, 2019 ONOMBUD 1, <http://canlii.ca/t/hxrk5>, at paras 30-31.