



Ombudsman Report

**Investigation into meetings held by council
for the Town of Amherstburg in 2022 and 2023
and a gathering of the Town's
Accessibility Advisory Committee in 2022**

**Paul Dubé
Ombudsman of Ontario**

April 2024

Complaint

- 1 My Office received a complaint regarding meetings held by council for the Town of Amherstburg (the “Town”) on August 8, 2022, November 29, 2022, November 30, 2022, February 13, 2023, February 14, 2023, and March 27, 2023, as well as a gathering of members of the Town’s Accessibility Advisory Committee (the “Committee”) in September 2022. The complaint alleged that the Town contravened the open meeting rules in the *Municipal Act, 2001* (the “Act”)¹ on these occasions.
- 2 Specifically, the complaint alleged that council failed to provide sufficient information about the topic(s) of discussion in resolutions to proceed into closed session on August 8, 2022, February 13, 2023, and March 27, 2023.
- 3 The complaint also alleged that a gathering of members of the Committee in September 2022 was a meeting that did not comply with the open meeting rules in the Act.
- 4 The complaint further alleged that council held meetings on November 29 and 30, 2022, which were not livestreamed and were not open to the public.
- 5 Finally, the complaint alleged that council did not provide public notice of its February 14, 2023 meeting.
- 6 The complaint initially included additional allegations about several other issues and meetings of council. My Office conducted a preliminary review of all the issues raised in the complaint. Based on our review of the relevant documents and evidence, we determined that only the allegations outlined above warranted a full investigation.
- 7 For the reasons set out below, my investigation determined that council contravened section 239(4)(a) of the Act on August 8, 2022, February 13, 2023, and March 27, 2023, by failing to provide sufficient information about some of the topics of discussion in its resolutions to proceed into closed session.
- 8 I have also determined that a gathering of members of the Accessibility Advisory Committee on September 8, 2022 was not a meeting subject to the open meeting rules. I have further determined that council’s meetings on November 29 and 30, 2022, were not closed to the public contrary to the open meeting rules, although I was unable to determine whether the meetings were livestreamed. Finally, I have determined that the Town did not contravene the open meeting rules on February 14, 2023.

¹ SO 2001, c 25.

Ombudsman jurisdiction

- 9 Under the Act, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 10 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 11 The Ombudsman is the closed meeting investigator for the Town of Amherstburg.
- 12 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable governing procedures have been observed.
- 13 Our 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.
- 14 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.

Investigative process

- 15 My Office notified the Town of our intent to investigate this complaint on November 24, 2023. After we obtained additional information regarding the date of the Committee’s gathering, on February 7, 2024, my Office provided updated notice of our investigation to the Town.
- 16 My Office spoke with the Municipal Clerk/Risk Manager (the “Clerk”) and the Deputy Clerk regarding the allegations about the council meetings and the September 8, 2022 gathering of Committee members. We also interviewed the Committee Chair, the current Mayor, and three Committee members who were present at the gathering on September 8, 2022 and continue to serve on the Committee.
- 17 We reviewed the Town’s former procedural by-law², which was in place at the time of the meetings, and the open and closed meeting materials for all six council meetings. These included agendas, minutes, reports, and other materials before council, as well as meeting recordings, where relevant.
- 18 We also reviewed the Town’s former terms of reference for local boards and committees, correspondence and a photograph related to the September 8, 2022 gathering of Committee members, as well as past council and Committee agendas, minutes, reports, and a subsequent meeting recording related to the September 8, 2022 gathering and the Town’s new transit service.
- 19 My Office received full co-operation with our documentation and information requests, and I would like to thank Town staff for their assistance throughout our review and investigation.

August 8, 2022 council meeting

- 20 On August 8, 2022, council met in council chambers. At 4:08 p.m., council resolved to move into closed session to discuss three items. The complaint alleged that the parts of the resolution related to a “Labour Relations/Employee Negotiations Matter” did not provide sufficient information about the matters to be discussed in closed session.
- 21 The relevant portion of the resolution described the item as:

² Town of Amherstburg, by-law No 2014-91, *By-law to govern the proceedings of Council, the conduct of its members and the calling of meetings* (21 January 2015) [Procedural By-law]. This by-law was repealed and replaced on August 14, 2023.

Item A - Labour Relations/Employee Negotiations Matter -
Section 239(2)(d)
- Labour relations or employee negotiations.

- 22 Council returned to open session at 5:31 p.m. and reported that a consultant presented a 2022 salary market review to council and answered questions.

Analysis

- 23 Before moving into a closed session, section 239(4)(a) of the Act requires a council, local board, or committee to state by resolution in open session that a closed meeting will be held, and the general nature of the matter to be considered at the closed meeting.
- 24 The Court of Appeal for Ontario stated in *Farber v. Kingston (City)* 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.³ This means that municipalities are required to add a “level of informative detail” to the resolution to close a session to the public,⁴ and I have previously recommended that councils provide more substantive detail in resolutions authorizing closed sessions.⁵
- 25 In this case, council merely identified the open meeting exception it was relying on. Based on my review, I find council could have provided additional information without undermining its reason for going into closed session. For example, council could have identified that it was discussing a management staff salary review.
- 26 Accordingly, council for the Town of Amherstburg contravened section 239(4)(a) of the Act by failing to provide sufficient information about the general nature of the matter to be considered.

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

⁴ *Brockville (City of)*, 2016 ONOMBUD 12 at para 45, online: <<https://canlii.ca/t/h2ssr/>>.

⁵ *Emo (Township of) (Re)*, 2020 ONOMBUD 6 at para 18, online: <<https://canlii.ca/t/jb1g6/>>.

September 8, 2022 Accessibility Advisory Committee gathering

Background

- 27 Under the *Accessibility for Ontarians with Disabilities Act, 2005*, the Town is required to establish an accessibility advisory committee.⁶ As of September 2022, the Town's Accessibility Advisory Committee was composed of one councillor and five members of the public.
- 28 In May 2022, council for the Town of Amherstburg approved a two-year pilot project with Transit Windsor to provide bus service between the Town and the City of Windsor. The new bus route began operation on September 6, 2022, using accessible buses.
- 29 My Office learned that prior to September 2022, some members of the Committee had never seen or used an accessible public transit bus before. The Chair, who was already familiar with accessible buses, had suggested that the Town reach out to Transit Windsor to request a demonstration for the Committee members of the features of an accessible bus. The Clerk, in his former role as staff liaison for the Committee, arranged for this demonstration to take place at Transit Windsor's operations centre.
- 30 The complaint alleged that the gathering happened in September 2022. During the course of our investigation, we determined that the gathering took place on September 8, 2022.

September 8, 2022 gathering

- 31 On September 8, 2022, the Committee Chair, five Committee members, the current Clerk, and the current Mayor⁷ met at the Transit Windsor operations centre in Windsor at 10:30 a.m. The gathering was not treated as a meeting; no public notice was provided and no minutes were taken.
- 32 A transit official pulled a bus into the parking lot to show to those in attendance. We were told that Committee members looked around the bus, and asked the transit official questions about how the bus worked, including about how bicycles could be transported.

⁶ SO 2005, c 11, s 29.

⁷ In September 2022, the current Mayor was then a councillor for the Town. He was present for the bus demonstration as he drove his spouse, the Committee Chair, to the transit facility. The Mayor did not attend in an official capacity.

- 33 The transit official then offered to demonstrate how the bus accommodated people with mobility devices. The transit official showed how the bus kneeled and deployed its ramp. Those present then proceeded to board the bus, where the transit official demonstrated the features of the bus, including how mobility device users could strap themselves into the vehicle and which reinforcements mobility devices needed in order to be safely secured when the bus was in motion.
- 34 Inside the immobile vehicle, Committee members asked more questions about using the bus and the transit service. The transit official answered these questions, and explained how transit staff offer assistance to customers with accessibility needs. This gathering was characterized to my Office as an informal question-and-answer period, where members could ask the transit official questions about how the bus, its features, and the bus service worked.
- 35 After finishing the question period, a group photograph was taken and everyone departed. A calendar invite circulated by the Clerk indicated the tour was scheduled to take up to an hour. While estimates of the exact length of the gathering varied, I have determined the bus demonstration took between half an hour to an hour.
- 36 Those we interviewed explained that the purpose of this gathering was to help Committee members who were not familiar with accessible buses to better understand how the new transit service worked. We were told that the Committee did not observe its normal meeting procedures because the bus tour was not considered a meeting.
- 37 We were told that during the demonstration, Committee members asked the transit official questions, and did not discuss or debate any proposals or vote on any matters. Our investigation determined that the Town's transit service plan had already been approved, and there was no specific proposal before the Committee or council related to transit services.
- 38 The Clerk told us that the Committee had an item in its September 22, 2022 regular meeting agenda for members to discuss any business arising from the bus tour in open session. The recording and minutes indicate that the Committee did not discuss any proposals related to accessible buses or transit services at the following September 22, 2022 Committee meeting.

Analysis

- 39 Section 238(1) of the *Municipal Act, 2001* defines a "committee" as being "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.” Although the Committee did not meet that threshold, as only one of six Committee members was a member of council, my Office was told that the Town considers the Committee to be subject to the Act’s open meeting rules. I have previously noted that a body may be subject to the open meeting requirements if a municipality considers it to be subject to them.⁸ Accordingly, my Office considered whether the bus tour on September 8, 2022, was a “meeting” for the purposes of the Act.

- 40 Section 238(1) of the Act sets out a two-part test to determine whether a gathering meets the definition of a “meeting” under the Act. A regular, special or other meeting of a council, local board, or a committee is a “meeting” where: (i) a quorum of members is present, and (ii) members discuss or deal with a matter in a way that materially advances their business or decision-making.
- 41 Five out of six Committee members were present at the transit facility on September 8, 2022. As there was a quorum of the Committee, the first requirement of the test is satisfied.
- 42 For the second requirement, it is necessary to determine whether the Committee materially advanced its business or decision-making on September 8, 2022.
- 43 In a 2018 report to the Village of Casselman, I stated:

“[M]aterially advances” involves considering the extent to which the discussions at issue moved forward the business of the municipality, based on factual indicators.

Discussions, debates or decisions that are intended to lead to specific outcomes or to persuade decision-makers one way or another are likely to “materially advance” the business or decision-making of a council, committee or local board. Mere receipt or exchange of information is unlikely to “materially advance” business or decision-making, as long as there is no attempt to discuss or debate that information as it relates to a specific matter that is or will be before a council, committee or local board.⁹

⁸ *Lucan Biddulph (Township of) (Re)*, 2021 ONOMBUD 17 at para 22, online: <<https://canlii.ca/t/jjq6h>>.

⁹ *Casselman (Village of) (Re)*, 2018 ONOMBUD 11 at paras 30–31 [*Casselman* 2018], online: <<https://canlii.ca/t/hvmtk>>.

- 44** I have also previously found that a body is likely to materially advance its business or decision-making when it votes, reaches an agreement, provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy.¹⁰
- 45** By contrast, the following activities do not or are unlikely to materially advance council business or decision-making:
- Discussing procedural options;¹¹
 - Receiving updates on recent activities or communication of information;¹² and
 - Receiving information that may assist council in better understanding the business of the municipality and/or acquiring skills.¹³
- 46** In the 2018 report to the Village of Casselman, I considered whether two information sessions attended by a quorum of council materially advanced its business or decision-making and constituted “meetings”. In the first session, a consultant provided information about a study council had commissioned the year prior related to development charges in advance of council undertaking the statutory development charge by-law process. The consultant then answered questions about the study’s calculations and the by-law approval process. In a second session, a developer explained the timelines of an already approved development.¹⁴
- 47** I determined that those sessions did not materially advance council business or decision-making, and were informational in nature. I observed that for the first session, the study had been previously commissioned, the council members did not have any input into its content or discuss options related to it, and the process to create a new development charges by-law had not yet begun. For the second session, the decision on the development had already been made, and the members present did not discuss or debate the project, and did not make any decisions about the project.¹⁵
- 48** In a recent report to the City of London, I reviewed a gathering where a quorum of members of the City’s Community and Protective Services Committee toured the facility of a non-profit organization, which had a funding request before the committee for a facility retrofit. Later that afternoon, the Committee

¹⁰ *Ibid* at para 41.

¹¹ *Saugeen Shores (Town of) (Re)*, 2020 ONOMBUD 3 at paras 44, 49–50, online: <<https://canlii.ca/t/j93c3>>.

¹² *Casselman* 2018, *supra* note 9 at para 40.

¹³ *Casselman (Village of) (Re)*, 2015 ONOMBUD 14 at para 54, online: <<https://canlii.ca/t/gtp61>>.

¹⁴ *Casselman* 2018, *supra* note 9 at paras 17–25.

¹⁵ *Ibid* at paras 44–47.

met and approved funding for the organization. I found that the tour materially advanced the committee's business and decision-making, as the discussions during the gathering directly related to business or decision-making that was set to be discussed by the committee later that day.¹⁶

- 49** On September 8, 2022, the Committee received information from a transit official about how the accessible bus functioned. The Committee did not discuss, debate, or make decisions on any specific proposals; rather, Committee members asked questions to better understand how the bus and the transit service worked. The Committee did not discuss or debate any proposals, and did not vote or come to any consensuses.
- 50** My Office was told that council had already made the decision to implement the transit service, and that the Committee had not been asked to advise council on any particular proposal. This explanation is corroborated by previous council minutes and the September 22, 2022 Committee meeting recording and minutes, which indicate that there was no follow up discussion about providing advice to council about matters arising from the bus tour.
- 51** In the City of London case, the information received during a tour of a local non-profit facility squarely related to business or decision-making that was set to come back to that committee later the same day. However, in this case, the tour at the transit facility was not connected to specific Committee business or decision-making, as there was no proposal related to transit services before the Committee. Those we spoke to indicated the intent of the tour was to better understand the accessibility features of the buses that had already begun servicing Amherstburg. Additionally, in this case, Town staff organized the tour, and the Clerk told my Office that he had reminded members about not advancing Committee business while on the tour, and that any discussion should be reserved to the following Committee meeting. The Committee meeting agenda also included an item for a public discussion of any general Committee business in case any arose from the bus demonstration.
- 52** Accordingly, the Committee did not materially advance its business or decision-making, and the September 8, 2022 gathering of Committee members at the transit facility was not a meeting of the Committee subject to the open meeting rules.

¹⁶ *London (City of) (Re)*, 2024 ONOMBUD 2 at para 43, online: <<https://canlii.ca/t/k27t7>>.

November 29 and 30, 2022 council meetings

- 53** On November 29 and 30, 2022, the newly inaugurated council held special council meetings to receive training on various municipal operations. The complaint alleged that these meetings were not livestreamed, and were not open to the public.
- 54** The council calendar and the agendas listed the Municipal Building's address as the location of the meetings, with the agendas further specifying that the meetings would be in council chambers. Neither the calendar nor the agendas referred to a livestream or electronic location for the meetings.
- 55** However, the Town's "Agendas and Minutes" webpage featured and continues to feature a button that generally invites members of the public to watch a livestream of council and committee meetings.
- 56** The Clerk told my Office that these meetings occurred in council chambers and that the public was able to attend in person. The Clerk said he believed that these meetings were livestreamed, and that he did not recall any technical issues.
- 57** Although the Town typically recorded council meetings at that time, the Town did not have any recordings available for these two meetings, and the Clerk did not have an explanation for their absence. The Town's then-procedural by-law did not contain a requirement to livestream meetings.

Analysis

- 58** Section 238(2.1) of the Act requires that a municipality's procedural by-law provide for public notice of meetings. The Act requires that all meetings be open to the public, subject to the open meeting exceptions.
- 59** The Town's former procedural by-law required the Clerk to give at least 48 hours' notice of all special council meetings, and required that the Clerk post an agenda on the home page of the Town's website for each meeting. The agenda served as notice to the public of the meeting.¹⁷
- 60** Based on my Office's review of the Town's calendar, agendas, and former procedural by-law, I find that the Town provided notice for the November 29 and 30, 2022 special council meetings. The notices specified that these would be in-person meetings held in council chambers in the Municipal Building. My

¹⁷ Procedural By-law, *supra* note 2, ss 4.3–4.4.

Office was told that the public was able to observe these meetings in person, and we were not provided with any evidence to the contrary.

- 61 Accordingly, I have determined that these meetings were not improperly closed to the public contrary to section 239(1) of the Act. However, the Town’s website could give the impression that all meetings are livestreamed due to wording on the Town’s “Agendas and Minutes” webpage. We received conflicting information about whether or not the November 29 and 30, 2022 council meetings were livestreamed and the Town did not have any records to confirm the meetings were livestreamed.
- 62 To help the public determine if they wish to attend a meeting in person, as a best practice, the Town’s website and public notices should clearly state whether particular meetings will be livestreamed, even when the public is permitted to attend the meeting in person. During the course of my investigation, the Clerk noted that the software used to generate meeting agendas automatically populated certain information, such as location information, from templates originally created during the COVID-19 pandemic when meetings were only held electronically. The Clerk told us that the Town had already identified the issue, and was reviewing the software’s settings to resolve it.
- 63 The Town also told my Office that it has implemented a back-up livestreaming option to ensure all council meetings are livestreamed going forward. The Town also indicated that it has implemented the best practice of recording all council meetings, as suggested by my Office in a May 2023 letter.¹⁸ I commend the Town for adopting these best practices and taking steps to enhance the accessibility and transparency of its meetings.

February 13, 2023 council meeting

- 64 On February 13, 2023, council met in council chambers. At 5:09 p.m., council resolved to move into closed session to discuss three items. The complaint alleged that the resolution did not provide sufficient information about a matter, “Information Regarding a Proposed Disposition of Land”, that was be discussed in closed session.
- 65 The relevant portion of the resolution described the item as:

Item A – Information Regarding a Proposed Disposition of Land

¹⁸ Letter from the Ontario Ombudsman to the Town of Amherstburg (17 May 2023), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2023/town-of-amherstburg>>.

- Section 239(2)(c) – a proposed or pending acquisition or disposition of land by the municipality.

- 66** In closed session, council discussed leasing space on a municipal infrastructure asset to a local broadcasting corporation. After returning to open session, council reported out from the closed session and passed a resolution to authorize entering into a licence of occupation agreement with the corporation.
- 67** The Clerk informed my Office that at the time of the meeting, the Town was in sensitive negotiations with other leaseholders regarding the same municipal infrastructure asset. We were told that the nature and location of the infrastructure asset and the Town’s geography prevented further information from being provided in the resolution without potentially affecting the Town’s ongoing negotiations.
- 68** However, during a previous open meeting, council had received and discussed a staff report related to this matter. The previous discussion, report, and resulting resolution identified the broadcasting corporation, the municipal infrastructure asset, and the potential for negotiating an agreement that would return to council.

Analysis

- 69** As noted above, the Act requires council to provide a level of informative detail in its resolution to go into closed session in a way that maximizes the information available to the public without undermining the reason for holding the discussion in closed session.
- 70** In this case, council only identified that it would be discussing information regarding a proposed disposition of land.
- 71** My Office has previously noted that when council is relying on the “acquisition or disposition of land” exception, there is no general requirement to provide the public with the address of the property to be discussed, and that doing so may undermine the reason for having the discussion in private.¹⁹ However, situations where additional information cannot be provided are a rarity.²⁰

¹⁹ Letter from the Ontario Ombudsman to Norfolk County (13 December 2022), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2022/norfolk-county>>.

²⁰ *Casselman (Municipality of) (Re)*, 2022 ONOMBUD 13 at para 22 [*Casselman* 2022], online: <<https://canlii.ca/t/jrnx5>>.

- 72 In this case, council had discussed this lease proposal and related report in a previous open session. This same information could have been provided in the resolution without undermining the reason for going into closed session. For example, council could have identified that it was going to discuss a matter related to the specific broadcasting corporation or to leasing space on the particular municipal infrastructure asset.
- 73 Accordingly, council's resolution did not meet the requirements of section 239(4)(a) of the Act.

February 14, 2023 council meeting

- 74 On February 14, 2023, council met in council chambers at 1:00 p.m. An external presenter provided council with training on municipal asset management.
- 75 The Clerk told my Office that the training had not originally been planned as a formal meeting, but on February 14, staff took the initiative to recommend that council treat the training session as a meeting of council, consistent with my Office's best practices for openness and transparency of education sessions.²¹ The Town also recorded the closed session.
- 76 The Clerk told my Office that public notice had not been issued prior to the meeting, but that the Town informed the public of the special closed meeting during or after the meeting itself, in accordance with its then-in-force procedural by-law. The Town's online meeting calendar now reflects that council met on February 14, 2023.
- 77 We were told that council waived notice for this special meeting, as permitted under its former procedural by-law, and the doors to the council chambers were open at the start of the meeting in the event that members of the public were in the area.
- 78 At approximately 1:02 p.m., council passed the following resolution:

That Council move into a closed session of Council in accordance with section 239(3.1), a meeting held for the purpose of educating or training of Members.

Item A - Asset Management Training Session

²¹ *Emo (Township of) (Re)*, 2023 ONOMBUD 5 at para 30, online: <<https://canlii.ca/t/jvj4d>> [*Emo 2023*].

- 79** In closed session, council received risk management training on municipal infrastructure asset management. The presenter discussed how to think about proactively providing funding to build and maintain infrastructure assets and services, how to communicate the importance of this type of funding while addressing concerns about the cost of providing such services, and how asset management planning can help address these challenges.
- 80** The presentation did not focus on specific Town infrastructure. The presenter spoke for the majority of the session, with occasional general questions or comments from council members.
- 81** Following the presentation, council adjourned at 3:53 p.m. At its next meeting, council waived confidentiality on the closed session recording, which the Town has since posted publicly online.

Analysis

- 82** As stated above, the open meeting rules in the Act only apply to “meetings” of a council, a local board, or a committee, where a quorum is present, and the body materially advances its business or decision-making. A quorum of council members was present on February 14, 2023, satisfying the first requirement of the two-part test.
- 83** It is therefore necessary to determine whether council materially advanced its business or decision-making. As noted above, discussions, debates, or decisions that are intended to lead to specific outcomes or to persuade decision-makers one way or another are likely to “materially advance” council business or decision-making. However, mere receipt or exchange of information is unlikely to materially advance council business or decision-making, as long as there is no attempt to discuss or debate that information as it relates to a specific matter that is or will be before council.²²
- 84** In a 2023 report to the Township of Emo, my Office reviewed a complaint about a gathering of members of council where they received training on the Township’s new budget format.²³
- 85** In that case, the Township of Emo did not provide notice of the training session, but did take open session minutes and passed a resolution to move into closed session under the “education and training” exception at section 239(3.1) of the Act. My Office determined that the Township’s discussion fit within the “education and training” exception, as council did not materially

²² *Casselman 2022, supra note 20; Pelee (Township of) (Re)*, 2022 ONOMBUD 2 at para 23, online: <<https://canlii.ca/t/jm1f5>>.

²³ *Emo 2023, supra note 21* at paras 28–31.

advance its business and decision-making, and the gathering was not a meeting under the Act.

- 86 Accordingly, while the Township of Emo was not required to provide public notice of the training session, my Office suggested that the Township provide notice and keep minutes as a best practice.
- 87 In this case, on February 14, 2023, in the Town of Amherstburg, an external presenter presented a general slideshow to Town council about municipal infrastructure asset planning, the challenges and risks related to funding infrastructure and services, and the challenges with communicating the need to fund infrastructure.
- 88 Council members did not discuss or debate specific matters that had been before council or would be going to council. Council therefore did not materially advance its business or decision-making, and the training session did not satisfy the second requirement in the definition of “meeting”.
- 89 Accordingly, council’s training session on February 14, 2023, was not a “meeting” and the Act’s requirements did not apply.
- 90 Although the training session was not a meeting, the Town took some steps to improve the transparency of the gathering. I commend the Town’s decision to pass a resolution to proceed into closed session, keep minutes, retroactively provide an agenda, and release a public recording of the training. These steps went beyond the formal requirements of the Act and assisted my Office’s review.
- 91 As a best practice, the Town should consider formalizing the practice of treating training sessions as meetings subject to the open meeting rules, and should provide public notice and publish agendas in advance of future training sessions.

March 27, 2023 council meeting

- 92 On March 27, 2023, council met in council chambers at 4:00 p.m. and immediately resolved to move into closed session to discuss four items.
- 93 The complaint alleged that the resolution did not provide sufficient information about all four matters to be discussed in closed session, which were described as follows:

Item A - Update on Matter Before Administrative Tribunal affecting the Municipality

- Section 239(2)(e) - Litigation or potential litigations, including matters before administrative tribunals, affecting the municipality or local board; and,
- Section 239(2)(f) - Advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

Item B - Proposed or Pending Disposition of Land

- Section 239(2)(c) - a proposed or pending acquisition or disposition of land by the municipality or local board

Item C - Striking Committee Information

- Section 239(2)(b) - Personal matters about an identifiable individual, including municipal or local board employees.

Item D - Proposed or Pending Acquisition of Land by the Municipality

- Section 239(2)(c) - a proposed or pending acquisition or disposition of land by the municipality or local board

Analysis

Item A – “Update on Matter Before Administrative Tribunal affecting the Municipality”

- 94** Regarding the “Update on Matter Before Administrative Tribunal affecting the Municipality” item, council considered potential courses of action related to a specific planning matter before the Ontario Land Tribunal, and received legal advice from counsel.
- 95** The Clerk told us that the Town had been in the process of negotiating a settlement of the matter, and noted that by naming the particular tribunal, the matter might have been identifiable, and the negotiations could have been affected.
- 96** As the fact of the tribunal proceeding was public knowledge, and council had previously considered the particular planning matter in open session, I find that council could have provided additional information for this portion of its resolution without undermining its reason for going into closed session. For example, council could have identified that it was going to discuss a planning matter or a matter before the Ontario Land Tribunal without undermining its reason for going into closed session.

- 97** This portion of the resolution failed to sufficiently describe the matter to be discussed in closed session, and contravened section 239(4)(a) of the Act.

Item B – “Proposed or Pending Disposition of Land”

- 98** Regarding the “Proposed or Pending Disposition of Land” item, council discussed whether to sell certain rights-of-way and alleys to a specific purchaser. The Clerk explained that identifying the specific land or location could have affected the purchaser’s business position with respect to other related transactions.
- 99** As stated above, there is no general requirement to identify the property being discussed under the “acquisition and disposition of land” exception. While some municipalities may refer to neighbourhood areas or wards in which properties are located, the Town advised my Office that its size and political geography did not offer helpful geographic descriptors.
- 100** However, the Town’s concerns about the negotiations had to be balanced with the Town’s obligations under the Act. Accordingly, I find that council could have provided additional information for this portion of its resolution without undermining its reason for going into closed session. For example, council could have identified that it was going to discuss the proposed sale of Town rights-of-way and alleys in closed session.
- 101** This portion of the resolution failed to sufficiently describe the matter to be discussed in closed session, and contravened section 239(4)(a) of the Act.

Item C – “Striking Committee Information”

- 102** Regarding the “Striking Committee Information” item, council discussed individuals under consideration for appointment to various Town committees in closed session. This portion of the resolution identified both the exception council relied on and provided a general description of the matter to be discussed in closed session.
- 103** This portion of the resolution sufficiently described the matter to be discussed in closed session and met the requirements of section 239(4)(a) of the Act.

Item D – “Proposed or Pending Acquisition of Land by the Municipality”

- 104** Regarding the “Proposed or Pending Acquisition of Land by the Municipality” item, council discussed whether to purchase a surplus site owned by a public

sector organization. Legislation required the organization to offer the site to other public sector bodies before disposing of it otherwise.

- 105 During a previous open meeting, council had directed staff to express interest in the property. The Town explained that identifying the property on March 27, 2023, could have revealed the Town's interest in the site, potentially affecting an offer price.
- 106 As council had previously discussed the site and council's potential interest in acquiring it in open session, I find that council could have provided additional information for this portion of its resolution without undermining its reason for going into closed session. For example, council could have identified that it was considering an acquisition of surplus land from the specific public sector organization, or, in this particular case, council could have identified it was considering the specific property in question.
- 107 This portion of the resolution failed to sufficiently describe the matter to be discussed in closed session, and contravened section 239(4)(a) of the Act.

Opinion

- 108 Council for the Town of Amherstburg contravened section 239(4)(a) of the *Municipal Act, 2001* on August 8, 2022, February 13, 2023, and March 27, 2023, by failing to provide sufficient information about some general topics of discussion in its resolutions to proceed into closed session.
- 109 My review also found that the Town did not contravene the Act on September 8, 2022, as the Accessibility Advisory Committee's gathering at the transit facility did not materially advance the Committee's business or decision-making, and was not a meeting subject to the open meeting rules.
- 110 Similarly, council did not contravene the Act on November 29 and 30, 2022, as the public notice identified an in-person meeting location and the public was able to attend in person. Finally, council did not contravene the Act on February 14, 2023, as its training session did not come within the definition of meeting, and was therefore not subject to the open meeting rules.

Recommendations

- 111 I make the following recommendations to assist the Town of Amherstburg in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

All members of council for the Town of Amherstburg should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001*.

Recommendation 2

Council for the Town of Amherstburg should ensure that all resolutions to proceed *in camera* 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.

Recommendation 3

As a best practice, council for the Town of Amherstburg should ensure that the Town's website and public notices clearly state whether particular meetings will be livestreamed, even when the public is able to attend the meeting in person.

Recommendation 4

As a best practice, council for the Town of Amherstburg should consider formalizing the practice of treating training sessions as meetings subject to the open meeting rules, and should consider providing public notice and published agendas in advance of future training sessions, and keeping minutes during training sessions.

Report

- 112 Council for the Town of Amherstburg was given the opportunity to review a preliminary version of this report and provide comments to my Office. No comments were received.
- 113 This report will be published on my Office's website, and should also be made public by the Town of Amherstburg. In accordance with section 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario