



Ombudsman Report

**Investigation into a complaint
about closed meetings held
by the City of Elliot Lake
on January 12 and January 30, 2023**

**Paul Dubé
Ombudsman of Ontario**

February 2024

Complaint

- 1 My Office received a complaint that council for the City of Elliot Lake (the “City”) held meetings on January 12 and 30, 2023 that did not fit within the closed meeting exceptions in the *Municipal Act, 2001*¹ (the “Act”). The complaint alleged that three of the items on council’s agendas for the closed sessions did not fit within the exceptions to the open meeting rules: “Update from City Solicitor” on January 12, and “management organizational chart and salary grid” and “Proposals for 225 Hwy 108 – updates” on January 30.
- 2 My investigation determined that the City of Elliot Lake met properly in closed session on January 12, as well as during two of its *in camera* discussions on January 30. However, it contravened the open meeting rules on January 30, when council discussed the City’s organizational chart in closed session.

Ombudsman jurisdiction

- 3 Under the *Municipal Act*, all meetings of a council, local board, and committee of either must be open to the public, unless they fall within prescribed exceptions.
- 4 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.
- 5 The Ombudsman is the closed meeting investigator for the City of Elliot Lake.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality’s governing procedures have been observed.
- 7 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

¹ SO 2001, c 25.

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.

- 8 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 is mandated to review 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: <https://www.ombudsman.on.ca/have-a-complaint/who-we-oversee>.

Investigative process

- 9 On June 21, 2023 we advised the City of our intent to investigate this complaint.
- 10 We reviewed relevant portions of the City's by-laws, the records from the January 12 and January 30 meetings, and the *Municipal Act*. Members of my Office interviewed members of council and the Clerk.
- 11 My Office received full co-operation in this matter.

January 12, 2023 meeting

- 12 Council held a special meeting on January 12, 2023. The meeting minutes record that council passed a resolution to proceed into closed session to discuss an update from the City Solicitor under the exception for advice subject to solicitor-client privilege found in section 239(2)(f) of the Act.
- 13 The Clerk told my Office that, while *in camera*, the City Solicitor updated council on the Superior Court's decision in *City of Elliot Lake (Integrity Commissioner) v. Patrie*.² The City Solicitor provided legal advice to council and sought council's instructions with respect to the matter.

² *City of Elliot Lake (Integrity Commissioner) v. Patrie*, 2023 ONSC 223.

- 14 After returning to open session, council passed the following resolution declaring the Mayor's seat vacant:

Whereas subsection 262(1) of the *Municipal Act, 2001* states "If the office of a member of a council becomes vacant under section 259, the council shall at its next meeting declare the office to be vacant".

Therefore be it resolved that council declares the seat of Head of Council vacant as of Thursday, January 12, 2023 pursuant to the decision of Justice Rasiah in *Elliot Lake (Integrity Commissioner) v. Patrie* dated January 9, 2023.

January 30, 2023 meeting

- 15 Council held a special meeting on January 30, 2023. The meeting minutes record that council proceeded into closed session to discuss four items, including two items described as "management organizational chart and salary grid" under the exception for personal matters in section 239(2)(b) and "proposals for 225 Hwy 108 – updates" under the exception for acquisition or disposition of land in section 239(2)(c).

"Management organizational chart and salary grid"

- 16 The closed session minutes record that the discussion about the organizational chart and salary grid took place in two parts. During the first part of the discussion, staff provided council with information about the City's organizational chart, which included information about senior staff and their titles. Council members and staff present at the meeting told my Office that the purpose of the discussion was to provide additional details about the operation of the municipal administration, to assist with future budget discussions. Salary ranges for management positions were also provided to council. We were told that staff names were included in the organizational chart, and the discussion referenced basic professional information about employees, such as their roles and responsibilities.
- 17 During the second part of the discussion, all staff members except the Chief Administrative Officer (CAO) left the meeting. Members of my Office were told that the CAO provided council with options to reorganize certain municipal departments and that the discussion involved information about identifiable employees, including leaves of absence, performance reviews, and working relationships.

“Proposals for 225 Hwy 108 – updates”

- 18 While in camera on January 30, council received an update from staff about the sale of land located at 225 Highway 108. My Office was told that the land is owned by the City and was the site of a former civic centre which experienced a roof collapse in 2019. Since the collapse, the City has explored options to sell part of the land for development.
- 19 The Clerk told my Office that council discussed two proposals from potential land purchasers, as well as financial information related to a geotechnical study of the land. The closed session minutes record that council provided direction to staff with respect to the proposals.

Analysis

Applicability of the exception for advice subject to solicitor-client privilege

- 20 Council cited section 239(2)(f), the “advice subject to solicitor-client privilege” exception, on January 12, 2023 when it moved into closed session to discuss an update from the City Solicitor.
- 21 A meeting or part of a meeting may be closed to the public if the discussion includes communications between the municipality and its solicitor in seeking or receiving legal advice intended to be confidential.³ The purpose of this exception is to ensure that municipal officials can speak freely about legal advice without fear of disclosure.
- 22 The City’s Solicitor was present during the closed session and provided legal advice to council regarding a recent decision of the Superior Court. Council discussed the legal advice and provided instructions to the Solicitor. Council’s report after returning to open session reflects the instructions provided to the Solicitor.
- 23 Accordingly, the “advice subject to solicitor-client privilege” exception applied to the discussion.

³ Letter from the Ontario Ombudsman to the Township of Ryerson (8 November 2013), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2013/township-of-ryerson-en>>; Letter from the Ontario Ombudsman to the Township of Adelaide Metcalfe (23 May 2012), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2012/township-of-adelaide-metcalfe>>.

Applicability of the exception for acquisition or disposition of land

- 24** Council cited the “acquisition or disposition of land” exception when it moved *in camera* to discuss updates from staff on the proposed sale of municipal land located at 225 Highway 108 on January 30, 2023.
- 25** The purpose of the exception for the acquisition or disposition of land is to protect a municipality’s bargaining position or negotiation strategy during the process of buying or selling municipal land.⁴ My Office has previously found that the exception does not apply to discussions about land transactions that may or may not happen in the future, since there is no bargaining position to protect in these instances.⁵
- 26** In this case, council received detailed information from staff about a proposed sale of municipal land. The discussion included proposals from two interested purchasers and financial information about a geotechnical study of the land.
- 27** The City’s plan to sell the land was not speculative and the closed session discussion involved information that, if public, could impact the City’s bargaining position. Accordingly, the exception for acquisition or disposition of land applied to council’s discussion.

Applicability of the exception for personal matters

- 28** Council cited the exception for personal matters to discuss the “management organizational chart and salary grid” on January 30, 2023.
- 29** The “personal matters” exception applies to discussions involving information about an individual in their personal capacity, rather than their professional, official or business capacity. However, professional information may qualify if it reveals something of a personal nature about an identifiable individual.
- 30** With respect to *in camera* discussions involving organizational charts, my Office has previously found that general information about organizational charts and staff positions by itself would not fit within the open meeting

⁴ Fort Erie (Town of) (Re), 2018 ONOMBUD 2, online: <<https://canlii.ca/t/hvmtm>>.

⁵ Fort Erie (Town of) (Re), 2015 ONOMBUD 12, at para 23, online: <<https://canlii.ca/t/gtp5w>>.

exceptions.⁶ Broader discussions about reorganization as it affects individual staff members and their roles are typically permitted in closed session under the “personal matters” or “labour relations” exceptions.⁷

- 31 In a recent report about the Town of South Bruce Peninsula, my Office found that a discussion about reorganization of the municipal administration structure fit within the “personal matters” exception. In that case, the discussion involved information about the workloads and working relationships of identifiable employees. The Ombudsman found that this discussion fit within both the exceptions for personal matters and for labour relations.⁸
- 32 Council’s discussion on January 30 took place in two parts. In the first part, council reviewed and discussed a staff organizational chart, where employees were identified by name as well as by role. Council members told my Office that they believed the “personal matters” exception applied to the discussion simply because individual employees were named. However, this information alone does not qualify as personal information.
- 33 The second part of the discussion involved a potential reorganization. However, unlike the first part of the discussion, council received information about identifiable employees that qualified as personal – including about leaves of absence, staff performance, and working relationships.
- 34 Accordingly, the first part of the closed session discussion about the organizational chart did not fit within the “personal matters” exception and should have been held in open session. The second part of the discussion fit within the “personal matters” exception.

⁶ Letter from the Ombudsman of Ontario to Town of Amherstburg (12 September 2013), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2013/town-of-amherstburg>>, and Letter from the Ombudsman of Ontario to Town of Amherstburg (9 December 2013), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2013/town-of-amherstburg-en>>.

⁷ Letter from the Ombudsman of Ontario to Town of Amherstburg (9 December 2013), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2013/town-of-amherstburg-en>>.

⁸ South Bruce Peninsula (Town of) (Re), 2015 ONOMBUD 25, online: <<https://canlii.ca/t/gtp6t>>.

Parsing the discussion

- 35 My Office has previously reviewed meetings where general information about organizational charts served as background to discussions that fit within the open meeting exceptions.⁹ In these cases, it may not be realistic to expect council to parse a meeting between open and closed sessions, and topics that do not fit within a closed meeting exception may be discussed *in camera*. This principle should be applied narrowly and only to discussions on a single topic, where splitting the information would require interrupting the conversation. In *St. Catharines (City) v. IPCO*, the Ontario Divisional Court found that parsing an *in camera* discussion could “detract from free, open and uninterrupted discussion.”¹⁰ If the *in camera* discussion could have been parsed between an open and closed meeting, the exception does not apply.
- 36 In this case, council’s discussion took place into two parts during the closed session. Council’s consideration of the organizational chart and its discussion about administrative reorganization were not entwined in such a way that separating the matters would have prevented a free, open and uninterrupted discussion. Council could have realistically received the information about the organizational chart and staff roles covered in the first part of the discussion in open session, and then moved into closed session to hold the second part of the discussion about reorganization.

Opinion

- 37 Council for the City of Elliot Lake did not contravene the *Municipal Act, 2001* on January 12, 2023 when it went *in camera* to discuss an update from the City Solicitor under the exception for advice subject to solicitor-client privilege.
- 38 Council did not contravene the *Municipal Act, 2001* on January 30, 2023 when it discussed an update on a proposed sale of municipal land located at 225 Highway 108, as well as a potential reorganization of the City’s administrative structure, under the exceptions for acquisition or disposition of land and personal matters, respectively. However, the discussion about

⁹ Letter from the Ombudsman of Ontario to Town of Amherstburg (12 September 2013), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2013/town-of-amherstburg>>; Letter from the Ombudsman of Ontario to Town of Amherstburg (9 December 2013), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2013/town-of-amherstburg-en>> and Sault Ste. Marie (City of) (Re), 2016 ONOMBUD 13, online: <<https://canlii.ca/t/h2sst>>.

¹⁰ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346, online: <<https://canlii.ca/t/fkqfr>>.

the City's organizational chart did not fit within the "personal matters" exception or any exception to the open meeting rules.

Recommendations

- 39 I make the following recommendation to assist the City of Elliot Lake in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

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

Recommendation 2

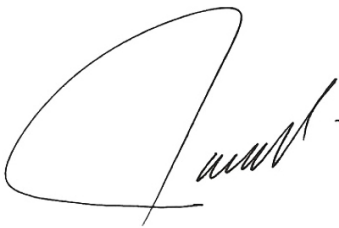
The City of Elliot Lake should ensure that no subject is discussed in closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

Report

- 40 The City of Elliot was given the opportunity to review a preliminary version of this report and provide comments. My Office received comments from council.
- 41 In its response, council accepted my findings with respect to the January 12, 2023 meeting. Council also accepted my findings regarding the discussions about the proposed sale of land and reorganization of the City's administrative structure on January 30, 2023. However, council disputed my finding that it violated the open meeting rules when it discussed the City's organizational chart in closed session on January 30.
- 42 Council, in its comments to us, noted that after discussing my preliminary report, council believes that its discussion about the City's organizational chart involved personal information regarding leaves of absence and staff performance. In its response, council expressed disagreement with my finding that its discussion could have been parsed between an open and closed session. Council agreed that the discussion took place in two parts, but noted that it was single discussion that was not divided by topic.

- 43 My findings, including about the first part of council's discussion on January 30, 2023, are based on evidence gathered during the investigation, including closed session minutes and interviews with council members who were present during the meeting. The version of events presented by council in its response to our preliminary report differs from the recollection of the individuals we interviewed, as well as from the written record of the discussion as described in the closed session minutes.
- 44 I acknowledge the steps taken by the City to ensure that staff and council members are trained on the open meeting rules, including preparing and distributing a best practices memorandum.
- 45 My report should be shared with council for the City of Elliot Lake. My report should be made available to the public as soon as possible, and no later than the next council meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario