



J. Paul Dubé, Ombudsman

April 3, 2024

Council for the City of Elliot Lake
45 Hillside Dr. North
Elliot Lake, ON
P5A 1X6

Via email

Dear Council,

Re: Ombudsman investigation into the January 30, 2023 meeting of council

My Office received a complaint alleging that council for the City of Elliot Lake (the “City”) held a meeting on January 30, 2023 that did not comply with the open meeting rules in the *Municipal Act, 2001*. On June 21, 2023, my Office notified the City that we would be investigating this complaint. I released my report in February 2024.¹

I am writing to advise council that after my investigation concluded and my Report was issued, the City sent my Office a video recording of the January 30, 2023 closed session. This video recording was not disclosed to my Office during the investigation.

Ombudsman’s role and authority

As of January 1, 2008, the *Municipal Act, 2001* 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, but 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 City of Elliot Lake.

¹ *Elliot Lake (City of) (Re)*, 2024 ONOMBUD 3 (CanLII), online: <<https://canlii.ca/t/k2wqr>>.

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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.

Recording of the January 30 closed session

When the complaint was first received, my Office made an initial inquiry to the City and requested that any recording of the January 30, 2023 meeting be forwarded to our Office. During my investigation into the January 30 meeting, in accordance with our procedures for all open meeting investigations, my Office requested that the City provide all available audio or visual recordings of the closed session. No recording of the meeting was provided in response to these requests. We received acknowledgment from the City that our request was received. Upon completion of our investigation, the City was given the opportunity to provide comments on a preliminary version of my report. The City disputed my findings regarding the January 30 meeting and told us that, after discussing the preliminary report, council believed that its discussion involved personal information about identifiable individuals.

After my Office received council's comments, we asked the City for any additional evidence or records that would support its position. The City told my Office that no additional evidence existed.

After my report was finalized and made public by the City, it came to my attention that the City might have had a video recording of the January 30 closed session in its possession. We made inquiries with the Mayor and the Clerk, who confirmed the existence of the video recording and sent it to my Office.

My Office has reviewed the recording. The recording captures council's *in camera* discussion about an organizational chart. This is precisely the type of relevant evidence we require to conduct a thorough investigation and why we request disclosure. The video recording shows council referring to personal information about identifiable individuals during its discussion about the organizational chart while *in camera* on January 30, and this type of information fits within the exception for "personal matters" in s. 239(2)(b) of the *Municipal Act, 2001*.

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Based on the evidence provided to us during the investigation, such as meeting minutes and interviews with individuals who were present at the meeting, my report found that council's discussion about the organizational chart did not fit within the "personal matters" exception. As noted in my report,

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.

...

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.

Since the January 30 video recording was not disclosed to my Office until my report was finalized, despite our requests for this type of recording, it was not considered as part of my investigation of the complaint. Had my Office been able to review the recording during the investigation, we would have been able to arrive at an opinion based on all the facts and relevant evidence. It is not a trivial matter that we were hindered by this failure to disclose evidence. While we understand the challenges of a small municipality with limited resources and have no reason to believe this omission was intentional, this failure to disclose evidence in an Ombudsman investigation is a serious matter. To protect the Ombudsman's investigative authority and promote compliance, the Legislature has made it an offence under the *Ombudsman Act* to wilfully mislead the Ombudsman or obstruct an Ombudsman investigation.

Recording closed session is a best practice

I have consistently encouraged all municipalities, local boards and committees of either of them to make audio or video recordings of all meetings, both open and closed. This provides the clearest and most accessible record for closed meeting investigators to review and assists in ensuring that officials do not stray from the legal requirements during closed sessions. I recognize that the City has adopted a practice of recording closed meetings of council.

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It is most unfortunate that the recording of the January 30 closed session was not provided to my Office during our investigation. Had my Office obtained the recording during the investigation, we would have been able to make appropriate findings, and in this case validate the decision to hold a meeting in closed session. I urge the City to be mindful of its own record-keeping practices and to fully co-operate with any future investigations by my Office.

Sincerely,



Paul Dubé
Ombudsman of Ontario

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