



Ombudsman Report

**Investigation into a complaint about a meeting
of the Committee of the Whole for the United Counties
of Leeds and Grenville on July 5, 2023**

**Paul Dubé
Ombudsman of Ontario**

November 2024

Complaint

- 1 My Office received a complaint about a meeting of the Committee of the Whole (the “Committee”) for the United Counties of Leeds and Grenville (the “Counties”) held on July 5, 2023. The complaint alleged that part of the discussion in closed session regarding a fundraising update did not fall within any of the prescribed exceptions to the open meeting rules in the *Municipal Act, 2001* (the “Act”),¹ and should have been held in open session.
- 2 My investigation determined that the Committee of the Whole for the United Counties of Leeds and Grenville contravened the *Municipal Act, 2001* on July 5, 2023. Only a portion of the Committee’s discussion regarding a fundraising update fit within the exception for personal matters about an identifiable individual. The rest of the discussion did not fit within any exception to the open meeting rules and should have occurred in open session.

Ombudsman jurisdiction

- 3 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.
- 4 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.
- 5 The Ombudsman is the closed meeting investigator for the United Counties of Leeds and Grenville.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable governing procedures have been observed.

¹ SO 2001, c 25.

- 7 Our Office has reviewed and 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.
- 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’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

- 9 On November 22, 2023, my Office advised the Counties of our intent to investigate this complaint.
- 10 We spoke with municipal staff, reviewed the open and closed session meeting materials and video recordings, and conducted interviews with the former Warden, the Committee member who chaired the meeting (the “Chair”), and the Chief Administrative Officer (“CAO”) at the time.
- 11 We received full co-operation in this matter.

Background

- 12 The Counties were in the process of redeveloping a municipally owned long-term care facility. In February 2023, the Counties adopted a Long-Term Care Redevelopment Project Fundraising Policy to guide the project. In May 2023, the Counties launched a fundraising campaign to support the redevelopment. Various individual and corporate donors came forward to contribute funds.
- 13 Starting in June 2023, there was discussion at the Counties regarding how the Counties communicated information internally about the fundraising efforts and how they had approached donations and naming rights. In response to this discussion, the CAO prepared a confidential report with an update on the fundraising campaign's activities. The CAO's report also outlined changes to the fundraising policy that he was implementing using his delegated authority under the policy.

July 5, 2023 meeting

- 14 At 9:00 a.m. on July 5, 2023, the Committee met in council chambers in open session. When adopting the open session agenda, a Committee member requested that the Committee discuss changes to the fundraising policy in open session, and matters concerning individual donors in closed session. The Committee considered the request to separate the topics and the CAO suggested that the Committee begin its discussion in closed session, then discuss any items later in open session that it determined should be discussed publicly. The Committee adopted this approach when formally approving the amended agenda.
- 15 At 9:38 a.m., the Committee passed a resolution to proceed into closed session to discuss an unrelated item and "Closed Report No. CW-080-2023: Redevelopment Fundraising Update" under the exception for plans and instructions for negotiations at section 239(2)(k) of the Act. The Committee then went into closed session.
- 16 After addressing the unrelated item, the Committee considered whether it was appropriate to discuss certain portions of the fundraising update in closed session. During this part of its discussion, the Committee made a passing reference to an individual donor. Based on the preferences expressed by the majority of Committee members, the Chair ruled that the Committee would discuss the fundraising update in closed session.

- 17 The Committee then discussed the Counties' internal communications processes related to particular donations and naming rights, and approaches to internal communications related to donations and naming rights more generally. During this portion of the discussion, Committee members made several references to specific individual and corporate donors, donations, and related communications, including certain donors' wishes.
- 18 Next, the Committee considered the CAO's report. The CAO provided an overview of the changes he was implementing to the fundraising policy. The CAO explained that the changes would affect how the Counties formalize documents for a certain type of donation going forward, add new internal communications processes for another type of donation, and involve a new staff role with the fundraising campaign. During his explanation of the new staff role, the CAO made passing reference to a particular municipal staff member by name.
- 19 The Committee briefly discussed these changes and sought clarification about the CAO's delegated authority to implement them. The Committee did not identify any specific donors during this portion of the discussion.
- 20 The Committee voted to receive the CAO's report for information, directed staff to relay certain information about the fundraising campaign to another committee, and then recessed from closed session at 11:08 a.m. Aside from a brief report-back after the recess, the Committee did not discuss the fundraising update further in open session.

Analysis

- 21 Under the Act, all meetings of council, local boards, and committees of either of them must be open to the public, unless they fall within a prescribed exception in section 239 of the Act. The Committee cited the exception for plans and instructions for negotiations at section 239(2)(k) of the Act in order to consider the fundraising update in closed session. During our investigation, it was also suggested that the exceptions for personal matters and labour relations at sections 239(2)(b) and 239(2)(d) of the Act respectively could also have applied to portions of the discussion.

Applicability of the exception for plans and instructions for negotiations

- 22** The Committee cited section 239(2)(k) of the Act, which allows discussions about plans and instructions for negotiations to occur in closed session. I have previously found that the purpose of this exception is to protect information that could undermine the municipality's bargaining position or give another party an unfair advantage during an ongoing negotiation. In order for the exception to apply, the following criteria must be satisfied:
1. The *in camera* discussion is about positions, plans, procedures, criteria, or instructions;
 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.²
- 23** In a 2019 report to the City of St. Catharines, I considered whether the exception for plans and instructions for negotiations applied to a meeting where council's discussion determined the nature of a new government relations position at the city. I found that the discussion did not specifically formulate a detailed course of action with respect to current or future negotiations and did not involve any information that could potentially undermine the city's bargaining position relative to the provincial government, so the exception did not apply.³
- 24** By contrast, in other instances, I have determined that discussions where a council has received a status update on specific negotiations and determined a position, or given staff directions relating to a negotiation, do fit within this exception.⁴
- 25** In this case, the Committee began by discussing what parts of the fundraising update it should discuss in closed session, and then, while in closed session, considered internal communications processes related to donations and naming rights. These discussions were predominantly retrospective and did not address any specific plans or instructions that the

² *St. Catharines (City of) (Re)*, 2019 ONOMBUD 1 at paras 30–31 [*St. Catharines*], online: <<https://canlii.ca/t/hxrk5>>.

³ *Ibid* at paras 33–34.

⁴ *McMurrich/Monteith (Township of) (Re)*, 2022 ONOMBUD 4 at paras 30–31, online: <<https://canlii.ca/t/jncmn>>; *Saugeen Shores (Town of) (Re)*, 2020 ONOMBUD 3 at paras 23–24, online: <<https://canlii.ca/t/j93c3>>.

Counties intended to apply to negotiations going forward. Accordingly, the discussion about the fundraising update did not fit within the exception for plans and instructions for negotiations.

- 26 During the discussion about the changes to the fundraising policy, the Committee received information about the CAO's amendments. These amendments would affect how the Counties formalize the documents for a certain type of donation in the future and would add new internal communications processes for another type of donation. While in theory these steps could potentially create new points of negotiation with donors, the Committee's discussion was not about a specific course of action to be applied to particular negotiations; rather, the Committee received information about technical changes to a public fundraising policy. This portion of the discussion did not fit within the exception for plans and instructions for negotiations.
- 27 Accordingly, the entire fundraising update discussion did not fit within the cited exception for plans and instructions for negotiations.

Applicability of the exception for personal matters about an identifiable individual

- 28 Those we interviewed suggested that the exception for personal matters about an identifiable individual at section 239(2)(b) of the Act could also have applied to parts of the fundraising update discussion. The exception for personal matters allows a meeting to be closed to the public when the discussions pertain to a personal matter about an identifiable individual, including about a municipal employee. I have previously determined that "personal information" is information that can be reasonably expected to identify an individual.⁵
- 29 To qualify as "personal information," information must be about an individual in their personal capacity, rather than their professional, official, or business capacity. However, information about an individual in their professional capacity may qualify as personal information if it reveals something of a personal nature about the individual.⁶

⁵ *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11 at para 19, online: <<https://canlii.ca/t/jr5rc>>; *Nipissing (Township of) (Re)*, 2023 ONOMBUD 2 at para 22 [*Nipissing*], online: <<https://canlii.ca/t/jv6ch>>.

⁶ *Nipissing*, *supra* note 5 para 23.

Discussion about considering the item in closed session

- 30** During the first portion of the Committee’s discussion, the Committee considered what parts of the fundraising update it should discuss in closed session, and briefly referred to an identifiable individual.
- 31** I have previously found that a passing reference to a topic is not sufficient to bring the overall discussion within the relevant open meeting exception.⁷ For example, in a report to the Township of Lanark Highlands, I concluded that a passing reference to a proposed land transaction during a discussion of a related, but distinct, matter did not bring the entire discussion within the exception for a proposed or pending acquisition or disposition of land at section 239(2)(c) of the Act.⁸
- 32** In a report to the Town of Grimsby, I found that the council, which made a passing reference about an ongoing arbitration process during a discussion about a different matter, could have refrained from referring to the arbitration if the council had held the discussion in open session. I found that the discussion did not fit within the exceptions to the open meeting rules.⁹
- 33** In this case, the reference to an identifiable individual was made while the Committee was considering whether it was proper to discuss the fundraising update in closed session. The identifiable individual was not the focus of the discussion. Had the Committee considered this issue in open session, it could have refrained from mentioning the individual by name. Accordingly, this portion of the Committee’s discussion did not fit within the exception for personal matters.

Discussion about internal communications processes

- 34** The Committee next discussed the Counties’ internal communications processes related to donations and naming rights. During this portion of the discussion, Committee members referred to specific individual donors and their wishes as well as corporate donors. My Office has not previously considered whether this type of information qualifies for the exception for personal matters.

⁷ *Lanark Highlands (Township of) (Re)*, 2021 ONOMBUD 15 at paras 29–30 [*Lanark Highlands*], online: <<https://canlii.ca/t/jhx9n>>; *Grimsby (Town of) (Re)*, 2016 ONOMBUD 19 at paras 38–39 [*Grimsby*], online: <<https://canlii.ca/t/h2st7>>.

⁸ *Lanark Highlands*, *supra* note 7 at paras 29–30.

⁹ *Grimsby*, *supra* note 7 at paras 38, 49.

- 35** In reviewing the scope of the exception for personal matters about an identifiable individual, my Office often considers orders made by the Information and Privacy Commissioner of Ontario (the “Commissioner”). Although not binding on my Office, the Commissioner’s orders can provide useful guidance.
- 36** While the Act does not define “personal matters,” the Commissioner has found that the term “personal matters” in the Act is analogous to the term “personal information” in the *Municipal Freedom of Information and Protection of Privacy Act* (“*MFIPPA*”).¹⁰
- 37** *MFIPPA* defines “personal information” to include information relating to financial transactions with which an individual has been involved, the personal opinions or views of an individual, correspondence an individual has sent to an institution that is implicitly or explicitly of a private or confidential nature, and the name of an individual where it appears with other personal information.¹¹
- 38** The Commissioner has previously determined that a draft donor agreement qualified as personal information under *MFIPPA*.¹² Likewise, the Commissioner found that a donor agreement was personal information under the equivalent provisions of the provincial *Freedom of Information and Protection of Privacy Act*.¹³
- 39** Similarly, in a different case, the Commissioner has considered whether or not records relating to donors for a cancelled municipal garden project contained personal information. The Commissioner concluded that donors’ contact information, their correspondence about how to refund or redirect their donations, and requests for tax receipts qualified as personal information alongside the donors’ names, addresses, and donation amounts.¹⁴

¹⁰ RSO 1990, c M.56 [*MFIPPA*]; *Clarington (Municipality) (Re)*, Order MO-2368, 2008 CanLII 68856 (ON IPC), online: <<https://canlii.ca/t/2217x>>.

¹¹ *MFIPPA*, *supra* note 10, s 2(1). See clauses (b), (e), (f), and (h) under the definition of “personal information”.

¹² *Burlington (City) (Re)*, Order MO-1485-F, 2001 CanLII 26375 (ON IPC), online: <<https://canlii.ca/t/1rfl5>>.

¹³ RSO 1990, c F.31, s 2(1); *York University (Re)*, Order PO-3892, 2018 CanLII 100398 (ON IPC), online: <<https://canlii.ca/t/hvqgk>>.

¹⁴ *Ottawa (City) (Re)*, Order MO-2262, 2008 CanLII 1825 (ON IPC), online: <<https://canlii.ca/t/1vhk1>>.

- 40 However, the Commissioner has previously interpreted the meaning of “identifiable individual” to exclude corporations. Accordingly, the phrase “personal information” only relates to natural persons.¹⁵
- 41 In this case, while discussing the Counties’ internal communications processes related to donations and naming rights, the Committee made several references to and discussed particular individual donors and their communicated wishes. These parts of the discussion fit within the exception for personal matters.
- 42 While the Commissioner’s findings are not binding on my Office, I find that the exception for personal matters applies to natural persons and not corporations. Therefore, the references to corporate donors did not fit within the exception for personal matters.
- 43 During our interviews, it was also suggested that the exception for personal matters could have applied to parts of the discussion about the Counties’ internal communications processes for donations and naming rights, due to the potential for public criticism of identifiable staff, Committee members, or others involved in the fundraising campaign.
- 44 My Office has previously found that discussions of employee conduct, performance, and salary can fit within this exception.¹⁶ However, in a recent report to the Township of Springwater, I found that the exception for personal matters did not apply to a council discussion about a hiring process conducted by that municipality’s chief administrative officer because the focus of the discussion was on the process, rather than on the chief administrative officer’s conduct.¹⁷
- 45 In this case, I find that this portion of the Committee’s closed session discussion focussed on the Counties’ internal communications processes, not any individual’s conduct. The Committee’s discussion of the Counties’ internal communications processes themselves therefore did not fit within the exception for personal matters.

¹⁵ *Ontario (Agriculture and Food) (Re)*, Order P-16, 1988 CanLII 1396 (ON IPC), online: <<https://canlii.ca/t/1rfm4>>; *Ontario (Northern Development & Mines) (Re)*, Order PO-1893, 2001 CanLII 26093 (ON IPC), online: <<https://canlii.ca/t/1r272>>; *Ontario (Citizenship, Culture and Recreation) (Re)*, Order P-1236, 1996 CanLII 7660 (ON IPC), online: <<https://canlii.ca/t/1r127>>.

¹⁶ *Russell (Township of) (Re)*, 2015 ONOMBUD 29 at para 31, online: <<https://canlii.ca/t/gtp73>>.

¹⁷ *Springwater (Township of) (Re)*, 2024 ONOMBUD 8 at para 37 [*Springwater*], online: <<https://canlii.ca/t/k4z7w>>.

Discussion about changes to the fundraising policy

- 46 As with the previous part of the Committee’s discussion, we were told that the exception for personal matters could have applied to the discussion about the changes to the fundraising policy, due to the potential for public criticism of identifiable individuals involved in the fundraising campaign.
- 47 Although there was a passing reference made to a particular staff member during this part of the Committee’s discussion, the reference related to a new position’s responsibilities, and the Committee did not scrutinize the particular staff member’s conduct or job performance. Instead, the discussion focussed on the changes to the fundraising policy. Because the Committee did not consider any personal matters about any identifiable individual, this portion of the Committee’s discussion did not fit within the exception for personal matters.

Applicability of the exception for labour relations

- 48 Given that the Committee’s discussion of the changes to the fundraising policy included consideration of a new staff position, we examined whether or not the exception for labour relations at section 239(2)(d) of the Act could have applied to this portion of the closed meeting.
- 49 The purpose of the exception for labour relations is to protect discussions relating to the relationship between a municipality and its employees.¹⁸ This includes situations where a council discusses information related to an employee’s duties and reporting relationships. The exception does not apply to discussions of hiring plans and proposed steps or to positions and job descriptions unless the discussion covers how these would affect individual employees and their roles.¹⁹
- 50 In this case, while the Committee made a passing reference to how the new position would relate to an existing staff role, the Committee’s discussion was not about the Counties’ relationship with any current or future employees. Accordingly, this portion of the closed meeting did not fit within the exception for labour relations, and the exception did not apply to the Committee’s discussion.

¹⁸ *St. Catharines*, supra note 2 at para 24.

¹⁹ *Springwater*, supra note 17 at paras 33–34.

Parsing the discussion

- 51** I have found that only the parts of the Committee’s discussion regarding donors and their wishes, which took place during the broader discussion about internal communications processes, fit within the exception for personal matters about an identifiable individual. It is therefore necessary to consider whether the Committee could have parsed the overall discussion of the fundraising update between open and closed sessions.
- 52** In *St. Catharines v. IPCO, 2011*, the Divisional Court found that it is unrealistic to expect municipal councils to split up discussions between open and closed sessions where it would “detract from free, open and uninterrupted discussion.”²⁰ Therefore, where it would be unrealistic to expect the Committee to parse intertwined subjects, topics that do not otherwise fit within an open meeting exception may still be discussed *in camera*.²¹ However, if the topics can be separated, the Committee would be expected to return to open session for those portions of the discussion that do not fit within an open meeting exception.
- 53** During the Committee’s consideration of the Counties’ internal communications processes related to donations and naming rights, the discussion about individual donors and their wishes fit within the exception for personal matters. This discussion was necessarily intertwined with the broader discussion of the Counties’ internal communications processes related to donations and naming rights more generally. It would be unrealistic to expect the Committee to have further parsed this portion of its discussion. Accordingly, the entirety of this portion of the discussion about the fundraising update fit within the exception for personal matters.
- 54** The discussion about which parts of the fundraising update to consider in closed session and the discussion about the changes to the fundraising policy were not necessarily intertwined with the information about individual donors and their wishes and could have been separated and held in open session.

²⁰ *St. Catharines (City) v IPCO*, 2011 ONSC 2346 at para 42, online: <<https://canlii.ca/t/fkqfr>>.

²¹ *Plympton-Wyoming (Town of) (Re)*, 2021 ONOMBUD 4 at para 26, online: <<https://canlii.ca/t/jd49k>>.

Opinion

- 55 The Committee of the Whole for the United Counties of Leeds and Grenville contravened the *Municipal Act, 2001* on July 5, 2023, when it held a procedural discussion to determine whether or not to consider the fundraising update in closed session and also when it discussed changes to the fundraising policy in closed session.
- 56 The Committee of the Whole for the United Counties of Leeds and Grenville did not contravene the *Municipal Act, 2001* on July 5, 2023, when it discussed internal communications processes related to donations and naming rights, including particular donors and their wishes. While this portion of the fundraising update did not fit within the cited exception for plans and instructions for negotiations, portions of the discussion did fit within the exception for personal matters about an identifiable individual. The other aspects of this discussion could not have been easily separated from consideration of the personal matters about identifiable individuals without interrupting and hindering the flow of the conversation. Therefore, this portion of the Committee's discussion fit within the exception for personal matters.

Recommendations

- 57 I make the following recommendations to assist the United Counties of Leeds and Grenville in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

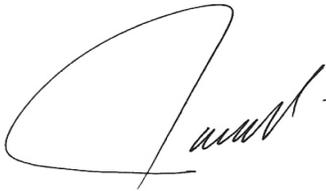
All members of council for the United Counties of Leeds and Grenville should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001*.

Recommendation 2

Council for the United Counties of Leeds and Grenville should ensure that no subject is discussed in a closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

Report

- 58 Council for the United Counties of Leeds and Grenville was given the opportunity to review a preliminary version of this report and provide comments to my Office. All comments we received were considered in the preparation of this final report.
- 59 This report will be published on my Office's website and should also be made public by the United Counties of Leeds and Grenville. 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

Ce rapport est aussi disponible en français