



Ombudsman Report

**Investigation into complaints about closed meetings
held by the Municipality of West Elgin
on September 14, September 22, September 28,
October 12, and October 16, 2023**

**Paul Dubé
Ombudsman of Ontario**

December 2024

Complaint

- 1 My Office received complaints that council for the Municipality of West Elgin (the “Municipality”) held meetings that did not comply with the open meeting rules in the *Municipal Act, 2001*¹ (the “Act”). The complaints alleged that the Municipality did not livestream to the public all or part of council meetings on September 14, September 22, September 28, October 12, and October 16, 2023.
- 2 My investigation concluded that the Municipality of West Elgin did not provide meaningful notice of the council meetings on September 22, September 28, and October 16, 2023, in contravention of the open meeting rules.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, all meetings of council, local boards, and their committees 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 Municipality of West Elgin.
- 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, local boards, their committees and staff, as well as 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. Municipal councils, local boards, their committees and their 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

¹ SO 2001, c 25.

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 March 18, 2024, we advised the Municipality of our intent to investigate the complaints.
- 10 We reviewed relevant portions of the Municipality’s by-laws, the meeting records, and the Act. We reviewed audio and video recordings of the meetings. We also interviewed the Municipality’s Clerk, Mayor and Deputy Mayor. The Mayor advised my Office that he did not attend the meetings on September 14, September 22, September 28, and October 12, 2023.
- 11 My Office received full co-operation in this matter.

Council procedures

- 12 The Municipality provides public notice of regular and special council meetings on its website. The Municipality’s procedural by-law provides that council meetings shall be held in council chambers unless otherwise decided by a resolution of council.
- 13 On September 14, 2023, council passed a resolution to cease livestreaming council meetings to the public. Members of the public would be permitted to attend these meetings in person only. Council members, staff and consultants would continue to be able to participate in these meetings electronically.
- 14 The procedural by-law provides that council may hold an emergency meeting without notice to the public where there is a situation or threat of an impending situation that constitutes “a danger of major proportions to life and property that affects public safety.” In these types of situations, according to the procedural by-law, the “health, welfare and property as well as the environment and economic health of the municipality” may be impacted.²

² Municipality of West Elgin, by-law No 2023-77, *Being a By-Law to establish rules of procedure for the meetings of Council, Council Committees and Boards of The Corporation of the Municipality of West Elgin* (14 September 2023), ss 2.12 and 5.3.

Background

Council meeting on September 14, 2023

- 15 The agenda for the September 14, 2023 council meeting states that the meeting will be held in council chambers and broadcast to the public over a livestream. The agenda directs members of the public to email the Clerk for a link to the meeting livestream. The complainant told our Office that they received two livestream links from the Municipality to watch the open sessions before and after the closed portion of the meeting.
- 16 The complainant used the first link to watch the meeting until council moved into a closed session. The complainant attempted to use the second link to continue watching the meeting, but was unable to view the meeting and eventually the complainant received a message that the link had expired.
- 17 The Clerk told my Office that the council meeting did resume in open session after the closed portion, and the livestream was available using the second link. She could not explain why the complainant was unable to observe the livestream of the remainder of the meeting.
- 18 A video recording of the open portions of the meeting is available on the Municipality's website. It records council moving into closed session at 5:11 p.m. and council's report back to the public in open session at 6:36 p.m. The meeting adjourns shortly after at 6:41 p.m.

Emergency council meeting on September 22, 2023

- 19 On September 22, 2023 council held an emergency meeting. Notice of the meeting was posted on the Municipality's website on September 20, 2023. The agenda indicates that the meeting will be held electronically but does not contain any instructions for members of the public to observe the meeting. The agenda states that the meeting was called to discuss a matter related to "Municipal Property that affects Public Safety."
- 20 The Clerk explained to our Office that the emergency involved a threat to public safety because council had an impending deadline to execute an agreement to host a pre-season NHL hockey game. The agreement, which was received by the Municipality days before the event, contained insurance provisions that needed council approval in order for the event to proceed. According to the Clerk, if the agreement was not approved by council at the meeting, the event would be cancelled.
- 21 The video recording of the meeting shows that staff advised council that public safety may be impacted by the event. Council then proceeded to review the agreement and pass a resolution to enter into the agreement.

Council meetings on September 28, October 12, and October 16, 2023

- 22 The complaint to my Office alleged that the council meetings on September 28, October 12, and October 16, 2023 were not livestreamed to the public despite notice for each meeting advertising that a livestream would be available.
- 23 The agenda for the September 28, 2023 meeting states that the meeting will be an “electronic hybrid meeting.” The location is described as “West Elgin Community Complex – Hybrid.” The agenda does not include instructions for the public to access a livestream of the meeting.
- 24 The agenda for the October 12, 2023 meeting states that the meeting will be held in person in council chambers. The agenda does not indicate that the meeting will be livestreamed.
- 25 The agenda for the October 16, 2023 meeting states that the meeting will be held electronically via Zoom. There is no physical location provided. The agenda does not include instructions or a link for the public to observe the electronic meeting.

Analysis

Council meeting on September 14, 2023

- 26 The complaint to my Office alleged that the Municipality did not livestream the portion of the council meeting on September 14, 2023 that occurred after council rose from closed session. My investigation revealed no evidence to substantiate the allegation.
- 27 The Clerk told my Office that it provided two links for members of the public to use to watch the meeting livestream: one link for the open session at the very beginning of the meeting, and one link for the open session which followed council’s *in camera* session. The Clerk told my Office that both open sessions of the council meeting were livestreamed. As well, the video recording of the meeting includes the open portion of the meeting which followed the closed session.

Emergency council meeting on September 22, 2023

- 28 The emergency council meeting on September 22, 2023 to review and approve an agreement to host a pre-season NHL hockey game does not meet the standard set by the procedural by-law for an emergency. Under the procedural by-law, an emergency meeting may be held without notice to the public. While the Municipality posted public

notice that an emergency electronic meeting would be held on September 22, 2023, the notice did not include a link or instructions for the public to observe the meeting.

- 29 The Municipality's procedural by-law refers to "a situation or threat of an impending situation caused by forces of nature, accidents or an intentional act." My Office has previously recognized that a procedure by-law may allow for a council meeting to be held as soon as practicable in the face of a "bona fide emergency" requiring urgent action. Generally, an "emergency" requires "unexpected circumstances requiring immediate or urgent action."³
- 30 The Clerk explained that the nature of the emergency it was facing was twofold. First, there was an extremely short timeframe to execute the agreement. Second, the event was expected to be well-attended with potential impact on public safety, and staff needed council to review the insurance provisions contained in the agreement.
- 31 The situation in which the Municipality found itself may have been urgent because of the impending deadline to approve the agreement and the potential impact to public safety during the event. However, this was not unexpected as the Municipality was in active contract negotiations to host the pre-season NHL hockey game and should have accounted for the time it would take for council to review and approve the agreement. The emergency meeting provisions in the procedural by-law apply to situations caused by "forces of nature, accidents or an intentional act," none of which were applicable to the circumstances leading up to the September 22, 2023 meeting.
- 32 Accordingly, while council may have had some issues to discuss urgently, I find that this was not an "emergency meeting" as defined in the procedural by-law, and therefore, public notice, including information about how members of the public could observe the meeting, was required.

Notice of meetings on September 28, October 12, and October 16, 2023

- 33 The Municipality continued to advertise council meetings as being livestreamed to the public, despite council's decision on September 14, 2023 to cease this practice.
- 34 To uphold the public's right to observe municipal government, municipalities must provide notice of the time and place of meetings, and then proceed to meet at the time and place specified.⁴ For the purposes of an electronic meeting, the "place" is electronic and notice of the place is given by publishing the procedure for how the public can observe the meeting electronically, including providing a link.⁵ If the notice does not provide this information, the meeting is effectively closed to the public, contrary to the

³ *South Bruce Peninsula (Town of) (Re)*, 2015 ONOMBUD 25 at para 49, online: <<https://canlii.ca/t/gtp6t>>.

⁴ *Russell (Township of) (Re)*, 2020 ONOMBUD 1, online: <<https://canlii.ca/t/j6n2t>>.

⁵ *McKellar (Township of) (Re)*, 2023 ONOMBUD 3, online: <<https://canlii.ca/t/jv6ck>>.

Act.⁶ I have previously found that when a meeting is advertised as hybrid in its meeting notice, members of the public should be able to observe the meeting both in person and electronically.⁷

- 35 Notice of the September 28, 2023 meeting indicated that the meeting would be hybrid, implying that members of the public could attend both in person and electronically. However, only a physical location of the meeting was provided. The notice did not include information about how members of the public could access a livestream. Members of the public wishing to attend the meeting electronically were unable to do so. Notice of the October 16, 2023 meeting stated the meeting would occur electronically but did not include any information about how members of the public could observe the meeting, whether in person or via a livestream. Therefore, these meetings were closed to the public.
- 36 The October 12, 2023 meeting was advertised as an in-person meeting. The meeting notice provides a physical location for members of the public to attend and observe the meeting. There was no reason for the public to expect that this meeting would have included the option to observe it via a livestream.

Opinion

- 37 My investigation revealed no evidence to substantiate the allegation that part of the council meeting on September 14, 2023 was not livestreamed to the public. However, the Municipality of West Elgin did not provide meaningful notice of the council meetings on September 22, September 28, and October 16, 2023, resulting in the meetings being effectively closed to the public.

Recommendations

- 38 I make the following recommendations to assist the Municipality of West Elgin in fulfilling its obligations under the *Municipal Act, 2001* and enhancing the transparency of its meetings:

Recommendation 1

All members of council for the Municipality of West Elgin 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*.

⁶ *Calvin (Municipality of) (Re)*, 2023 ONOMBUD 9, online: <<https://canlii.ca/t/jxg32>>.

⁷ Letter from the Ontario Ombudsman to Municipality of West Elgin (7 September 2023), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2023/municipality-of-west-elgin>>.

Recommendation 2

Council for the Municipality of West Elgin should ensure that the public is provided with notice of all council meetings that contains the date, time, and location of the meeting, including specific information about how to access the meeting electronically, if appropriate.

Recommendation 3

When relying on the emergency meeting provisions in its procedural by-law to hold a meeting without public notice, the Municipality of West Elgin should ensure it meets the standard set by the procedural by-law for an emergency.

Report

- 39** Council and staff for the Municipality of West Elgin were 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.
- 40** This report will be published on my Office's website and should also be made public by the Municipality of West Elgin. 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
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