

# O Ombudsman

*Council*

ONTARIO'S WATCHDOG  
CHEN DE GARDE DE L'ONTARIO

October 22, 2007

Dear Clerk/Administrator/Council:

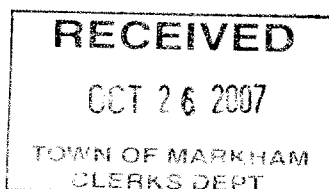
As of January 1, 2008, the provisions of the *City of Toronto Act, 2006* and the *Municipal Act, 2001* relating to investigation of closed meetings will come into effect. Under these new legislative provisions, the Office of the Ombudsman of Ontario will have the responsibility of investigating complaints about closed meetings if the municipality in question has not appointed an investigator.

I would like to take this opportunity to provide you with some general information regarding our Office's processes and how it will be dealing with this new jurisdiction. Attached for your information and assistance is some additional information in the form of a "frequently asked questions" document. This information can also be found on the Ombudsman's website at [www.ombudsman.on.ca](http://www.ombudsman.on.ca).

The Ombudsman's Office will be maintaining information about closed meetings on its website and will be available to the public and municipalities as a resource. The Ombudsman's services are free of charge. Our Office is independent from government and functions in an impartial and confidential manner, conducting thorough, objective and credible investigations.

The Ombudsman's process has proven effective in resolving tens of thousands of cases on an annual basis. When we receive a complaint, our normal practice is to contact the parties involved and first attempt to resolve issues informally. If this is unsuccessful, a formal investigation may be launched. Prior to launching an investigation, notice is given in writing to the organization that is the subject of the complaint – in the case of complaints about closed meetings, notice would go to the relevant municipality or local board. Under the *Ombudsman Act*, the Ombudsman also has discretion to decline to investigate a complaint.

Given that the Ombudsman will have jurisdiction to investigate complaints about closed meetings in any case where a municipality has not appointed an investigator for this purpose, it is important that all Ontario municipalities provide our Office with up-to-date information regarding any investigator(s) they may appoint. This will also assist the Ombudsman's Office in providing appropriate referral information to complainants in cases where municipalities have appointed investigators.



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We would appreciate it if you could notify our Office of any investigator(s) appointed by your municipality, including name and contact information. In addition, please provide us with any Council minutes confirming the investigator's appointment, and any relevant bylaw relating to the terms and conditions governing the investigator. This can be done by e-mail at [info@ombudsman.on.ca](mailto:info@ombudsman.on.ca) or by mail, addressed to the attention of Sherrie Nicholson, Ombudsman Ontario, Bell Trinity Square, 483 Bay Street, 10<sup>th</sup> Floor, South Tower, Toronto, ON, M5G 2C9.

If you have any questions, please feel free to visit our website or contact us via e-mail at [info@ombudsman.on.ca](mailto:info@ombudsman.on.ca) or by phone at 1-800-263-1830.

Yours truly,

A handwritten signature in black ink, appearing to read 'B. Finlay', written in a cursive style.

Barbara Finlay  
Deputy Ombudsman

Encl.

# O ombudsman

ONTARIO'S WATCHDOG · CHIEN DE GARDE DE L'ONTARIO

## **Investigating Closed Municipal Meetings: Frequently Asked Questions**

Municipalities and local boards in Ontario are required to pass bylaws setting out the procedure for holding meetings. The law now requires that public notice be given that a meeting will be held. All meetings must be open to the public unless they come within limited exceptions.

As of January 1, 2008, the *City of Toronto Act, 2006* and the *Municipal Act, 2001* provide that any person may request an investigation into whether a municipality or local board has complied with the open meeting requirements or the procedural bylaw relating to any meeting or part of a meeting that was closed to the public.

If a municipality has not appointed an investigator, the Ombudsman of Ontario has authority to investigate complaints about closed meetings. The Ombudsman's investigations are conducted at no cost to those who complain or to municipalities or local boards. The Ombudsman's process respects the values of independence, impartiality, confidentiality and a credible investigative process and has been proven effective in resolving tens of thousands of cases per year in a timely manner.

### **Who must hold an open meeting?**

All municipal and local boards – except conservation authorities, police services boards, school boards, and public library boards – are required to hold meetings that are open to the public, subject to some exemptions.

### **When can a meeting be closed to the public?**

A municipal or local board meeting, or part of a meeting, may be closed if the subject matter being considered concerns:

- the security of the property of the municipality or local board;
- personal matters about an identifiable individual, including municipal or local board employees;
- a proposed or pending acquisition or disposition of land by the municipality or local board;
- labour relations or employee negotiations;
- litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;

- advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.

A meeting may also be closed if it is held for the purpose of educating or training the members, so long as no member discusses or otherwise deals with any matter during the closed meeting in a way that materially advances the business or decision-making of the council, local board or committee.

In addition, meetings must be closed if the subject matter relates to the consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act* if the council, board, commission or other body is the head of an institution for the purposes of that Act.

### **Can members vote during a closed meeting?**

Generally, meetings are not supposed to be closed to the public during the taking of a vote. However, voting in a closed meeting is permitted if the closed meeting is otherwise authorized and the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the City; to officers, employees or agents of a local board or of a committee of either of them; or to persons retained by or under a contract with the municipality or local board.

### **Does a municipal council or local board have to follow a specific procedure to close a meeting?**

Yes, in order to close a meeting a specific process must be followed:

The municipality, local board, or committee must state by resolution that a closed meeting will be held and state the general nature of the matter to be considered at the closed meeting. Public notice of a meeting is required even if the meeting is closed. In the case of meetings for the purpose of educating or training members, the subsection of the *Municipal Act* authorizing meeting closure for this purpose must also be cited.

### **Does a municipal body have to keep a record of a closed meeting?**

A municipal council, local board or committee, must record without comment all resolutions, decisions and other proceedings, whether the meeting is open or closed.

### **Who can ask for an investigation relating to a closed meeting?**

Any person or corporation may ask for an investigation relating to a closed meeting.

### **What municipal bodies can be investigated for failing to hold an open meeting?**

The investigation provisions cover municipalities and local boards, which include:

- municipal councils;
- municipal boards, including boards of health or planning boards;
- transportation commissions;

- any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities.

### **Who investigates closed meeting complaints?**

If a municipality has appointed an investigator, he or she will investigate complaints about closed meetings. If the municipality has not appointed an investigator, the Ontario Ombudsman may investigate. Once the Ontario Ombudsman has received a complaint, the Ombudsman will retain jurisdiction over a complaint even if an investigator is subsequently appointed by the municipality.

Complaints may be made to a municipality or local board or to the Ontario Ombudsman. If the Ombudsman receives a complaint about a municipality where an investigator has been appointed, the complaint will be referred to that investigator. Similarly, it is expected that municipalities and local boards will refer complaints to the Ontario Ombudsman when no investigator has been appointed.

### **How will the Ombudsman know if a local investigator has been appointed?**

The Ontario Ombudsman is encouraging municipalities to notify his office if an investigator has been appointed, and to provide the investigator's contact information. The Ombudsman's Office will contact a municipality in cases where no notification has been received.

### **Does the Ombudsman have the ability to conduct investigations in both English and French?**

Yes, the Ombudsman's office can conduct investigations in either English or French.

### **Does the Ombudsman charge a fee to either the municipality or the person bringing the complaint?**

No, there is no fee charged by the Ombudsman to either the municipality or the person bringing the complaint to our Office. In keeping with the tradition of ombudsman offices around the world, the Ombudsman's services are free of charge in order to ensure they are fully accessible to everyone.

### **Will the Ombudsman notify the municipality or local board when a complaint is received?**

The Ombudsman's usual process is to document and confirm the details of a complaint, and then to contact the municipality or local board to advise them of the complaint and obtain information. If the complaint cannot be resolved informally, a formal investigation may be commenced. In the case of a formal investigation, the head of the municipality or local board will be notified.

**Can closed meetings prior to January 1, 2008 be investigated?**

The investigation provisions apply to meetings held on or after January 1, 2008. As a general rule, legislative provisions only apply on or after their commencement date.

**What powers of investigation does the Ombudsman have with respect to closed meeting complaints?**

The investigative powers set out in the *Ombudsman Act* – including the power to issue summonses, inspect premises and compel municipal officials and staff to provide information and documents – apply to investigations of closed meeting complaints.

**Will the Ombudsman investigate every complaint received?**

The Ombudsman's Office will conduct an initial review of each complaint regarding open meetings. Not all complaints will necessarily result in a formal investigation. Some cases will be resolved informally, and there may also be circumstances when an investigation is otherwise considered unnecessary.

**Will the Ombudsman establish time frames for the municipality or local board to respond to a complaint?**

The time frame for responding to a complaint will depend on the nature of the circumstances. As a general rule, the Ombudsman expects timely responses so that complaints may be resolved without undue delay.

**What happens to municipal documents after an Ombudsman investigation?**

The Ombudsman's practice is to return original documents. Copies of documents retained in the Ombudsman's file are kept confidential. The Ombudsman is not subject to the *Municipal Freedom of Information and Protection of Privacy Act* or the *Freedom of Information and Protection of Privacy Act*.

**What can the Ombudsman do if he finds a meeting was improperly closed or procedural requirements were contravened?**

If the Ombudsman concludes, after an investigation, that there was a contravention of the procedural bylaw relating to a closed meeting, or that the closed meeting provisions were contravened, he may report his opinion and reasons to the municipality or local board, and make recommendations to address his concerns.

**Will the Ombudsman's reports about closed meetings be made public?**

Yes, once an Ombudsman report is provided to the municipality or local board, that body is required to make it public. Copies of the reports may also be found on the Ombudsman's website, [www.ombudsman.on.ca](http://www.ombudsman.on.ca).