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CONFIDENTIAL

November 10, 2025

SENT BY EMAIL TO: flazzaro@amo.on.ca

Local Authority Services
155 University Ave.
Suite 800
Toronto, ON
M5H 3B7

Dear Ms. Lazzaro:

RE: Closed Meeting Investigation – Final Report
Our File No.: 34646-5

This public report of our investigation is being provided to Council in accordance with Section 239.2(1) of the *Municipal Act*. We note that Section 239.2(11) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Closed Meeting Investigator is prepared to attend at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. Council does not have the authority to alter the findings of the report, only consider the recommendations. Per section 239.2 (12), if the report contains a finding that all or part of a meeting was held in closed session contrary to the *Act*, then Council is required to pass a resolution stating how it intends to address the recommendations in the report.

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The Closed Meeting Investigator has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Investigator is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Investigator the duty to conduct investigations in response to complaints under the *Municipal Act*, and that the Investigator is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Investigator's final decision in this matter.

THE COMPLAINT

Our office received a complaint with respect to a closed session which occurred on August 12, 2025. The complaint raises concerns about Council's use of the "personal matters" exception to go into closed session. According to the complaint, Council went into closed session to discuss allegations or concerns regarding the conduct of a specific individual; the complaint raises questions as to whether this is permitted.

In order to determine specifically what parts of the meeting were the subject of the complaint, we reviewed the agenda used in closed session. Only one agenda item – 9.6 – pertained to the allegations against the specific individual referenced by the complainant. On that basis, we determined, on a balance of probabilities, that item 9.6 was the subject of this complaint.

The *Municipal Act* provides the Closed Meeting Investigator with powers which include the ability to interview witnesses and review documents deemed relevant to the investigation process. In conducting the preliminary review, our process included:

- Reviewing the relevant provisions of the *Municipal Act*;
- Correspondence with the complainant; and
- Reviewing agendas, closed session resolutions, and similar documentation.

Municipal Act

239 (1) Except as provided in this section, all meetings shall be open to the public.

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

[…]

(b) personal matters about an identifiable individual, including municipal or local board employees;

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

(a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or

(b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

(6) Despite section 244, a meeting may be closed to the public during a vote if,
(a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
(b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board. 2001, c. 25, s. 239 (6).

ANALYSIS:

Under the *Municipal Act*, the default position is that meetings of Council and similar bodies are open to the public. This is an important rule, as it reinforces principles of open and accountable government. However, there will, naturally, be circumstances in which Council must address issues that should not be discussed in public; for this reason, the *Act* includes a number of exceptions.

The scheme of the *Act*, and previous decisions of closed meeting investigators, make clear that for a meeting to be properly closed to the public, the following requirements must be met:

1. The meeting must begin in open session, and a resolution must be passed to move into closed session;

2. The resolution to move into closed session must cite the section of the *Act* relied upon and must give a general description of the matters to be discussed; and

3. The content of the meeting must actually fall within the cited exception.

There is a similar default position that voting cannot occur in closed session; again, there are exceptions. In order to be properly in closed session, a vote:

1. must pertain to a subject matter that falls within a closed session exception, and
2. must be procedural in nature or provide direction to staff or agents of the municipality. Substantive decision making in closed session is not permitted.

Did the Motion To Move In Camera Comply with the Requirements under the Municipal Act?

We have had the opportunity to listen to the recording of the Council Meeting of August 12, 2025, and to hear the motion passed to move into an in-camera (closed) session. The motion passed was the same as the one included in the agenda; the portion relevant to this complaint read as follows:

> Confidential Motion from Councillor Lowery and Councillor Inch re: Personal matters about an identifiable individual, including municipal or local board employees

As noted above, a motion to move into closed session must contain two elements

- A short description of the matter to be discussed; and
- The sections of the Municipal Act relied upon in order to move into closed session

The motion passed with respect to closed session agenda item 9.6 met only one of these requirements. While it did specify that the "personal matters" exemption was being relied upon to move into closed session, no description of the discussion to be held was provided. As noted by the Court of Appeal in *Farber*, "the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public." That requirement was not met here, and therefore the motion to move into closed session was non-compliant with the *Municipal Act*.

While it is the case that the agenda item identified the fact that a motion was to be considered, in our opinion this still not does actually provide a general description of what is being discussed.

Was the Subject Matter Discussed in Closed Session Complaint with the Act?

According to the closed session agenda, item 9.6 was to be the discussion of a motion made on notice to Council. The contents of the motion are discussed in more detail below, but generally involved taking certain concrete steps as the result of allegations which were made against a specific individual. The allegations themselves were not the subject of the agenda item, but were referenced in the preamble to the motion itself, and appear to be the motivation for the motion.

In terms of actual discussion, we are advised there was very little: a presentation was made by a member of staff concerning the proposals made in the motion, in particular concerning what steps had been taken by staff a as result of allegations which had been made, and how those steps related to the proposals.

The complainant notes that several decisions from the Ombudsman's Office, and other closed meeting investigators, have found that discussions of someone in their professional capacity do not constitute a "personal matter". This is certainly the case – for example, we have held, in our own investigations, that discussion of Council salaries cannot constitute a "personal matter". The Complainant points to this as being a reason that allegations of wrongdoing should not be discussed in closed session.

However, the Ombudsman's Office, following in the footsteps of the Information and Privacy Commissioner before it, has also found that scrutiny of an individual's conduct, even in their professional capacity, may push a matter into the realm of "personal" rather than professional. See, for example, *Midland (Town of) (Re),* 2016 ONOMBUD 8 .

In our opinion, the allegations against the specific individual crossed into the personal realm, and could, therefore, be discussed in closed session. This may also extend to the steps taken by the City to address those allegations. Therefore, to the extent that discussion was about the allegations in question, or about steps taken to address them, it was properly in closed session.

However, while the presentation to Council discussed steps taken to address the allegations in question, there also appears to have been some discussion of the potential consequences of the motion. These discussions likely were not sufficiently personal to fit into the "personal matters" exception. We do not have sufficient information to determine if they may have fit into another closed meeting exception.

<u>If Votes Were Held, did They Comply With the Act?</u>

Item 9.6 primarily concerned a motion, made on notice, which proposed the following three actions:

1) Suspension and re-assignment of certain authorities which had been delegated to an individual;
2) Instructions that an independent third-party be retained to review certain issues;
3) A determination that the suspension and re-assignment of delegated authority remain in effect until certain conditions have been met.

Because these three proposals were voted on in one single motion, they constituted a single vote, and we will deal with them together.

As noted above, the Act requires that the vote pertain to a matter which can be discussed in closed session, and that it not be substantive. The *Municipal Act* requirements apply to holding a vote in closed session; it does not matter if the vote is defeated or not, it must still comply with the Act.

It is important to note that the motion appears to have been drafted in advance and made on notice – it did not arise spontaneously, but was the sole purpose of this agenda item. The

recitals to the motion (often called "whereas clauses") are useful in understanding the context and intention of the motion. They speak to Council's ability to govern its own affairs and reassign roles and responsibilities, and go on to provide reasons why Council is deciding to revoke and re-assign certain delegations. These reasons specifically pertained to the allegations in question.

Above, we noted that Council can discuss allegations in closed session, under the "personal matters" exception. This is reasonable – it allows Council to consider allegations, particularly unproven ones, without tarnishing reputations or engaging in defamation. However, even though the motion appears to have been motivated by those allegations, it was substantively about revoking and delegating specific authority.

The vote was very clearly substantive in nature. Delegated authority allows an individual to make certain decisions on behalf of, and binding on, the municipality. It was not clear to us where the delegated authority referred to in the motion actually came from; however, it is typically found in a by-law or, in some instances, in the *Municipal Act* or other legislation. Both stripping someone of their delegated authority and granting it to someone else involved making decisions which amended whatever delegation may have already existed, and changed who can bind the municipality in certain matters. This is clearly a substantive decision which goes beyond simply providing instructions to staff.

It is important to note that, of the three action items contained in this motion, point (2), which called for an independent third-party review of certain allegations, would likely have been acceptable had it been voted on separately. This instruction clearly pertained to the allegations in question, and only gave direction to begin a review process. However, as noted above, because the motion as a whole was the subject of a single vote, the motion as a whole was improperly voted on in closed session.

CONCLUSION AND RECOMMENDATIONS

We have found that Council breached the closed meeting requirements of the Act in two ways

1) The resolution to go into closed session failed to provide sufficient information regarding the subject matter of the meeting.
2) Council voted on a motion to make substantive decisions.

The first issue, failure to provide sufficient information regarding the subject matter of the meeting, should be addressed by updating Council's procedures to provide such information. The *Farber* decision tells us that Council only needs to provide enough information so that a member of the public can have an idea of what's being discussed, but not so much information as to defeat the purpose of going into closed session. In this case, such a description could have referenced "allegations" without naming those allegations or the person against whom they were made.

In many cases, it will be helpful for Council to look at its closed session agenda, and consider whether the same, or similar, language could be used for the motion to go into closed session.

The second issue – voting improperly in closed session – should be addressed in several ways.

First, we recommend Council and relevant staff obtain training on closed sessions. Beyond this, Council should review its policies and procedures; care should be taken on how agenda items are framed, and both Council and staff should consider that, in some cases, a single topic or proposal may need to be broken up so that parts of it are addressed in closed, and parts in open.

For instance, in this case, Council could have held a closed session discussion on the allegations, and how to respond to them; action item 2, which involved seeking a review of certain allegations, likely could have been voted on in closed as well. The motion to revoke and re-delegate could then have been placed on an open session agenda, where Council would have discussed the substantive steps. In such a scenario, Council should be cautious to ensure that the closed session information is only discussed in closed, and that the substantive decision making is only done in open.

This concludes the investigation and report in this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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