



Cunningham Swan

LAWYERS

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CONFIDENTIAL

October 21, 2025

SENT BY EMAIL TO: tgorgerat@khrtownship.ca

Mayor and Members of Council
c/o Tammy Gorgerat, CAO/Clerk
Township of Killaloe, Hagarty and Richards
1 John Street
P.O. Box 39
Killaloe, ON
K0J 2A0

Dear Mayor and Members of Council:

**RE: Closed Meeting Investigation
Our File No.: 33209-6**

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 *Municipal 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.

PRELIMINARY REVIEW

On September 26, 2025, our office received two complaints. The first complaint pertained to a closed meeting held September 16, 2025 (the "Closed Meeting Complaint"). The second complaint arose from an email sent by the CAO/ Clerk – Treasurer to all members of Council (the "Email Complaint").

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

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

FACTS:

At the regular meeting of Council September 16, 2025, two letters from the public were removed from the agenda. During an in-camera portion of the meeting, one of the letters was discussed by Council.

Additionally, on September 25, 2025, the CAO/ Clerk – Treasurer sent an email to all of Council requesting Council's permission to sign a retainer agreement for legal services. The email stated that if Council directed the CAO/Clerk – Treasurer to proceed, then a formal resolution would be brought to Council at the next Council meeting. Council members then provided their responses and direction by email.

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,
- (a) the security of the property of the municipality or local board;

- (b) personal matters about an identifiable individual, including municipal or local board employees;
 - (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
 - (d) labour relations or employee negotiations;
 - (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
 - (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
 - (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
 - (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
 - (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
 - (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
 - (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.
- (...)
- (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.
- (5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote.
- (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.

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 *Municipal Act* includes a number of exceptions to the default rule.

The scheme of the *Municipal 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 *Municipal 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; but 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.

In other words, Council can only vote on an item in closed session if that same item could itself be a subject of a closed session.

Even where an exception applies which permits a meeting to be held in closed session, the *Municipal Act* still imposes certain restrictions to promote continued public engagement and/or scrutiny.

First, the motion to proceed into closed session must itself be held in open session. That is to say, a member of the public must be able to enter or log-in to the meeting as it is called to order and observe the motion to move to closed session as it is moved and voted on. Only once the motion passes can the public be excluded.

Second, the motion to move into closed session must provide the “general nature” of what is to be discussed. In *Farber v. Kingston (City)* 2007 ONCA 173, the Ontario Court of Appeal described the contents of this requirement as follows:

I think that 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.

A member of the public, not having been permitted to be present during the closed session, must nevertheless be able to review the motion and have a general idea as to what was discussed, except in limited circumstances. This is important, not least of all because, without this step the public has no way to otherwise hold its Council accountable with respect to the closed meeting.

In addition to passing an appropriate resolution, the subject matter itself must be properly within the cited exception.

The Closed Meeting Complaint

Did Council Pass an Appropriate Resolution in Open Session to Move into Closed Session?

The meeting minutes show that Council was in open session on September 16, 2025, when it passed a motion to move into closed. This was done in accordance with the *Municipal Act*.

Did the resolution to move into closed session cite the section of the *Municipal Act* relied upon and provide a general description of the matters to be discussed?

That motion to move into closed session cited the section of the *Municipal Act* relied on by using a check box system to identify the relevant exemption. However, it failed to provide any details as to the nature of the discussions in closed. As explained above, this is a clear requirement of the *Municipal Act*, and one that has been upheld by the Court of Appeal. Nothing in the minutes indicates that providing a brief description of the subject matter would have defeated the purpose of holding the meeting in closed session.

As a result of the failure to provide any details regarding the subject matter to be discussed, the motion to move into closed session was insufficient.

Did the Meeting Actually Fall within the Cited Exception

Although we have already determined that Council did not meet the technical requirements to move into closed session, it is still important for us to consider whether the subject matter discussed actually fit the cited exemption. Council relied on the exemption for personal matters about an identifiable individual.

In order to qualify as a personal matter for the purpose of the exception, the information must: (1) be reasonably expected to identify an individual; and (2) be about an individual in their personal, rather than professional capacity.¹ Information about an individual in their professional capacity may still qualify as personal information if it reveals something of a personal nature.²

The closed session minutes, as provided by the Township, indicate that the discussion initially was held related to letters that were to be considered in the meeting under the “Correspondence” agenda item. The letter that was discussed apparently included remarks and comments that were allegedly inappropriate and that pertained to an identifiable individual in their personal capacity.

However, the closed session minutes do not suggest that the contents of the letter were exclusively discussed. Rather, it appears that the discussion centered around the general policy of reading correspondence during Council meetings. There was discussion surrounding the Township’s procedural by-law and whether an amendment to the procedural by-law would be required. Council also discussed the importance of respectful communication generally. These discussions did not, therefore, pertain to personal matters about an identifiable individual, but instead related generally to the procedure of Council meetings and the overall desire for respectful communication. Given those circumstances, we find, on a balance of probabilities, that the cited exception did not apply to these discussions.

¹ Amherstburg (Town of) (Re), 2022 ONOMBUD 11 (CanLII) at para 19 [Amherstburg] citing Ontario (AG) v Pascoe, 2002 CanLII 30891 (ONCA) at para 1 and Amherstburg (Town of) (Re), 2015 ONOMBUD 13 at para 22.

² *Ibid*

The closed session minutes further state that Council gave two directions during closed session related to amending process generally moving forward. While the direction might appear to qualify as directions to staff relating to procedural items, as permitted in the *Municipal Act*, these topics could not be brought into closed session, and certainly did not relate to personal matters about an identifiable individual. In essence, Council directed that staff take a course of action that would have the effect of amending the procedural by-law, which is otherwise silent on whether correspondence should or should not be read aloud at meetings.

These directions ultimately pertained to subject matter that was not suitable for closed session and should have been done in open session, with appropriate transparency provided to the public.

Finally, the closed session minutes identified an additional discussion where a Councillor discussed receiving correspondence from a resident regarding a particular issue. It was unclear who this individual was and what the issue was, but on a balance of probabilities we find that the issue was separate and distinct from the discussion regarding the letters. Accordingly, this discussion should have had a separate resolution citing the appropriate section of the *Municipal Act* was and providing a description of the general nature of the discussion.

We cannot comment on whether the subject matter was appropriate for closed session without further information, though we caution that the nature of the discussion did not appear to relate to personal information about an identifiable individual. Nevertheless, we find that the discussion was not properly in closed session as there was no proper resolution passed.

The Email Complaint

According to section 238(1) of the *Municipal Act*, a meeting requires the following elements:

- (a) A quorum of members is present, and
- (b) Members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council.

As a result of sections 238(1) and 239 of the *Municipal Act*, any instance where a quorum of members is present, and matters are discussed or otherwise dealt with in a way that materially advances the business or decision-making of council, is a meeting that must be open to the public unless one of the delineated exemptions applies.

We reviewed the email thread that is the subject of the Complaint. The email thread included all Councillors and therefore constituted quorum. The thread contained a discussion about the business or decision making of Council and the municipality, namely, the decision to retain legal services on behalf of the municipality. Accordingly, we find that the email thread was a meeting for the purposes of the *Municipal Act* and the rules pertaining to closed meetings applied.

There was no open session meeting and therefore there was no resolution to move into closed session. Accordingly, the email was not a properly constituted closed session meeting, even though it was a meeting of Council.

We note that the subject matter of the discussion, being the decision on whether to retain legal services, was itself appropriate for closed session. However, the proper procedural steps to enter into a valid closed session meeting were not followed. It was not appropriate to discuss and provide direction on this issue in an email thread.

CONCLUSION AND RECOMMENDATIONS

We find that the meeting of September 16, 2025, was not properly held in closed session, as it did not comply with the requirements of the *Municipal Act*. Specifically, we find that the resolution to move into closed session was deficient, and that the cited exception did not apply to the specific discussions that were held.

We also find that the email thread of September 25, 2025, was an improper closed session meeting. Specifically, we find that while the subject matter of the discussion was appropriate for closed session, there was no resolution to move from an open session meeting into closed session. There was also no reference to the section of the *Municipal Act* being relied upon and no general description of the subject matter to be discussed.

Going forward, we recommend that the Township adopt a practice of identifying the subject matter of a closed meeting discussion in the resolution to move into closed, as is required by the *Municipal Act*. The Township should also carefully consider the exception relied upon, in order to ensure that the correct exception is applied, and the matter is properly in closed session. Council should be careful to ensure that discussions and decisions do not deviate from a valid closed session item while in closed session; matters that do not fall within the delineated closed session exemptions should not be discussed or decided in closed session.

Furthermore, Councillors should adopt a process to ensure that it not conduct Council business via email. If the business or affairs of Council are being discussed by Council as a whole (or by a sufficient number of Council to form quorum) a proper meeting must be called.

This concludes the investigation and report in this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



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