



J. Paul Dubé, Ombudsman

BY EMAIL

October 30, 2024

Council for the City of Hamilton
c/o Andrea Horwath, Mayor
71 Main Street West
Hamilton, ON L8P 4Y5

Dear Members of Council for the City of Hamilton:

Re: Closed meeting complaint

My Office received a complaint alleging that an interview panel convened by the Mayor of the City of Hamilton (the “City”) to advise her on selecting a new City Manager constituted a committee or local board that failed to comply with the open meeting requirements under the *Municipal Act, 2001* (the “Act”).¹ Specifically, the complaint alleged that the panel held meetings in October 2023 that were closed to the public, and that the City did not provide public notice or agendas for these meetings.

My review determined that the City did not contravene the *Municipal Act, 2001*. The Mayor had the statutory authority to appoint the new City Manager independently from council, and convened the panel to advise her on exercising this individual power. The panel was not established by council, did not report to council, and did not exercise delegated authority from council. In addition, the panel was not established by an Act and did not exercise any power under any Act. I have concluded that the panel was neither a committee nor a local board subject to the open meeting rules in the *Municipal Act, 2001*.

Ombudsman’s role and authority

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

¹ SO 2001, c 25, s 1 [*Municipal Act, 2001*].

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the default investigator for municipalities that have not appointed their own. My Office is the closed meeting investigator for the City of Hamilton.

My 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.

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.

Our review

My Office spoke to the then-acting City Clerk, the Mayor, and both the Mayor's former and current Chief of Staff. We also reviewed a confidential staff report that outlined the process the Mayor used to appoint the City Manager, and which went to council in closed session for information in December 2023.

Hiring a new City Manager

The *Strong Mayors, Building Homes Act, 2022* amended the *Municipal Act, 2001* to assign various powers and duties to the head of council (i.e. the mayor) of prescribed municipalities.² These are often referred to as "strong mayor" powers. Generally, these were powers and duties that a council as a whole had previously exercised. On July 1, 2023, the Mayor of the City of Hamilton was granted these enhanced strong mayor powers,³ which include the ability to appoint Hamilton's City Manager.⁴

² SO 2022, c 18.

³ O. Reg. 180/23.

⁴ *Municipal Act, 2001*, ss 229, 284.5.

In July 2023, the former City Manager announced her retirement. The Mayor announced she would exercise her strong mayor power to fill the vacancy. To assist her in appointing a City Manager, the Mayor contracted with an executive search firm and convened an informal interview panel to advise her. The Mayor determined the panel's composition, which consisted of the Mayor, five members of council who served as chairs of certain committees, and two members of the public. The panel was organized informally by the Mayor's office, without involvement from council or the then-acting City Clerk. The panel did not have formal terms of reference, and did not provide public notice of its gatherings or keep minutes.

In late October and early November 2023, the panel assisted the Mayor with interviewing candidates. Panellists provided individual feedback to the Mayor about the candidates, and the Mayor was solely responsible for the final hiring decision.

Council was not involved in the hiring process for the new City Manager. In early December 2023, shortly before the successful candidate was announced, council received a confidential staff report in closed session that explained the process through which the new City Manager had been selected. On December 4, 2023, the Mayor formally appointed a new City Manager, and her decision was subsequently posted on the City's public website.⁵

Analysis

The panel was not subject to the Municipal Act, 2001

The *Municipal Act, 2001* defines a "committee" as "any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards."⁶

In assessing whether a body is a committee, I also consider its role and function, as the Act defines "committee" as an advisory or other committee or a similar entity. My Office has previously found that a body exercising delegated authority from council to make decisions or recommendations is likely to be a committee.⁷

⁵ Andrea Horwath, Mayoral Decision MDE-2023-14, 4 December 2023, online: [\[https://www.hamilton.ca/sites/default/files/2023-12/MDE-2023-14_accessible.pdf\]](https://www.hamilton.ca/sites/default/files/2023-12/MDE-2023-14_accessible.pdf) [MDE-2023-14].

⁶ *Municipal Act, 2001*, s 238(1).

⁷ *West Parry Sound (Heads of Council in) (Re)*, 2015 ONOMBUD at para 37, online: [\[https://canlii.ca/t/gtp7q\]](https://canlii.ca/t/gtp7q); *Calvin (Municipality of) (Re)*, 2024 ONOMBUD 4 at para 32, online: [\[https://canlii.ca/t/k3tr1\]](https://canlii.ca/t/k3tr1).

The Act defines “local board” as several listed types of boards, “or 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.”⁸

The Act’s openness requirements apply to meetings of councils, local boards, and their committees. The word “meeting” is defined, in part, as “any regular, special or other meeting of a council, of a local board or of a *committee of either of them* [...]” (emphasis added).⁹

In this case, council did not create the panel and the panel did not report to council or exercise delegated authority from council. The panel was not established by an Act and did not exercise any power under any Act. Rather, the panel was arranged by, and reported to, the Mayor in the exercise of her strong mayor powers. The panellists individually provided recommendations and advice to the Mayor, who was the sole decision-maker for the City Manager position. In that capacity, the Mayor had unilateral authority to appoint a City Manager, with or without an advisory panel, and was free to accept or disregard the panellists’ advice.

The panel was created by the Mayor at her discretion to advise her on a decision that she was empowered to make. Given its function, creation, and reporting relationship, I have determined that the panel was not a committee of council or a local board and its gatherings were not “meetings” for the purpose of the Act’s open meeting rules.

Importance of openness and transparency

Although I have determined that the panel was not subject to the open meeting requirements in the Act, this case raises broader questions about openness and transparency in municipal decision-making.

The Act’s open meeting requirements are “intended to increase public confidence in the integrity of local government by ensuring the open and transparent exercise of municipal power.”¹⁰ The principles of accountability, transparency, and fairness are essential for good governance, including in the exercise of strong mayor powers. The legislation granting these powers incorporates some of these principles, and specifically requires that decisions be in writing and be publicly available,¹¹ as the Mayor’s decision was in this case.¹²

⁸ *Municipal Act, 2001*, s 1(1).

⁹ *Ibid*, s 238(1).

¹⁰ *London (City) v RSJ Holdings Inc*, 2007 SCC 29, at para 19, online: <<https://canlii.ca/t/1rtq1>>.

¹¹ *Municipal Act, 2001*, s 284.4.

¹² *MDE-2023-14*, *supra* note 5.

To further increase the accountability and transparency of mayoral decisions, I encourage the City of Hamilton, as a best practice, to provide public information to clarify the nature and role of any future advisory bodies that assist the Mayor in exercising her strong mayor powers.

Conclusion

My review determined that the Mayor's interview panel was not a committee or local board subject to the open meeting rules under the *Municipal Act, 2001*.

I would like to thank the City of Hamilton for its co-operation during my review. The City Clerk has confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Paul Dubé', with a large, stylized loop at the beginning.

Paul Dubé
Ombudsman of Ontario

cc: Matthew Trennum, City Clerk, City of Hamilton

Cette lettre est aussi disponible en français