

BY EMAIL

May 12, 2023

Council for the City of London
c/o Mayor Josh Morgan
300 Dufferin Avenue
London, ON N6B 1Z2

Dear Members of Council for the City of London:

Re: Closed meeting complaint

My Office received a complaint about the January 23, 2023 meeting of the City of London's Strategic Priorities and Policy Committee (the "Committee"). The complaint alleged that the Committee meeting was closed to the public when the doors to London City Hall were locked after the meeting had started until the City became aware of the issue and unlocked the doors.

I am writing to share the outcome of my review of this complaint. For the reasons set out below, I have determined that the City contravened section 239(1) of the *Municipal Act, 2001* (the "Act")¹ for the period of 4:30 p.m. to 6:05 p.m. on January 23, 2023 when the doors to City Hall were locked and the public was unable to access the building to observe the Committee's meeting.

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

¹ SO 2001, c 25.



My Office has 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.

Review

My Office notified the City of our intent to investigate this complaint on March 31, 2023.

As part of this investigation, we reviewed the January 23, 2023, Committee meeting materials, including the agenda, minutes, and video recordings. We also interviewed the City Clerk and reviewed the City's policy regarding public access to meetings², as well as an email that was sent to City staff and council regarding the incident on January 23.

January 23, 2023 meeting

The Committee met in council chambers at 4:03 p.m. on January 23, 2023. The City also livestreamed the meeting to both YouTube and the City's eScribe meeting platform.

The City's policy on public access during council and standing committee meetings requires that the City Clerk or their designate ensure that the doors to the public viewing gallery of council chambers are open to the public fifteen minutes before the meeting. The City Clerk told my Office that the doors to council chambers were open for the January 23, 2023 Committee meeting, as he could see them from where he was sitting. The City's policy does not specifically require staff to confirm that the doors to City Hall are unlocked.

At approximately 4:30 p.m., half an hour after the meeting had begun, a security guard under contract to the City locked the front doors to City Hall. We were told that this is normal procedure for days when there are no council or committee meetings. The City

² City of London, by-law No CPOL.-273-251, *Public Access During Council and Standing Committee Meetings* (26 June 2018) [Public Access by-law].



Clerk and Committee were unaware that the doors had been locked, and my Office was told that the doors were locked in error. At 6:05 p.m., the Committee voted to take a recess.

During the recess, around 6:15 p.m., a member of the press alerted the City Clerk that the front doors were locked. The City Clerk told my Office that he immediately notified the City's corporate security team, who unlocked City Hall's doors around 6:20 p.m. During the period that the doors were inadvertently locked, the meeting was livestreamed on both YouTube and eScribe without interruption.

The Committee resumed its meeting at 6:42 p.m. before adjourning at 11:45 p.m.

Steps taken following the January 23, 2023 meeting

The following day, the City Manager circulated an email to senior City staff and members of council acknowledging that the doors were locked from 4:30 p.m. to 6:20 p.m. in error, and explaining that the City was immediately taking several steps to avoid such errors in the future.

According to the email, the City will have a member of security assigned to checking the doors to City Hall to ensure they remain unlocked during future council and committee meetings. In addition, the City has committed to taking other steps to ensure that the doors to City Hall remain unlocked, including reassigning security oversight of meetings to permanent City security co-ordinators, creating a checklist for security staff working during meetings, and reviewing its security operations and training procedures.

Analysis

Subsection 239(1) of the *Municipal Act, 2001* requires that all meetings of a municipal council be open to the public, subject to prescribed exceptions. As indicated by the Supreme Court of Canada in *London (City) v. RSJ Holdings Inc.*, the open meeting requirements set out in the Act reflect the public's "right to observe municipal government in process."³

³ *London (City) v. RSJ Holdings Inc.*, 2007 SCC 29 at para 32.



In 2016, my Office issued a report to the City of London regarding a meeting where the doors to City Hall were locked and the public was prevented from gaining access to council chambers, despite council's intentions that the meeting be open to the public.⁴ As a result of that investigation, my Office made recommendations to the City that it should ensure that the public has unimpeded access to council chambers in order to observe all open meetings of council and committees, and ensure that a formal written policy is created and implemented that sets out security protocols during meetings of council or committees. In response to my Office's recommendations, City council subsequently adopted a policy regarding public access to meetings.⁵ I commend the City for implementing my Office's previous recommendations.

As indicated in the City's procedure by-law, the default meeting location for standing committees, including the Strategic Priorities and Policy Committee, is in council chambers at City Hall, subject to public notice of a change in venue. The City's website and the agenda both identified that the January 23, 2023 Committee meeting would take place in council chambers, with a livestream option also available.

My investigation determined that the livestream was available throughout the January 23, 2023 Committee meeting without any technical issues. However, the procedure by-law and agenda specified that the meeting's location was City Hall council chambers. As I noted in my recent report to the Township of McKellar, the public's right to observe municipal government in process requires that municipalities provide accurate notice of the time and place of their meetings and then proceed to meet at the time and place specified in the notice.⁶

In this case, the City provided notice that the Committee would meet in council chambers on January 23, 2023. Due to the locked doors at City Hall, any members of the public who were not already inside the building would have been unable to access council chambers and observe municipal business from approximately 4:30 p.m. to 6:05 p.m. when the Committee recessed. Once the doors to City Hall were unlocked at approximately 6:20 p.m., council chambers were accessible to the public for the remainder of the Committee

⁴ *London (City of) (Re)*, 2016 ONOMBUD 4, online: <<https://canlii.ca/t/gt8dh>>.

⁵ Public Access by-law, *supra* note 2.

⁶ *McKellar (Township of) (Re)*, 2023 ONOMBUD 3 at para 48, online: <<https://canlii.ca/t/jv6ck>>.

483 Bay Street, 10th Floor, South Tower / 483, rue Bay, 10^e étage, Tour sud
Toronto, ON M5G 2C9

Tel./Tél. : 416-586-3300 Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

www.ombudsman.on.ca

Facebook : facebook.com/OntarioOmbudsman Twitter : twitter.com/Ont_Ombudsman YouTube : youtube.com/OntarioOmbudsman



meeting. Because the public could not access council chambers, the portion of the January 23, 2023 meeting from 4:30 p.m. to 6:05 p.m. was closed to the public contrary to the *Municipal Act, 2001*.

There is no indication that the doors were locked under the Committee's direction to exclude the public, nor that Committee members or municipal staff were aware that the front doors had been mistakenly locked. As soon as staff were notified, the issue was immediately resolved. Moreover, new processes have been put in place to prevent the issue from recurring. I commend the City for acknowledging its error and taking immediate and tangible steps to improve its meeting practices.

Conclusion

My review has determined that the City of London's Strategic Priorities and Policy Committee contravened section 239 of the *Municipal Act, 2001* from 4:30 p.m. to 6:05 p.m. on January 23, 2023 when the doors to City Hall were mistakenly locked.

The Mayor and City Clerk were given the opportunity to review the content of this letter and provide comments to my Office. We did not receive any comments.

I would like to thank City of London for its co-operation during my review. This letter will be published on my Office's website, and should also be made public by the City. 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 letter.

Sincerely,



Paul Dubé
Ombudsman of Ontario

cc: Michael Schulthess, City Clerk, City of London

483 Bay Street, 10th Floor, South Tower / 483, rue Bay, 10^e étage, Tour sud
Toronto, ON M5G 2C9

Tel./Tél. : 416-586-3300 Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

www.ombudsman.on.ca

Facebook : facebook.com/OntarioOmbudsman Twitter : twitter.com/Ont_Ombudsman YouTube : youtube.com/OntarioOmbudsman

