



Ombudsman Report

**Investigation into a special meeting held
by the Town of Midland on March 5, 2025**

**Barbara Finlay
Acting Ombudsman of Ontario**

August 2026

Complaint

- 1 My Office received a complaint that the Town of Midland held a special meeting on March 5, 2025 that was improperly closed to the public. On that day, two consultants met with council in closed session to give a presentation and lead council through a “visioning exercise” for the Midland Bay Landing development project. The meeting was closed under the open meeting exceptions for information supplied in confidence by a third party and information belonging to the municipality under sections 239(2)(i) and (j) of the *Municipal Act, 2001*.¹
- 2 For the reasons set out below, I find that the discussion did not fit within the cited exceptions. I have determined that part of the discussion, when council discussed strategies to attract a developer during the procurement process for the project, fit within the open meeting exception for plans and instructions for negotiations under section 239(2)(k) of the Act. However, I find this part of the discussion could have been parsed from the consultants’ presentation and the visioning exercise, and that these parts of the discussion ought to have been conducted in open session.
- 3 Accordingly, I find that council for the Town of Midland contravened the *Municipal Act, 2001* by holding a closed meeting on March 5, 2025.

Ombudsman jurisdiction

- 4 Under the *Municipal Act, 2001* (the “Act”), all meetings of council, local boards, and committees of either of them must be open to the public, unless they fall within prescribed exceptions.
- 5 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board 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.
- 6 The Ombudsman is the closed meeting investigator for the Town of Midland.
- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the applicable governing procedures have been observed.

¹ SO 2001, c 25.

- 8 Our 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/en/info-public-bodies-and-officials/municipal-government/municipal-meeting-digest.
- 9 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/en/make-complaint/what-we-can-help-you/organizations-you-can-complain-about.

Investigative process

- 10 My Office sent a notice of investigation to the Town on May 26, 2025. We interviewed the Chief Administrative Officer, the Director of Legislative Services/Town Clerk, the former Deputy Clerk, eight of nine council members, the municipal solicitor, the Executive Director of Community and Growth, and the Executive Director of Infrastructure Management/Town Engineer. We also spoke with one of the consultants.
- 11 We reviewed the open and closed meeting agendas and minutes, and the Town's procedure by-law. We also reviewed two different versions of the consultants' PowerPoint presentation, one of which we were told was presented during the closed meeting on March 5, 2025, while the other was presented to the public at a regular council meeting on March 19, 2025.
- 12 The Town does not make audio or video recordings of its closed meetings.
- 13 My Office received full co-operation in this matter.

Background

- 14 The Midland Bay Landing project was the intended development of 40 acres of waterfront property in downtown Midland.² The Town has been trying to develop the site for years. We were told there were two previous unsuccessful attempts to develop it.
- 15 My Office was told that the Town hired the consultants to assist it in developing a strategic plan for the project's development. It was explained to us that the role of the consultants was to manage and advise council through a request for proposal ("RFP") process to attract a developer for the site.
- 16 We were told that the purpose of the meeting on March 5, 2025 was to have council provide its vision for the site. We were told that Town staff had already been consulted and public consultations were to be held after the meeting. According to those we spoke with, the consultants would use the feedback and ideas gathered to put together an expression of interest that would go out to developers.
- 17 We were told this was a major development for the Town, which would involve significant costs.

March 5, 2025 meeting

- 18 On March 5, 2025, council held a special meeting that was called to order at 4:03 p.m. Council resolved to move into closed session at 4:09 p.m. to discuss an item identified on the agenda as "KPMG – Council Visioning Exercise for the Midland Bay Landing Site." Council cited the open meeting exception for information supplied in confidence by a third party under section 239(2)(i) of the *Municipal Act, 2001* and the exception for information belonging to a municipality under section 239(2)(j) of the Act.
- 19 According to the minutes and those we interviewed, the two consultants were present in the closed meeting to give a presentation and lead council through a "visioning exercise" for the Midland Bay Landing project. Interviewees told us that the visioning exercise was an opportunity for council members to share their ideas about what they wanted to see done with the property.

² Town of Midland, "Midland Bay Landing Project", online: <<https://www.midland.ca/en/business-development/midland-bay-landing.aspx>>.

- 20 The PowerPoint presentation my Office reviewed included possible ideas for the site, along with photos illustrating similar ideas that had been implemented in other cities around the world. It also included suggestions and questions for council's consideration.
- 21 The minutes do not reveal, and interviewees could not recall, whether the meeting had two distinct parts – for example, if the consultants' presentation came first, followed by the visioning exercise – or whether it was all part of one discussion.
- 22 Several interviewees recalled that the consultants also explored strategies with council about how to be successful in the RFP process. We were told this included a discussion of how much council was willing to invest in the project.
- 23 We were told no decisions were made during the closed session.
- 24 Council adjourned the special meeting at 6:17 p.m.
- 25 According to the open meeting minutes, council reported back that following its discussion, it directed staff to prepare a motion to receive the information provided by the consultants, and confirm the direction given to the consultants, regarding the Midland Bay Landing site. The motion was then passed when council returned to open session.
- 26 Council adjourned the special meeting at 6:18 p.m.

Analysis

Information supplied in confidence by a third party

- 27 The open meeting exception for information supplied in confidence by a third party applies in the following circumstances:
- i. The information discussed falls into one of the listed types of information (a trade secret or scientific, technical, commercial, financial or labour relations information);
 - ii. It is supplied confidentially, whether explicitly or implicitly, to the municipality by a third party; and,
 - iii. If disclosed, it would reasonably be expected to cause harm to the third party.³

³ *Municipal Act, 2001, supra* note 1, s 239(2)(i).

- 28 The purpose of the exception is to protect confidential information that belongs to, and is about, a third party.⁴
- 29 In this case, interviewees had different views of what type of information was discussed during the closed meeting.
- 30 Some interviewees told us that council discussed environmental and geotechnical studies of the Midland Bay Landing site and that this qualified as technical or scientific information. Other interviewees told us council discussed financial information, such as the monetary value of the land or how much money council was willing to invest in the project.
- 31 However, we were also told the studies and the financial information were already in the Town's possession, and did not come from the consultants. As it was not supplied confidentially by a third party, the discussion of this information did not fit under the open meeting exception for information supplied in confidence by a third party.
- 32 Other interviewees told us that council discussed strategies to secure a developer in the RFP process and that this qualified as commercial information or a trade secret. However, the consultant with whom we spoke told us council did not discuss strategies or other information about the procurement process that were proprietary to their company or confidential.
- 33 In any event, interviewees consistently told us the reason they wanted to keep the discussion confidential was to protect the Town's interests during the RFP process, since its disclosure could risk prejudicing the Town's negotiations with potential developers, giving the developers an unfair advantage. Because the expectation of harm resulting from a possible disclosure of the information was to the Town, not to the consultants, the open meeting exception for information supplied in confidence by a third party does not apply.
- 34 As a result, I find that council's discussion on March 5, 2025 does not fall within the open meeting exception for information supplied in confidence by a third party.

⁴ *Essex (Town of) (Re)*, 2025 ONOMBUD 7 at para 49, online: <<https://canlii.ca/t/kg8bd>> [*"Essex"*]; *Leeds and the Thousand Islands (Township of) (Re)*, 2022 ONOMBUD 5 at para 25, online: <<https://canlii.ca/t/jnkk9>>; and *St.-Charles (Municipality of) (Re)*, 2019 ONOMBUD 6 at para 29, online: <<https://canlii.ca/t/j2p1h>>.

Information belonging to the municipality

35 Council also relied on the open meeting exception for information belonging to the municipality under section 239(2)(j) of the Act to have a closed meeting. This exception applies where:

- i. The closed meeting discussion is about a trade secret, or financial, commercial, scientific or technical information;
- ii. The information belongs to the municipality; and
- iii. It has monetary value or potential monetary value.⁵

36 With respect to the applicability of this exception, interviewees described the same categories of information as those they described for the exception for information supplied in confidence by a third party.

37 As I explain below, even if the discussion was about one or more of those categories, and even if the information belonged to the municipality, I find it did not have monetary value or potential monetary value.

38 My Office has previously found that having monetary value or potential monetary value means the information must have intrinsic value.⁶ The possibility that disclosure of this information could adversely affect the municipality is not a relevant factor for consideration.⁷

39 For example, in a report to the City of Hamilton, my Office considered whether information related to the City's financial contribution during a bid to host the Canadian Football League Grey Cup Championship game had intrinsic monetary value.⁸ My Office held that the information did not have intrinsic monetary value, even if its disclosure might have negatively impacted the City's competitive position against other cities vying to host the game.

40 Similarly, in a 2025 report to the Township of Russell, my Office concluded that a discussion about a costing update for a new recreation complex did not fit within this exception.⁹ My Office determined that the fact that disclosure of the information could adversely affect the Township's ability to secure advantageous contracts in the future did not mean that the information had intrinsic monetary value.

⁵ *Essex*, *supra* note 4 at para 80.

⁶ *Russell (Township of) (Re)*, 2025 ONOMBUD 3 at para 28, online: <<https://canlii.ca/t/k9wggw>> [*"Russell"*]; *Hamilton (City of) (Re)*, 2019 ONOMBUD 3 at para 47, online: <<https://canlii.ca/t/j2b49>> [*"Hamilton"*].

⁷ *Russell*, *supra* note 6 at para 32; *Hamilton*, *supra* note 6 at para 54.

⁸ *Hamilton*, *supra* note 6 at paras 58-59.

⁹ *Russell*, *supra* note 6 at paras 28-32.

- 41 Although its jurisprudence is not binding on our Office, the Information and Privacy Commissioner has also determined, under the analogous exception in freedom of information legislation, that information that affects an organization's ability to secure contracts does not equate to information with monetary value.¹⁰
- 42 In the present case, interviewees all described the monetary value or potential monetary value of the information at issue in terms of the possible negative impact on the Town's competitive position in the RFP process. Interviewees told us that if the information were to be disclosed, it would give developers an unfair advantage in that process and have a detrimental impact on the Town's ability to secure the best deal.
- 43 This potential adverse impact on the Town from the information's disclosure does not mean that it has intrinsic value.
- 44 Accordingly, the exception for information belonging to the municipality does not apply to council's discussion on March 5, 2025.

Plans and instructions for negotiations

- 45 Although not cited by the Town prior to going into closed session, we also considered the application of the open meeting exception for plans and instructions for negotiation under section 239(2)(k) of the Act.
- 46 This exception enables a municipality to discuss "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."¹¹ The purpose of the exception is to allow a municipality to protect information that could undermine its bargaining position or give another party an unfair advantage over the municipality during an ongoing negotiation.¹²
- 47 In order for the exception to apply, the municipality must show that:
- i. The discussion in closed session was about positions, plans, procedures, criteria, or instructions;
 - ii. The positions, plans, procedures, criteria, or instructions are intended to be applied to negotiations;

¹⁰ *Ontario (Attorney General) (Re)*, 2009 CanLII 7944 (ON IPC), online: <<https://canlii.ca/t/22m86>>; *Ontario Power Generation (Re)*, 2016 CanLII 46208 (ON IPC), online: <<https://canlii.ca/t/gsmnl>>; *Thunder Bay Catholic District School Board (Re)*, 2017 CanLII 78367 (ON IPC), online: <<https://canlii.ca/t/hnvfw>>.

¹¹ *Municipal Act, 2001*, *supra* note 1 at s 239(2)(k).

¹² *Grey Highlands (Municipality of) (Re)*, 2021 ONOMBUD 11 at para 17, online: <<https://canlii.ca/t/jfzr8>>.

- iii. The negotiations are being carried on currently, or will be carried on in future; and
- iv. The negotiations are being conducted by or on behalf of the municipality.¹³

- 48** In the 2025 report to the Township of Russell previously described, my Office found that council discussed its strategy and expectations regarding its financial contribution to a recreation complex project and gave instructions to staff relating to the cost of the project.¹⁴ Although the Ombudsman found the exception for information belonging to the municipality did not apply to that discussion, he went on to conclude that the information discussed was relevant to a future tendering process and to any negotiations with bidders that might result from it. Accordingly, my Office found that the exception for plans and instructions for negotiations applied in that case.
- 49** Similarly, here, several interviewees told us there was a discussion with the Town's consultants about how it should proceed in bringing the project to market through the RFP process. We were told this included a discussion of strategic and financial considerations, as Town council and staff wanted to provide the consultants with the information they needed for the Town to successfully attract a developer.
- 50** At the time of the meeting, the Town was planning on using the information gathered in the meeting and through public consultations to put out a request for expressions of interest. The RFP process was to be conducted in future, but it was the planned next step in the development process following consultations.
- 51** As was the case in the Township of Russell, the RFP was likely to lead to future negotiations with at least one potential developer. We were told that if the closed meeting discussion had occurred in open session, it would have revealed strategic information that could have informed developers' proposals and weakened the Town's bargaining position during the future negotiations. We were told this is a significant development for the Town, and it was important for council not to jeopardize future dealings with developers.
- 52** Although the particular developer with whom the Town would be negotiating was not known at the time of the March 5, 2025 meeting, this is not determinative. What must be established is that the municipality had a bargaining position to protect, even if it is one that would be relevant to future negotiations.

¹³ *Ibid.*

¹⁴ *Russell*, *supra* note 6 at paras 35-38.

- 53 Here, I am satisfied council had a bargaining position to protect in its future negotiations with a developer, and if its discussion of strategies and financial considerations had been disclosed to the public, it would have undermined the Town's position in those negotiations.
- 54 Accordingly, I find that council's discussion about how to proceed in the RFP process, including the discussion of strategic and financial considerations, fell within the open meeting exception for plans and instructions for negotiations under section 239(2)(k) of the Act.
- 55 This conclusion does not, however, apply to the consultants' presentation and council's visioning exercise for the Midland Bay Landing site. We were told the visioning exercise was an opportunity for council members to share their ideas about what they wanted to see happen on the site. Public consultations were held to canvass residents' views as well. The information gathered was used to develop the request for expressions of interest that later went out to developers.
- 56 Accordingly, it cannot be said that the disclosure of this information would have undermined the Town's bargaining position during future negotiations. Rather, the ideas shared were intended to inform those negotiations.
- 57 Because part of council's discussion fit within the exception for plans and instructions for negotiations, while part of it did not, it is necessary to consider whether the discussion could have been parsed.

Parsing the discussion

- 58 In some cases, a topic that, on its own, does not fit within a closed meeting exception may nevertheless be discussed behind closed doors.
- 59 In *St. Catharines v. IPCO*, the Divisional Court found that it is unrealistic to expect municipal councils to split up discussions between open and closed sessions where it would "detract from free, open and uninterrupted discussion."¹⁵ In other words, where topics of discussion are significantly intertwined, it may not be realistic to separate them.¹⁶ However, if the topics can be separated, council is expected to return to open session for those portions of the discussion that do not fit within an open meeting exception.

¹⁵ *St. Catharines (City) v IPCO*, 2011 ONSC 2346 at para 42, online: <<https://canlii.ca/t/fkqfr>>.

¹⁶ Letter from the Ontario Ombudsman to Municipality of Central Manitoulin (March 4, 2026), at 3, online: <<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/municipality-central-manitoulin-march-4-2026>>; *Kitchener (City of) (Re)*, 2025 ONOMBUD 4 at para 54, online: <<https://canlii.ca/t/kctv2>>.

- 60 In the present case, there is no recording of the closed meeting. The minutes are broadly worded and do not provide details of council's discussion. Those we spoke with did not always recollect the discussion in detail, or, if they did, their recollections were not always consistent with one another.
- 61 As a result, it was difficult for my Office to determine how interconnected the consultants' presentation and the visioning exercise were with the discussion of strategies for the RFP process.
- 62 However, based on the way that witnesses described the meeting, I find that it was possible for the presentation and visioning exercise to take place in open session, where council members could have publicly shared their thoughts and ideas about what they wanted to see happen on the Midland Bay Landing site, while saving their discussion of what strategy to pursue in the RFP process for closed session.
- 63 Accordingly, I find that council's closed meeting discussion could have been parsed.

The adequacy of the record of the meeting

- 64 The March 5, 2025 closed meeting was approximately two hours long. However, the minutes of the meeting are brief and broadly worded. While they identify the general topic of discussion, they do not reflect its content.
- 65 Because interviewees had different recollections about certain points and the municipality does not make audio or video recordings of its closed meetings, it was challenging for my Office to determine the details of the discussion that occurred in closed session.
- 66 Section 239(7) of the Act requires that all resolutions, decisions and other proceedings that take place during a meeting be recorded without comment. This requirement applies whether the meeting is open or closed.
- 67 While minutes are not intended to be a verbatim transcript, they should record the substance of the discussion.¹⁷ Minutes that do not reflect the entirety of issues and matters discussed and decisions made during a meeting do not provide the accurate record required to protect the municipality, should the meeting be subject to an investigation or litigation.¹⁸ Incomplete minutes also

¹⁷ *Niagara Central Dorothy Rungeling Airport Commission (Re)*, 2023 ONOMBUD 8 at para 86, online: <<https://canlii.ca/t/jx8pb>>.

¹⁸ *Ibid* at para 87.

leave officials without a record to consult in future in order to understand how an issue was considered or a decision was reached.¹⁹

68 My Office has found that a proper record of a closed meeting should include the following:

- where the meeting took place;
- when the meeting started and adjourned;
- who chaired the meeting;
- who was in attendance, with specific reference to the clerk or other designated official responsible for recording the meeting;
- whether any participants left or arrived while the meeting was in progress and if so, at what time this occurred;
- a detailed description of the substantive and procedural matters discussed, including reference to any documents considered;
- any motions, including who introduced the motion and seconders; and
- all votes taken, and all directions given.²⁰

69 Furthermore, as a best practice, my Office recommends that municipalities make audio or video recordings of all meetings, both open and closed.²¹ This provides a clear and accessible record for closed meeting investigators to review and assists in ensuring that officials do not stray from the legal requirements of the open meeting rules during closed session.²² Had the Town made an audio or video recording of the closed meeting on March 5, 2025, it would have greatly assisted my review.

70 Going forward, the Town should ensure that it keeps complete and comprehensive minutes that accurately reflect the proceedings of the meeting, including a detailed description of the substantive matters discussed.

71 Moreover, I strongly encourage the Town to adopt the best practice of audio or video recording its closed meetings.

Opinion

72 Council for the Town of Midland contravened the *Municipal Act, 2001* when it held a closed meeting to receive a consultants' presentation and conduct a visioning exercise about the Midland Bay Landing development project. While council's discussion of the RFP process, including strategic and financial

¹⁹ *Ibid.*

²⁰ *Ibid* at para 85.

²¹ *Bruce (County of) (Re)*, 2022 ONOMBUD 7 at paras 82-83, online: <<https://canlii.ca/t/jpbf9>>.

²² *Ibid.*

considerations, fit within the open meeting exception for plans and instructions for negotiations under section 239(2)(k) of the Act, this part of the discussion could have been parsed from the presentation and visioning exercise.

Recommendations

- 73 I make the following recommendations to assist the Town of Midland in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

All members of council and committees for the Town of Midland should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001* and its procedure by-law.

Recommendation 2

The Town of Midland should ensure that no subject is discussed in closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

Recommendation 3

The Town of Midland should ensure that complete and accurate records are kept of all meetings and that the records reflect all of the substantive matters that were discussed.

Recommendation 4

The Town of Midland should make audio or video recordings of its proceedings, including closed meetings.

Report

- 74 Council for the Town of Midland was given the opportunity to review a preliminary version of this report and provide comments to my Office. No comments were received.

- 75** This report will be published on my Office's website and should also be made public by the Town of Midland. 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 report.



Barbara Finlay
Acting Ombudsman of Ontario