

Frequently Asked Questions about Closed Meeting Investigations

Procedure By -law

The Municipal Act, 2001 provides that every municipality and local board in Ontario is mandated to enact a by -law to govern the calling, location and proceedings of their meetings under s.238.

Open Meeting Rule

All municipal council meetings, a local board, or a committee of either of them must be held in an open public session unless an exception applies pursuant to s.239(1).

Exceptions for Closed Meetings

The Municipal Act, 2001 sets out a number of exceptions to the open meeting rule based on the subject matter of the item that the council, local board, or committee is considering (ss.239(2), (3) and (3.1)). Council, local board, or committee must follow certain procedural requirements prior to convening into a closed session.

Investigations

Since 2008, s.239.1(1) of the Municipal Act, 2001 has allowed any person to request that an investigation be conducted to determine whether a municipality or local board has complied with s.239, or a procedure by -law passed under s.238.

Investigator

Municipalities are authorized to appoint an independent investigator to conduct what has become known as a “closed meeting investigation” under s.239.2. In appointing an investigator, the municipality is to consider the following matters:

- the investigator’s independence and impartiality
 - confidentiality with respect to the investigator’s activities
 - the credibility of the investigative process
- If a municipality does not appoint an investigator, the default investigator is the Ontario Ombudsman.

Investigator’s Powers

An investigator is given significant powers to carry out its investigation, including the powers set out in s.19 of the Ombudsman Act which include the authority to summons any person and examine them under oath, and to require any officer, employee or member of a municipality to provide such information and to produce such documents or things that the investigator requires. The investigator operates under a duty of confidentiality but is entitled to disclose such matters as they consider appropriate in any report.

How does a person file a request and is there a required form for a request?

The municipality can decide upon the form for a request, but presumably the request should be signed by the person requesting the investigation and should include contact information and sufficient detail to indicate the meeting that the request concerns, and a general indication of why the request has been made.

What are the requirements of an Investigation?

The investigation process is required to be credible, its activities confidential, and it is required to be conducted impartially and independently.

Neither Council, nor a Local Board, nor any of its members should attempt to provide direction to the investigation process once a request has been made. Council or Board members could be interviewed as could any other person in attendance at the meeting that is the subject of the request.

What does the Municipality or Local Board do with a request for an Investigation if they have appointed LAS (Local Authority Service)?

The request should be directed to the Municipal Clerk who will have a checklist of material required for each investigation (this is available from LAS). This standardized checklist is designed to minimize investigation costs and ensure the credibility of the investigation process.

What is the LAS' investigation process?

- An individual files a written request for investigation with the Clerk of the municipality
- The municipality sends the request and background documentation to the Investigator (Aird Berlis)
- Initial review by Investigator will result in decision to proceed, or not proceed – with a reason, or withdrawal of request
- If decision is to proceed, investigation is completed
- Draft report filed and peer-reviewed by Investigator
- Final report prepared and submitted to Council or Local Board
- Report is made public by the municipality

Will all requests proceed to a full investigation?

During the investigative process the person who filed the request may decide to withdraw the request. If that happens, the file will be closed and the action reported to the Council, or to the Council and Local Board. Some requests may be determined upon preliminary review to be frivolous or vexatious. Following such a

determination the requestor will be notified of this decision by the Investigator as well the Council, or the Council and the Local Board.

Are all reports reviewed by more than one person?

Each draft report prepared by a Review Officer and is peer reviewed by Aird Berlis. In most instances this will be undertaken by one of the principals of Aird Berlis. Only after the peer review has been completed will Aird Berlis submit the report and any recommendations to the municipality or local board.

How long does an investigation take?

The time spent on an investigation will depend on a few factors. It could be as short as a few hours to investigate a complaint that is on its face without merit or outside the scope or purpose of the closed meeting investigator. But it could also be a few working days depending upon the complexity of the situation, the number of persons to be interviewed and the organization of interviews by the Review Officer and the municipality.

What is investigated under a complaint?

The Act provides in section 239.1 that the mandate of the investigator is to determine whether a municipality or local board has complied with section 239 or the procedure by-law of the municipality or local board. Only the procedure as it relates to the acceptability of a closed meeting and not the issue at hand in the complaint is investigated.

Is there an appeal mechanism available for Investigator reports?

The Municipal Act, 2001 does not provide for an appeal of the report. The investigator's powers are paramount, and its proceedings cannot be challenged, except for lack of jurisdiction, and no decision or report from the investigator can be challenged, reviewed, quashed or called into question in any court.

Who can see a request?

The Municipal Act, 2001 imposes a duty of confidentiality on every person involved with the Investigation. This duty prevails even over the Municipal Freedom of Information and Protection of Privacy Act.

Is the final LAS report of the Investigator available to the public?

Yes, the report is required to be made publicly available. If the investigator determines that there has been a contravention, a report will be provided and the council, or the local board are required to pass a resolution stating how they intend to address the report.

