



Committee Report

To: Warden Janice Jackson
Members of the Executive Committee

From: Donna Van Wyck,
Clerk

Date: March 18, 2021

Re: Closed Meeting Minute Review 2016-2020

Staff Recommendation:

The Closed Meeting Minute Review 2016-2020 report is for information.

Background:

The intent of the closed session provisions in the Municipal Act, 2001 (Municipal Act) is to ensure that members of council carry on their decision-making function in a transparent and open fashion with ample opportunity for members of the public to participate in the process.

At the January 14, 2021 Bruce County Council meeting the Clerk presented the Closed Meeting Investigator's December 31, 2020 Report. At the end of the presentation Council directed staff to review the County's closed meetings for the past five years and attempt to identify, as best they can, any meetings, or portions of meetings, where the procedure for closing the meeting may be challengeable. Staff therefore conducted a review of the agendas, open minutes, and closed minutes for the past five years, taking particular attention to look for the following:

- a) Whether the subject matter of the item discussed in closed was not identified in the Agenda or, if identified, may be considered vague;
- b) Whether the subject matter of the item discussed in closed as identified in the Agenda appears to have been incorrectly stated or inaccurately identified on the Agenda;
- c) Whether the exemption(s) cited in the Agenda to go into closed appear not to accurately "fit" the item discussed in closed;
- d) Whether there was insufficient information available to determine any of the above, including unable to locate all records associated with a meeting; or
- e) On review, staff are just uncertain.

To clarify, Staff's review did not include a determination of whether an item discussed in closed should have been dealt with in closed.

To also clarify, the below also include possible questionable portions of closed meetings however there are other portions of the closed meeting that appear to have been properly handled/referred to and therefore it is questionable whether the closed meeting, in its entirety or at all, may be deemed to have been improperly closed.

Based on instructions given, 181 closed meeting minutes from 2016-2020 for Council and 11 Committees were reviewed. As Council is aware, there have been investigations related to closed meetings during that period of time, and from those investigations and the decisions rendered, the County decided on its own to release the minutes or portions of 16 sets of minutes. Column three of the below chart therefore does not reflect those minutes that have been the subject of litigation and/or investigation and were found to be improperly closed, nor have we reviewed minutes that are currently subject to investigation and/or litigation or those minutes that staff recently was notified may be subject to an investigation.

Year	Number of Closed Meetings	Meetings that may be challengeable based on one or more of the criteria noted in a) to e) above
2016	30	7
2017	38	4
2018	39	7
2019	40	3
2020	34	0
Total	181	21

To determine whether a meeting has been properly closed or whether the subject matter discussed during the closed meeting properly falls within an exemption under the Municipal Act, 2001 is a task which is usually undertaken by the Ombudsman or by an Investigator (Section 239.2 of the Municipal Act, 2001).

In addition, as Council is aware, Council and Staff continue to improve on processes and procedures related to closed meetings as outlined below:

1. "Closed Session Best Practices" Training was held on February 13, 2020 and presented by Aird & Berlis the County's Closed Meeting Investigator. The presentation was circulated to attendees for future reference. Staff recommend that closed meeting training be provided once per term of Council.
2. Council has been provided direction on how to properly report out of a closed meeting.
3. Authors of closed reports are required to provide the permitted reason under the Municipal Act, 2001 for closed meeting reports and consult with the Clerk of Deputy Clerk to confirm requirements are met for the item to be discussed in a closed meeting.
4. The Chair is required to announce, in the open meeting, the actions taken in a closed meeting, providing as much detail as possible, including any direction or instructions provided.

5. The resolution passed in the open meeting to authorize the closed meeting maximizes the information available to the public without undermining the reason for excluding the public. In the interest of disclosing enough information, it is important that members of the public know the essence of the item under consideration without disclosing the potential substance of the ensuing deliberations. This will also provide Members of Council (Committee or Board) with sufficient information to prepare for the discussion or, most importantly, to disclose pecuniary or other interests at the appropriate time.
6. The resolution authorizing the closed meeting indicates what matters are to be considered under which exemption.
7. The Ontario Ombudsman “Open Meetings Guide for Municipalities” was shared with Directors (via email on February 11, 2020) to assist in providing guidance in determining what subject matters qualify to be discussed in a closed meeting.

Financial/Staffing/Legal/IT Considerations:

There is no financial, staffing, legal or IT considerations associated with this report.

Interdepartmental Consultation:

The County C.A.O. and the County Solicitor provided input on this report.

Link to Strategic Goals and Elements:

None

Approved for Submission:

Sandra Datars Bere
Chief Administrative Officer