



Corporation of the Town of Cobourg

Policy Title: Closed Meeting Investigation Policy and Procedure

Division: Corporate Services

Department: Legislative Services

Effective Date:

Revision Date:

Approval Level: Municipal Council

Section Number: 3-1

Policy Number: LEG-ADM-25

1.0 PURPOSE

This document sets out the Closed Meeting Investigation Policy and Procedure (the "Policy") for the Corporation of the Town of Cobourg (the "Town").

The Policy applies to Municipal Council, to all local boards and to committees of which at least 50 percent of the members are also Members of Council or members of local boards and committees.

2.0 POLICY STATEMENT

The Town of Cobourg is committed to ensuring that any request for an investigation made pursuant to section 239.1 of the *Municipal Act, 2001* is dealt with in a fair, expeditious and effective manner by an independent and impartial investigator.

3.0 STATUTORY FRAMEWORK

The open meeting rule in Ontario is set out in s. 239(1) of the *Municipal Act, 2001* and requires that municipal councils and their committees as well as local boards hold meetings that are open and accessible to the public. There are a number of exemptions to the open meeting rule that are set out in s. 239(2), (3) and (3.1) of the *Municipal Act, 2001*. In addition, every municipality and local board is required to enact a Procedural By-law pursuant to s. 238(2) of the *Municipal Act, 2001* that governs the calling, place and proceedings of meetings.

Any person may request that an investigation be undertaken pursuant to s. 239.1 of the *Municipal Act, 2001* to determine whether a municipality or a local board has complied with s. 239 of the statute or a procedure by-law made under s. 238 in respect of a meeting or part of a meeting that was closed to the public.

Municipalities are authorized to appoint an investigator to conduct the investigation in an independent manner and to report on the investigation pursuant to s. 239.2(1) of the *Municipal Act, 2001* (in the absence of an appointment, the Ombudsman of Ontario is the default investigator).

In carrying out his or her functions, the investigator shall have regard to the importance of his or her independence, impartiality, confidentiality with respect to his or her activities, and the credibility of his or her investigative process. The appointed investigator may

Closed Meeting Investigation Policy and Procedure

delegate in writing to any person, other than a member of council, any of the investigator's powers pursuant to s. 239.2(6) of the *Municipal Act, 2001*.

Upon completion of the investigation, if the appointed investigator is of the opinion that the meeting in question, or part of it, appears to be closed to the public contrary to s. 239 of the *Municipal Act, 2001* or the municipality's procedure by-law, the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as the investigator thinks fit pursuant to s. 239(10) of the statute.

4.0 APPOINTED INVESTIGATOR

The Town appointed Aird & Berlis LLP as its Investigator (the "Investigator") with the authority to conduct investigations upon receipt of a valid request in respect of meetings or part of meetings that are closed to the public. The Investigator shall be responsible to determine compliance with the *Municipal Act, 2001* or the applicable procedure by-law and to report on the results of such investigation.

5.0 POLICY

1. The Town and its local boards, and Advisory Committees commit to full cooperation, including the provision of all information requested by the Investigator, either written or through interviews, to assist the Investigator in his or her investigation.
2. In accordance with s. 239.2(11) of the *Municipal Act, 2001*, the Town shall ensure that any reports received from the Investigator by the Town are made available to the public.
3. The Town and its local boards and Advisory Committees shall include any report received from the Investigator related to an investigation under the *Municipal Act, 2001* on the next available public agenda and will consider that report in an open public session of Council, a Committee of Council or the local board.
4. The Town and its local boards or a committee shall pass a resolution stating how they intend to address the Investigator's report pursuant to s. 239(12) of the *Municipal Act, 2001* if, in the Investigator's opinion, a closed meeting was held in contravention of s. 239 of the statute or the applicable procedure by-law.

6.0 REQUEST FOR INVESTIGATION

A request for investigation must be submitted on the Request Form attached as Appendix "A" to this Policy. The Request Form may be obtained from the Municipal Clerk's Department or downloaded from the Town's website.

Closed Meeting Investigation Policy and Procedure

7.0 PROCEDURE

1. Any person may submit a request under s. 239.1 of the *Municipal Act, 2001* to the Investigator relating to compliance with s. 239 of the statute or the applicable procedure by-law for meetings or part of meetings that are closed to the public.
2. A request for investigation under s. 239.1 of the *Municipal Act, 2001* must be submitted in writing using the Request Form (and attaching all supporting documents) and directly forwarded by mail or email to the Investigator at:

John Mascarin
Aird & Berlis LLP
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9
Email: jmascarin@airdberlis.com

3. All requests will be treated as confidential by the Town, its local boards and the Investigator, unless authorization is given by the requester to release his or her identity or the identity of the requester has been publicly disclosed.
4. All requests must contain the following information:
 - a) the name of the requester, mailing address, telephone number, and e-mail address (if applicable);
 - b) the date of the closed meeting under consideration;
 - c) the nature and background of the particular occurrences;
 - d) all other relevant information necessary for the Investigator to reasonably consider;
 - e) a direction with respect to the release of the requester's identity; and
 - f) the original signature of the requester or the requester's authorized signing officer(s).

The Request Form is intended to provide the Investigator with as much information as possible to aid in the conduct of the investigation. A Request Form that has been improperly or not fully completed may be deemed incomplete by the Investigator and will not be accepted. If such an event occurs, the Investigator will notify the requester of such circumstance.

Closed Meeting Investigation Policy and Procedure

5. When a request is submitted, the Investigator is responsible for compliance with this Policy and shall follow the following procedures:
 - a) assign a file number and record a file number on the envelope or email;
 - b) log the file number together with the date and time received; and
 - c) confirm receipt of the request to the requester.
6. For all requests, the Town or its local boards shall supply forthwith to the Investigator the following or any other information or documentation as requested by the Investigator related to a request:
 - a) a certified copy of the Notice of Meeting;
 - b) a certified copy of the Meeting Agenda;
 - c) a certified copy of the Meeting Minutes;
 - d) any relevant resolutions;
 - e) a municipal or local board contact list; and
 - f) any other relevant information as requested by the Investigator.
7. The Town and its local boards shall allow the Investigator full independence in which to conduct its investigation and shall not interfere or obstruct the Investigator in any way from carrying out its investigation. The Investigator may report any instances of interference or obstruction to the Council or the local board.
8. The Investigator shall review the request to determine whether there are reasonable and probable grounds to proceed with a full investigation. The Investigator is authorized to summarily dismiss the request, with written notice to the requester, if it determines that there are no reasonable or probable grounds to undertake a full investigation.
9. The Investigator will commence its investigation within two (2) weeks of having made a determination that the request merits a full investigation.

Administration

The Chief Administrative Officer designates the Municipal Clerk to implement and administer these Policy.