

The Corporation of the Town of New Tecumseth

Closed Meeting Investigation Policy and Procedure

PREAMBLE

This document sets out the Closed Meeting Investigation Policy and Procedure for The Corporation of the Town of New Tecumseth (the “Town”).

The procedure applies to Council, to all local boards (excluding the Police Services Board and New Tecumseth Public Library Board) and to committees of which at least 50 percent of the members are also members of Council or members of local boards.

Statutory Framework

The open meeting rule in Ontario is set out in s. 239(1) of the *Municipal Act, 2001* (the “Act”) 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 Act. In addition, every municipality and local board is required to enact a procedure by-law pursuant to s. 238(2) of the Act 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 Act to determine whether a municipality or a local board has complied with s. 239 of the Act 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 Act (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 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 Act.

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 Act 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 Act.

Appointed Investigator

The Town appointed Aird & Berlis LLP as its Investigator (the “Investigator”) with the authority to conduct investigations upon receipt of a valid complaint in respect of meetings or part of meetings

that are closed to the public. The Investigator shall be responsible to determine compliance with the Act or the applicable procedure by-law and to report on the results of such investigation.

POLICY

1. The Town and its local boards are committed to ensuring that any request for an investigation under s. 239.1 of the Act is dealt with in a fair, open and expeditious manner.
2. The Town and its local boards 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.
3. In accordance with s. 239.2(11) of the Act, the Town and its local boards shall ensure that any reports received from the Investigator by the Town are made available to the public.
4. The Town and its local boards shall include any report received from the Investigator related to an investigation under the Act on the next available public agenda and will consider that report in an open public session of Council or the local board.
5. The Town and its local boards shall pass a resolution stating how they intend to address the Investigator's report pursuant to s. 239(12) of the Act if, in the Investigator's opinion, a closed meeting was held in contravention of s. 239 of the Act or the applicable procedure by-law.
6. Any questions regarding this Policy can be directed to the Clerk's Department, Town of New Tecumseth, 10 Wellington Street East, Alliston, ON L9R 1A1, by contacting the Clerk's Department at 705-435-3900; or through e-mail to clerk@newtecumseth.ca.

COMPLAINTS

Prior to submitting a request for investigation, any member of the public is encouraged to discuss their concerns or inquiries with the Clerk.

[Request Forms](#) may be downloaded from the Town's website or are available in the Clerk's Department.

Complaint Procedure

1. Any person may submit a complaint to the Investigator relating to compliance with the Act or the applicable procedure by-law for meetings or part of meetings that are closed to the public.

2. Complaints must be submitted in writing using the Request Form in a sealed envelope identified as a complaint under s. 239.1 of the Act, and directly forwarded by mail to:

- (a) The Clerk:

Town of New Tecumseth
10 Wellington Street East
Alliston, ON L9R 1A1

or

- (b) The Investigator:

John Mascarin
c/o Aird & Berlis LLP
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

As an alternative to mailing a hard copy, an electronic or digital copy of the complaint with all supporting documents may be emailed directly to the Investigator at: jmascarin@airdberlis.com. **E-mailed complaints to the Clerk will not be accepted.**

3. All complaints will be treated as confidential by the Town, its local boards and the Investigator, unless authorization is given by the requestor to release his or her identity or the identity of the requestor has been publicly disclosed.
4. All complaints 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) unless received by e-mail.

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.

5. When a complaint is submitted directly to the Clerk, the Clerk is responsible for compliance with this Policy and shall follow the following procedures:
 - (a) ensure that the request remains sealed and its contents remain confidential; and
 - (b) forward the complaint forthwith to the Investigator by regular mail.

- (c) assign a file number and record a file number on the envelope or email;
 - (d) log the file number together with the date and time received; and
 - (e) confirm receipt of the complaint to the requester.
6. When a complaint is submitted directly to the Investigator, 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 complaint to the requester.
7. 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 complaint:
- (a) a certified copy of the Meeting Agenda;
 - (b) a certified copy of the Meeting Minutes;
 - (c) any relevant resolutions;
 - (d) a municipal or local board contact list; and
 - (e) any other relevant information as requested by the Investigator.
8. 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.
9. 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 complaint, with written notice to the requester, if it determines that there are no reasonable or probable grounds to undertake a full investigation.

Commencement of Investigation

10. The Investigator will commence its investigation within two (2) weeks of having made a determination that the complaint merits a full investigation.

Reporting

11. The Investigator shall complete its investigation and report to Council or the local board pursuant to s. 239.2(6) of the Act within ninety (90) days from the date of receipt of the complaint. Should the Investigator be unable to complete the investigation and report within ninety (90) days, the Investigator shall report same to Council or the local board and provide an indication of the date(s) that the investigation will be completed and the report submitted.