

## Closed Meeting Protocol

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### 1. Objective

To provide information regarding the statutory requirements and Regional procedures with respect to Council and Committee meetings that are closed to the public.

### 2. Definitions

**Closed Meeting** – means a meeting, or part of a meeting, which is closed to the public as permitted by the Municipal Act, also referred to as an "in-camera meeting".

### 3. Should the Meeting be Closed

In the interests of accountability and transparency, and when possible, Regional Council endeavours to conduct its decision making in public. Staff are requested to consider the following questions when determining whether a matter should be considered in a Closed Meeting:

**Question 1:** Does the matter meet the criteria in the Municipal Act (Section 10.1 of the Procedural By-law) for the meeting to be closed?

**Question 2:** If so, just because the meeting can be closed, does that mean it should be closed?

The determination regarding whether a matter should be dealt with in a Closed Meeting is the responsibility of the relevant Department Head in consultation with the Commissioner of Corporate Services or designate and/or the Regional Clerk.

### 4. Municipal Act Rules for Closed Meetings

Topic / Municipal Act Exception	Discussion Can Include	Voting Permissions
Security of Property of the Regional Corporation	<ul style="list-style-type: none"> <li>• Regional property</li> <li>• Regional facilities</li> <li>• Regional assets</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters</li> <li>• Giving directions or instructions to staff</li> </ul>
Personal Matters About Identifiable Individuals	<ul style="list-style-type: none"> <li>• Municipal employees</li> <li>• Members on boards and committees</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters</li> <li>• Giving directions or instructions to staff</li> </ul>
A Proposed or Pending Acquisition or Disposition of Land	<ul style="list-style-type: none"> <li>• Purchases</li> <li>• Sales</li> <li>• Leases</li> <li>• Expropriations</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters</li> <li>• Giving directions or instructions to staff</li> </ul>
Labour Relations or Employee Negotiations	<ul style="list-style-type: none"> <li>• Union or Employee Negotiations</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters</li> <li>• Giving directions or instructions to staff</li> </ul>

Topic / Municipal Act Exception	Discussion Can Include	Voting Permissions
Litigation or Potential Litigation, including matters before Administrative Tribunals	<ul style="list-style-type: none"> <li>• Current or Pending Litigation</li> <li>• Matters before the Ontario Municipal Board</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters</li> <li>• Giving directions or instructions to staff</li> </ul>
Advice that is Subject to Solicitor-Client Privilege	<ul style="list-style-type: none"> <li>• Legal Opinions or Advice</li> <li>• Status Reports/Briefings</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters</li> <li>• Giving directions or instructions to staff</li> </ul>
Matters under Other Legislation	<ul style="list-style-type: none"> <li>• Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)</li> <li>• Emergency Management and Civil Protection Act</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters</li> <li>• Giving directions or instructions to staff</li> </ul>
Request under the Municipal Freedom of Information and Protection of Privacy Act	<ul style="list-style-type: none"> <li>• FOI Requests</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters</li> <li>• Giving directions or instructions to staff</li> </ul>
An Ongoing Investigation respecting the Region by an Ombudsman	<ul style="list-style-type: none"> <li>• Ongoing Investigation by Ombudsman appointed under the Ombudsman Act or Ombudsman appointed by the Region</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters</li> <li>• Giving directions or instructions to staff</li> </ul>
Education or Training	<ul style="list-style-type: none"> <li>• Council Orientation</li> <li>• Professional Development</li> </ul>	<ul style="list-style-type: none"> <li>• No discussion or decisions that materially advance the business or decision-making of Council/Committee</li> </ul>

## 5. Statutory Requirements for Closed Meetings

Pursuant to Sections 238 and 239 of the Municipal Act:

- Public notice of a Closed Meeting must be given.
- Before holding a meeting or part of a meeting that is to be closed to the public, Council must state by resolution, the fact of the holding of the Closed Meeting and the general nature of the matter to be considered at the Closed Meeting.
- All resolutions, decisions and other proceedings at Closed Meetings are to be recorded without note or comment.
- Closed Meeting proceedings shall be recorded by the Regional Clerk and/or his or her designate.

- Any person may request an investigation of whether the Region has complied with Section 239 of the Municipal Act or the Procedural By-law in respect of a meeting or part of a meeting that was closed to the public.

## 6. Access Requests for Closed Meeting Reports and Materials

Reports and materials prepared for consideration at Closed Meetings are records that may be subject to Freedom of Information (FOI) access requests under the Municipal Freedom of Information and Protection of Privacy Act. While it would be desirable to protect the confidentiality of records that are considered at Closed Meetings, in the event of an appeal, the Region could be ordered to release such records.

## 7. Closed Meeting Reports and Recommendations

### Reports

Whenever possible, written Closed Meeting reports are preferred over verbal reports as written reports provide for a more detailed account of the confidential record. Written reports also ensure that Council/Committee is prepared for any decisions they may need to consider in relation to a Closed Meeting discussion. It is also important to ensure that information that can be made available to the public is disclosed appropriately. Aside from a singular report appearing on a Closed Meeting agenda, consideration shall also be given to the following:

**Option A:** A report to appear on the Open Meeting agenda which provides as much general context in relation to the Closed Meeting matter as possible without disclosing confidential details and a confidential attachment to provide the accompanying confidential details; or

**Option B:** A companion report to appear on the Open Meeting agenda which provides for as much general context in relation to the Closed Meeting matter as possible without disclosing confidential details; or

**Option C:** A recommendation for Council/Committee to direct staff to prepare a related information report to be included as part of a subsequent Open Meeting agenda.

### Report Titles

The following standard format is to be used for Closed Meeting report titles and included on Open Meeting agendas for notice purposes:

Confidential Report of the <Department Head> – <reference to Topic/Municipal Act Exception> with respect to <reference to subject matter, property location>

## **Recommendations**

Under the Municipal Act, Council or Committee in a Closed Meeting is permitted to vote on procedural motions or to direct or instruct Regional officers, agents or employees. Some actions which conform to this requirement are inherently confidential and should not be considered publicly. Other actions, however, can and should be voted on in an Open Meeting. The following are best practices with respect to the consideration of an Open Meeting motion related to a matter discussed by Council or Committee in a Closed Meeting:

**Option A:** If it is recommended that a report be received for information, this recommendation must be introduced in the Open Meeting. In this case, the following procedural motion should be used to rise from the Closed Meeting:

That Council/Committee rise from the closed meeting and report.

Once Council/Committee has risen from the Closed Meeting, the recommendation to receive the report for information may be introduced, using the following motion:

That Confidential Report <report #> be received for information.

**Option B:** If the report includes recommendations for approval by Council/Committee, the recommendations must be introduced in the Open Meeting. In this case, the following procedural motion should be used to rise from the Closed Meeting:

That Council/Committee rise from the closed meeting and report.

Once Council/Committee has risen from the Closed Meeting, the recommendations may be introduced by Council/Committee, using the following motion:

That the recommendations contained in Confidential Report <report #> be adopted.

In order to ensure that there is appropriate context for the introduction of the motion, the Chair shall consider presenting appropriate background information prior to Council's consideration of the motion.

**Option C:** If it is recommended that direction be given to staff to report back at a subsequent meeting, this direction can appear as part of a recommendation within the staff report and be passed in a Closed Meeting:

That staff be directed to report back at a subsequent meeting of Council/Committee in relation to <subject matter>.

If determined to be appropriate, greater detail can also be provided as part of the direction to staff. The following is an example to illustrate:

That staff be directed to prepare a report for the January 1, 2016 Council/Committee meeting in relation to the approach contemplated in Option Two of Report #2015-X-1 regarding <subject matter>.

## **8. Public Disclosure**

### **Disclosing Closed Meeting Information**

Members of Council and Regional Staff shall not disclose or release information considered in a Closed Meeting. This is a standard practice established to protect the interests of both Council and the Region. However, if Council deems it desirable and appropriate to release the final recommendations, the following clause may be included as part of the motion to adopt the recommendations in the confidential report, to authorize staff to release/publish the recommendations adopted by Council:

- b) That staff be directed to release the recommendations adopted by Council as it pertains to Confidential Report <report #>;

### **Disclosing Closed Meeting Agenda Items**

Although information contained in Closed Meeting reports shall not be disclosed, the Municipal Act requires that public notice of meetings be provided in a Procedural By-law. The Region's Procedural By-law requires that there be public notice of meetings and that the agenda, including a list of items to be considered at each meeting, to be posted on the website and made available prior to the meeting.

In order to be accountable and transparent, and inform all present in public of matters dealt with in closed session, Council and its committees shall open all meetings in open session and pass a motion to move into closed session. Once matters in the Closed Meeting have been dealt with, Council/Committee shall reconvene in open session to disclose, in a general manner, how the agenda items were dealt with in the Closed Meeting. A sample Chair's script is attached as Appendix A to the Closed Meeting Protocol.

## **9. Addition of a Closed Meeting Item Not on the Agenda**

In the event an item not appearing on an agenda must be considered at the meeting due to exceptional circumstances involving urgent or time sensitive issues, which require a Council resolution prior to the next regularly scheduled meeting or in advance of the time required to convene a special meeting, the item may be added to the agenda by way of an addendum pursuant to Section 8.5 of the Procedural By-law.

In order for a 'time sensitive' matter to be added to an addendum, as soon as practical the relevant Department Head shall advise the Regional Clerk of the matter and provide an explanation as to its urgency.

In the event an item not appearing on an agenda or addendum must be added to the agenda, the Chief Administrative Officer and/or relevant Department Head shall advise Council and provide an explanation as to its urgency. Pursuant to the Procedural By-law, the item can be introduced by dispensing with notice on a two-thirds majority vote of the members present and voting.

**10. Attendance at a Closed Meeting**

Unless otherwise directed by Council/Committee, attendance at Closed Meetings is limited to the Chief Administrative Officer, Department Heads, the Regional Clerk and/or his or her designate, and other Regional Staff as deemed necessary, at the discretion of the relevant Department Heads.

Regional Staff are to remain outside the Closed Meeting room until called to speak to their specific matter. Regional Staff should vacate the meeting once their matter has been dealt with by Council/Committee.

**11. Closed Meeting Prelude**

In order to remind the Members of Council/Committee of their obligations in closed session, the Chair shall read a script at the beginning of the closed session detailing the Closed Meeting rules of the Region of Durham (Appendix B to the Closed Meeting Protocol).

**Appendix "A"**

**Sample Script when rising from the Closed Meeting**

Council/Committee met in Closed Session to consider matters it is permitted to do so under the Municipal Act, and as listed on today's Council/Committee agenda. The following items were considered during the Closed Session:

List of Items Considered in Closed Session

In the continuing interest of transparency and open government, I am reporting in public session any outcomes from today's closed session meeting.

As a result of our closed session today, I wish to report the following:

Examples:

Minutes from Previous Closed Session – A question of Item <x> was considered by Council/Committee from these minutes

OMB Appeal Update – Council received information regarding OMB Litigation related to <ROPA amendment number or file number>

Labour Relations/Employee Negotiations – Direction was given to staff respecting negotiations with Local XXXX.

Litigation Matter – Direction was given to staff with respect to litigation related to <subject matter>

Solicitor-Client Privilege – Council/Committee received legal advice related to <subject matter>

**Appendix "B"****Sample Script at the Beginning of a Closed Meeting**

Please be advised that Council/Committee will now meet in Closed Session in accordance with subsection 239(2) of the Municipal Act to consider:

- (a) the security of property of the Regional Corporation
- (b) personal matters about an identifiable individual
- (c) a proposed or pending acquisition or disposition of land
- (d) labour relations or employee negotiations
- (e) litigation or potential litigation
- (f) advice that is subject to solicitor-client privilege
- (g) a matter in respect of which Council may hold a closed meeting under another Act

I will be verbally reporting out in a general sense on all items considered in the closed session once we rise from the closed session and move back to open session.

Note: Only reference the section of the Municipal Act that pertains to the matters to be considered in Closed Session. Any other matters not mentioned in the motion to move into closed session cannot be discussed.

**MFIPPA Requests or Ombudsman Investigation**

Please be advised that Council/Committee will now meet in Closed Session in accordance with subsection 239(3.1) of the Municipal Act to consider:

- (a) a request under the Municipal Freedom of Information and Protection of Privacy Act
- (b) an ongoing investigation respecting the municipality by the Ombudsman

I will be verbally reporting out in a general sense on all items considered in the closed session once we rise from the closed session and move back to open session.

Note: Only reference the section of the Municipal Act that pertains to the matters to be considered in Closed Session. Any other matters not mentioned in the motion to move into closed session cannot be discussed.



Educational or Training Sessions

Please be advised that Council/Committee will now meet in Closed Session in accordance with subsection 239(3) of the Municipal Act for the purpose of <subject>.

Examples: Council Orientation; Professional Development

I will be verbally reporting out in a general sense on all items considered in the closed session once we rise from the closed session and move back to open session.