



**To:** Council  
**From:** CAO/Clerk  
**Date:** December 11, 2007  
**Subject:** Closed meeting investigator

---

**Recommendation:**

It is recommended that Council consider the appointment of a Joint Meetings Investigator with our neighbouring municipalities which form part of the Municipal Action Group. It is further recommended that a RFP be prepared by the joint municipalities to ensure that the Meetings Investigator has defined duties as noted in this report and will perform his duties as an independent arms length investigator in compliance with the Municipal Act, 2001.

**Background:**

The Municipal Act, 2001 stipulates under what circumstances Council or a Local Board may discuss an issue in closed session. This part of the Act has been in place for many years and the criteria for a closed meeting are reiterated in the Township's Procedural By-law. As of January 1, 2008, the Act will allow any person to request an investigation of whether a municipality or Local Board has complied with this Section of the Act. The investigation will be undertaken by either an investigator appointed by the municipality or if one is not appointed, by the Ombudsman of Ontario.

In order to meet the demand of municipalities in Ontario for Investigator, the Association of Municipalities of Ontario has established a program through its Local Authority Services Company to offer an investigator service. This service will provide an Investigator to any municipality that has signed up for the services and paid the required retainer. The investigation may consist of simply reviewing the allegations and minutes of the meeting to make a determination of compliance or, a full investigation of what exactly was discussed in closed session through whatever means necessary. The cost for this service is \$600 retainer for the two year term of the contract and \$1250 per day billed in hourly increments, for an investigation.

The Ontario Ombudsman will provide investigation services at this time at no cost to municipalities. However, it will be necessary for the Provincial Government to provide staffing and resources necessary for the Ombudsman's office to undertake this function. These resource allocations remain unclear and subject to annual budget approval of the Provincial Legislature. This means a possibility of a future charge should meeting investigations place a significant strain on the resources of that office. Another concern

with the Ontario Ombudsman dealing with complaints is the time required to complete such an investigation which would be longer than if the review was undertaken by a local Meetings Investigator.

As previously discussed, Bill 130 includes the discretionary authority for Council to appoint a municipal Meetings Investigator. There are a number of principles that Council must have regard for when appointing a Meetings Investigator:

1. The investigator's independence and impartiality;
2. Confidentiality with respect to the investigator's activities; and
3. The credibility of the investigator's investigative process.

In considering the appointment of a Meetings Investigator, I would recommend that the successful candidate possess:

- Previous municipal government experience (i.e. former Clerk, CAO, municipal lawyer);
- Knowledge of municipal government and the closed meeting provisions of the Municipal Act, 2001;
- A clear understanding of Council operations and policies;
- Credibility with Council, staff, public and media;
- The ability to receive complaints and conduct an investigation in both official languages; and
- No specific connection or interest with the Township.

Some municipalities in Ontario have decided to appoint a Joint Meetings Investigator in conjunction with neighbouring municipalities. This matter has been mentioned for consideration in a recent meeting of the Municipal Action Group.

Section 239.2 of the Municipal Act, 2001 authorizes the Township to appoint a Meetings Investigator and to assign him/her duties required by this position. Specifically it is recommended that the Meetings Investigator be given the authority to:

- Develop the processes and procedures for receiving complaints regarding closed meetings of the municipality or a Local Board for approval by Council;
- Receive complaints and conduct investigations in accordance with the Township's approved process with respect to a meeting of the municipality or Local Board that was closed to the public to determine whether the body complied with Section 239 of the Municipal Act, 2001 or the Township's Procedural By-law;
- Upon concluding an investigation, the Meetings Investigator shall report his or her decision and the reasons for it to Council and the Local Board (if applicable) and shall make such recommendations as he or she thinks is appropriate; and
- Provide an annual summary report of complaints and investigations, and make recommendations for any changes to the approved process deemed necessary by the Meetings Investigator.

Under Section 239.1, the Investigator position is subject to Section 223.13(6) and Sections 223.14 to 223.18 of the Municipal Act, 2001, which delineates the process of the Municipal Ombudsman. As such, the following are powers of the Meetings Investigator:

- Any decision, recommendation, act or omission of the Investigator is final and shall not be challenged, reviewed, quashed, or called into question;
- Every investigation shall be conducted in private;
- The Investigator may hear or obtain any information from any person he or she sees fit;
- The Investigator and every person acting under the instruction of the Investigator shall preserve secrecy with respect of all matters that come to his/her duties;
- The Investigator may disclose any matter that he/she believes should be disclosed to establish grounds for his/her conclusions; and
- No proceeding of the Investigator shall be challenged, reviewed, quashed or called into question in any court, nor shall the Investigator or any person acting under the instruction of the Investigator be called to give evidence in any court or judicial proceeding regarding anything coming to his/her knowledge through the course of his/her duties.

Respectively Submitted By:

Raymond Champagne, CAO/Clerk.