



BY EMAIL

Andrea Holland
City Clerk, City of Hamilton
71 Main Street West
Hamilton, ON, L8P 4Y5

June 23, 2021

Dear Ms. Holland:

Re: Complaints about the display of electronic vote results

I am writing further to our conversations about complaints received by the Ombudsman regarding vote results displayed to the public during electronic meetings held by the City of Hamilton (the “City”). Complainants told our Office that the results of a vote held by the City’s Board of Health during an electronic meeting on February 19, 2021, were not entirely visible to the public. Some complainants told us that vote results have also been partially obstructed during other meetings held by council or committees. Complainants told our Office that these votes were not observable by the public, contrary to the open meeting rules outlined in the *Municipal Act, 2001*¹ (the “Act”).

For the reasons set out below, our Office will not be reviewing this complaint further.

Role of the Ontario Ombudsman

Under the Act, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions. Votes may only take place during a closed meeting if the meeting is properly closed, and the vote is for a procedural matter or to give directions to staff or officials.

As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public. Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.

¹ SO 2001, c 25.

The Ombudsman is the closed meeting investigator for the City of Hamilton.

In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's governing procedures have been observed.

Our Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of open meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting procedures. Summaries of many of the Ombudsman's previous decisions can be found in the digest: www.ombudsman.on.ca/digest.

Voting during electronic meetings

Due to the ongoing COVID-19 pandemic, we understand that the Board of Health has been meeting electronically. All meetings where members participate electronically are streamed live to the public.

The results of votes that take place during electronic meetings are displayed to the public using a meeting management software, E-scribe. An E-scribe vote display window indicates that a vote is in progress, shows the nature of the motion being voted on, and the mover and seconder of the motion. Once a vote has been taken, E-scribe displays the nature of the motion and whether it was carried. The E-scribe vote display window lists the names of all the members who voted 'yes' on the motion, followed by those who voted 'no'. If there are any members absent from the vote, their names are listed below the names of members who voted 'no'.

Complaints received by the Ombudsman

Our Office received several complaints that during a vote held by the City's Board of Health on February 19, 2021, the names of the members who voted 'no' on a particular motion were not displayed to the public. While the names of the members who voted 'yes' on the motion were visible, the names of those who voted 'no' were cut off at the bottom of the E-scribe vote display window. As a result, the names of the members who voted 'no' were not made visible to the public during the meeting.

We spoke with you and the Legislative Coordinator for the City's Board of Health about the vote on February 19, 2021, and about the E-scribe vote display window generally.

Steps taken by the City to resolve the E-scribe vote display window issue

During our discussions, you and the Legislative Coordinator acknowledged that some of the names of the board members who voted against a motion during the February 19 meeting were not visible to the public on the E-scribe vote display window. You both noted that the overall result of the vote – that it was carried 8-4 – was visible and that the result was also verbally announced by City staff during the meeting. Further, you noted that the vote would be recorded in the minutes, which are made public.

You explained that the vote results appear to be cut off at the bottom of the E-scribe vote display window when there is a lot of text included in that window. If there is too much text, then it cannot all be displayed simultaneously in the window and some text may be cut off.

You told our Office that the amount of text displayed depends on the nature of the motion and the number of members in a meeting. If the motion being voted on is long, and/or if there are many members participating in the meeting, then it is possible that some of the information will be cut off at the bottom. This was the case during the February 19, 2021, vote of the Board of Health.

You told our Office that you have raised the issue with the E-scribe software provider. Until the issue can be addressed through a software update, City staff have committed to scrolling through the vote results during electronic meetings to ensure that all results are displayed to the public.

Conclusion

Under the circumstances, we will not be proceeding with a further review of these complaints. We encourage the City to continue monitoring the E-scribe vote display window and to take appropriate measures to ensure that the vote results are displayed in their entirety during a meeting. We ask that the City include this letter as correspondence at an upcoming meeting of council. We thank you for your co-operation with our Office during our review.

If you have any question about the content of this letter, please feel free to contact me at 416-586-3425.

Sincerely,



Emily Prosser
Student-At-Law
Office of the Ontario Ombudsman

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