

Resolution



The Corporation of the Township of Tiny

Meeting Date: November 22, 2023

Moved by: WALMA - Carried: 5-0
Seconded by: MISOMINS. Defeated:
Signed:

THAT the Ombudsman's Final Report dated October 26, 2023 regarding the Huronia Airport Task Force Presentation of April 19, 2022 be received;

AND THAT the recommendations therein be taken into consideration.



J. Paul Dubé, Ombudsman

BY EMAIL

October 26, 2023

Township of Tiny
c/o Mayor David Evans
130 Balm Beach Road West
Tiny, ON
L0L 2J0

Dear Members of Council for the Township of Tiny:

Re: Report – Office of the Ontario Ombudsman

I have completed my investigation into a complaint regarding a meeting held by the Huronia Airport Task Force of the Town of Midland, Town of Penetanguishene, and Township of Tiny on April 19, 2022.

Please find my final report enclosed.

In accordance with section 14.1(8) of the *Ombudsman Act*, the Township should make my report available to the public, and we ask that this be done no later than the next council meeting. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, council should pass a resolution stating how it intends to address this report.

Pursuant to section 14.1 (9) of the *Ombudsman Act*, I will also post a copy of the report on my website at www.ombudsman.on.ca.

Please encourage all members of your committees and local boards to familiarize themselves with the open meeting rules. Our Office has resources available, including our Open Meeting Guide for Municipalities, which [can be accessed on our website here](#). You can also contact us directly to order copies at info@ombudsman.on.ca.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Paul Dubé', written over a light blue horizontal line.

Paul Dubé
Ombudsman of Ontario

CC: Sue Walton, Director of Legislative Services/Clerk, Township of Tiny

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Ombudsman Report

**Investigation into a complaint about a meeting
held by the Huronia Airport Task Force of the Town
of Midland, Town of Penetanguishene, and
Township of Tiny on April 19, 2022**

**Paul Dubé
Ombudsman of Ontario**

October 2023

Complaint

- 1 My Office received a complaint about a virtual presentation given by the Huronia Airport Task Force (the “Task Force”) to members of council for the Town of Midland, Town of Penetanguishene, and Township of Tiny (the “three municipalities”) on April 19, 2022.
- 2 The complaint alleged that the Task Force’s presentation was not broadcast by a television network on the network’s local television channel or its website, as had been advertised in a joint public notice issued by the three municipalities. The complaint alleged this was contrary to the notice provisions in the *Municipal Act, 2001* (the “Act”)¹ and the three municipalities’ procedure by-laws.
- 3 My investigation determined that the Town of Midland, Town of Penetanguishene, and Township of Tiny contravened the open meeting rules on April 19, 2022, by failing to ensure that the public notice for the Huronia Airport Task Force’s meeting provided up-to-date information about how the public could access the virtual meeting. My investigation also found that the three municipalities failed to record meeting minutes.

Ombudsman jurisdiction

- 4 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.
- 5 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 6 The Ombudsman is the closed meeting investigator for the Town of Midland, Town of Penetanguishene, and Township of Tiny.
- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable governing procedures have been observed.

¹ SO 2001, c 25.

- 8 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 the Ombudsman's previous decisions can be found in the digest: www.ombudsman.on.ca/digest.

Investigative process

- 9 In May 2023, my Office advised the Town of Midland, the Town of Penetanguishene, the Township of Tiny, and the Huronia Airport Commission of our intent to investigate this complaint.
- 10 My Office reviewed the three municipalities' procedure by-laws and relevant portions of the Act. We reviewed minutes, agendas, staff reports, correspondence attachments, and video recordings from the municipal council meetings related to the February 2021 creation of the Task Force, as well as minutes from meetings of the Huronia Airport Commission. We also reviewed the public notices, certain social media posts, a slide deck, and a YouTube recording related to the Task Force's April 19, 2022 presentation.
- 11 My Office spoke with the Clerks for Midland, Penetanguishene, and Tiny, and the former Huronia Airport Commission Chair. We also spoke with Penetanguishene staff involved in the preparation of the April 19, 2022 presentation.
- 12 We received full co-operation in this matter.

Background

- 13 Midland, Penetanguishene, and Tiny are the joint owners of the Huronia Airport, an airport located in Tiny. The airport is operated by a joint local board, the Huronia Airport Commission (the “Commission”).²
- 14 The Commission was incorporated in 1996 by a special Act of the Ontario legislature, and is governed by an agreement among the three municipalities.
- 15 The Commission is composed of seven members: One council member from each of the three municipalities, and four community members. Midland appoints two community commissioners, while Penetanguishene and Tiny each appoint one.
- 16 In January 2021, the Chief Administrative Officers of the three municipalities developed a joint staff report for the three councils related to an external review of the Huronia Airport’s operations, including its governance. This joint staff report proposed next steps related to the airport’s development.
- 17 The joint report noted that “Municipal Administration is recommending a Task Force be assembled representing all three Municipalities (Administration and Council), the Airport, as well as community stakeholders with support from a neutral and objective Aviation expert.” The joint staff report recommended that the task force assemble a roadmap of recommendations and timelines for the airport’s development, which would go before the three municipalities for approval.³ A letter from the Commission was attached to the joint report where the Commission requested to be included in any future discussions related to the airport’s governance structure.
- 18 At consecutive meetings in February 2021, each of the three councils received the joint report and the Commission’s letter. At their respective meetings, each council received information about the Task Force’s proposed membership, which did not include representation from the

² I have previously found that a municipal airport commission established under a special Act of the Legislature was a joint local board subject to the open meeting rules, see *Niagara Central Dorothy Rungeling Airport Commission (Re)*, 2023 ONOMBUD 8 [*Niagara Central*], online: <<https://canlii.ca/t/jx8pb>>.

³ This joint report went to council on February 10, 2021 for Penetanguishene, February 17, 2021 for Midland, and February 24, 2021 for Tiny, with minor differences in formatting and introductory language between the versions provided to each council.

Commission. However, each of the three councils discussed and passed resolutions to modify the proposed membership of the Task Force to also include members of the Commission.

- 19 After discussing the membership composition and the content of the amendments, all three councils passed amended resolutions endorsing the report's recommendations, including the creation of the Huronia Airport Task Force, with an amendment to include the Commission members on the Task Force.
- 20 Our review found no evidence that the Commission passed any resolutions creating or endorsing the Task Force during this period in 2021.

The Huronia Airport Task Force

- 21 Section 238(1) of the Act defines a "committee" as any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards. In addition, my Office has previously found that a body may be subject to the open meeting requirements if it is a committee as defined in a municipality's procedure by-law,⁴ or is considered by a municipality to be a committee.⁵
- 22 In assessing whether a body is a committee, my Office also considers its role and function, as the Act defines a committee as an advisory or other committee or similar entity. My Office has found that a body that exercises delegated authority from council to make decisions or recommendations is likely to be a committee.⁶ A body is not likely to be a committee if it serves an administrative purpose, merely exchanges information, or advances previously decided positions.⁷
- 23 In this case, each municipality passed a resolution establishing the Task Force. My Office was told that at the time of the April 2022 presentation, the Task Force was composed of the seven commissioners, the Midland CAO,

⁴ *Niagara (Regional Municipality of) (Re)*, 2015 ONOMBUD 37, online: <<https://canlii.ca/t/gtp7n>>; *Hamilton (City of) (Re)*, 2021 ONOMBUD 9, online: <<https://canlii.ca/t/jfj02>>.

⁵ *Hornepayne (Township of) (Re)*, 2016 ONOMBUD 20, online: <<https://canlii.ca/t/h2st9>>.

⁶ *West Parry Sound (Hubs of Council in) (Re)*, 2015 ONOMBUD 38 [West Parry Sound], online: <<https://canlii.ca/t/gtp7q>>.

⁷ *Ibid*; *Hamilton (City of) (Re)*, 2014 ONOMBUD 11, online: <<https://canlii.ca/t/gtmh8>>; *Deep River (Town of) (Re)*, 2017 ONOMBUD 17, online: <<https://canlii.ca/t/hqspf>>.

the Penetanguishene CAO, and a municipal planner from Tiny. As only three of the Task Force's 10 members were councillors, it did not meet the definition of a committee under the Act.

- 24 However, Midland, Penetanguishene, and Tiny's procedure by-laws provide that the Task Force is a committee. This is because the Task Force's composition and purpose came within the definition of "ad hoc committee" for each municipality.⁸ In all three of these municipalities, ad hoc committees must comply with various open meeting rules established in the procedure by-law, including the provision of notice.⁹ Accordingly, the Task Force was a committee of each municipality and subject to the open meeting rules established in each municipality's procedure by-law.
- 25 Following the April 19, 2022 presentation, the Task Force's initial mandate was complete. However, the Huronia Airport Commission has continued the Task Force with the same membership and an enhanced mandate. The continued Task Force is a committee of the Commission, as more than 50% of its members are also members of the Commission, a local board. Accordingly, the Task Force is currently subject to the open meeting rules in the *Municipal Act, 2001*.

⁸ Midland's procedure by-law defines an ad hoc committee as "a Committee established to review a specific matter or to undertake a specific initiative within a specified timeframe, which is dissolved automatically upon completion of its mandate, unless otherwise directed by Council." See Town of Midland, By-law No 2022-2, *A By-law to provide rules governing the proceedings of its Council, Council Committees, and its Members' Conduct and to repeal By-law 2018-62, as amended* (20 January 2022) [Midland Procedure By-law], s 2.1.

Penetanguishene's procedure by-law defines an ad hoc committee as a "special purpose committee of limited duration, created by Council to inquire into and report on a particular matter or concern." See Town of Penetanguishene, By-law No 2019-25, *Being a By-law of The Corporation of the Town of Penetanguishene to Govern the Proceedings of Council and its Committees (Procedure Manual for Council/Committees) and to Repeal By-law 2017-86* (10 April 2019) [Penetanguishene Procedure By-law], s 1.3.

Tiny's procedure by-law does not define ad hoc committee, but provides that a committee is a "Standing Licensing Tribunal, Selection Committee or an Advisory Committee or Task Force established by Council from time to time." As council's resolution expressly identified a "Task Force", and the definition of "committee" includes task forces, the Task Force is a committee under the procedure by-law. See Township of Tiny, By-law No 22-012, *A By-law to govern the proceedings of Council and the Committees of Council and the conduct of its members and to repeal By-laws 16-044, 17-098, 20-058 and 21-081* (23 February 2022) [Tiny Procedure By-law], s 1.10.

⁹ All three procedure by-laws apply the open meeting rules to a "meeting", which includes committee meetings.

April 19, 2022 meeting

Notice

- 26 On April 19, 2022, the Task Force met to provide the three municipalities with a joint presentation summarizing its work to date. In preparation for the meeting, the Clerks for Midland, Penetanguishene and Tiny prepared a joint public notice stating that a joint virtual presentation of the Huronia Airport Task Force would take place on April 19, at 7:00 p.m., and that no municipal business would be advanced. The public notice further stated that the presentation would be available on a local television network or could be viewed on the network's website. It also indicated that members of the public wishing to participate virtually over Zoom could contact a Penetanguishene staff member via e-mail. The notice included the contact information for the CAOs of the three municipalities.
- 27 All three municipalities reproduced the notice on their websites in late March 2022 and on certain social media accounts throughout March and April 2022.
- 28 My Office was told that Penetanguishene took the lead co-ordinating the presentation and arranged to broadcast the presentation with the television network. The Town of Penetanguishene also planned to livestream the Task Force's presentation on its municipal YouTube page. However, the link to the YouTube livestream was not included in the public notice.
- 29 We were told that the television network informed Penetanguishene staff on the day of the presentation that it would not be broadcasting the presentation live that evening. Updated notices regarding how the public could observe the Task Force's presentation were not provided, and the YouTube link had not been included in the original meeting notice.

The Task Force's presentation

- 30 The Task Force began its presentation at 7:00 p.m. The Town of Penetanguishene hosted the Zoom meeting and livestreamed the presentation to Penetanguishene's YouTube channel. It was not broadcast live on television or the television network's website.

- 31 Eight of the Task Force's 10 members were present, along with 16 of 23 council members for the three municipalities. My Office was told that members of the public who had previously requested the Zoom link were also present virtually with their cameras off.
- 32 Members of the Task Force and an external consultant spent the first hour providing an overview of the Huronia Airport's operations, possible outcomes for the airport, as well as actionable items and considerations for the councils going forward. Attendees were told that these matters would be coming forward to council for consideration and decision-making.
- 33 After the formal presentation, the council members on the Task Force/Commission were invited to share their opinions on the Task Force's proposals. Following these remarks, a question-and-answer session was held with the members of council and the Task Force presenters for another hour. The members of council in attendance were able to ask questions to the speakers. My Office's review of the recording did not observe council members discussing or debating the information among themselves.
- 34 The presentation concluded at approximately 9:00 p.m.

Analysis

Was the April 19, 2022 presentation a meeting of the Task Force?

- 35 Section 238(1) of the Act sets out a two-part test to determine whether a gathering meets the definition of a "meeting". A regular, special or other meeting of a committee is a "meeting" where: (i) a quorum of members is present, and (ii) members discuss or deal with a matter in a way that materially advances the committee's business or decision-making. Each municipality's procedure by-law reiterates this definition.¹⁰
- 36 Based on my Office's review of the YouTube recording, eight of 10 Task Force members were visible at various times during the presentation and question-and-answer period. Accordingly, there was a quorum of Task Force members present.
- 37 For the second requirement, it is necessary to determine whether the Task Force materially advanced its business or decision-making.

¹⁰ Midland Procedure By-law, *supra* note 8, s 2.1(pp); Penetanguishene Procedure By-law, *supra* note 8, s 1.25; Tiny Procedure By-law, *supra* note 8, s 1.22.

- 38 In a previous report, I stated that “materially advances” means considering the extent to which the discussions at issue move forward the business of the municipality, based on factual indicators. Discussions, debates or decisions that are intended to lead to specific outcomes or to persuade decision-makers one way or another are likely to “materially advance” the business or decision-making of a council, committee, or local board.¹¹ Similarly, a body is likely to materially advance business or decision-making when it votes, reaches an agreement, provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy.¹²
- 39 On the other hand, the mere receipt or exchange of information is unlikely to materially advance business or decision-making, as long as there is no attempt to discuss or debate that information as it relates to a specific matter that is or will be before the body.¹³
- 40 My Office was told that the Task Force plays an advisory role without decision-making authority regarding the Airport’s future development. During the presentation, members of the Task Force walked council members through the Task Force’s recent activities, proposed courses of action, and provided background information for requests that would subsequently be considered at future council meetings. The question-and-answer session allowed for additional context, clarification, and speech-making in support of the Task Force’s proposals. These activities materially advanced the business of the Task Force, whose mandate was to create a roadmap and report back to the three municipalities.
- 41 Accordingly, the Task Force’s April 19, 2022 presentation was a meeting of the Task Force that needed to comply with the open meeting rules established in each municipality’s procedure by-law.

Notice

- 42 Section 238(2) of the Act requires municipalities to pass a procedure by-law that governs the calling, place, and proceedings of meetings. Section 238(2.1) of the Act further requires that procedure by-laws provide for public notice of meetings. Midland, Penetanguishene, and Tiny’s procedure by-laws contain public notice requirements for meetings.

¹¹ *Casselman (Municipality of) (Re)*, 2022 ONOMBUD 13, online: <<https://canlii.ca/t/jrkx5>>.

¹² *Pelee (Township of) (Re)*, 2022 ONOMBUD 2, online: <<https://canlii.ca/t/jm1f5>>.

¹³ *Ibid.*

- 43 To uphold the public's right to observe municipal government, municipalities must provide notice of the time and place of meetings, and then proceed to meet at the time and place specified.¹⁴ For the purposes of an electronic or virtual meeting, the "place" is electronic and notice of the place is given by publishing the procedure for how the public can observe the meeting electronically, including providing a link.¹⁵ If the notice does not provide this information, the meeting is effectively closed to the public, contrary to section 239(1) of the Act.¹⁶
- 44 In a recent report, I found that the Township of McKellar contravened the open meeting rules when it provided inconsistent meeting notices for a council meeting, where the original notice provided an electronic location, while the second notice provided an in-person location.¹⁷ Despite some members of the public being able to attend the meeting, I found that the Township's failure to remove the outdated Zoom information nonetheless constituted a breach of the open meeting rules.¹⁸ In another case, I found a breach of the open meeting rules when inconsistent access information was provided for a virtual meeting.¹⁹
- 45 In this case, the public notice indicated that the meeting would be broadcast on television and online by the television network in a specific manner. It also provided the public with a means to request access to the Task Force's presentation by contacting a member of staff. Ultimately, the meeting was not broadcast by the television network and was instead available as a livestream on the Town of Penetanguishene's YouTube channel. The public notice did not provide information about this YouTube livestream.
- 46 As a result, members of the public interested in observing this meeting on YouTube would not know how to find it. Further, I have previously found that meetings where login information is only provided upon request do not satisfy the Act's notice requirements.²⁰

¹⁴ *Russell (Township of) (Re)*, 2020 ONOMBUD 1, online: <<https://canlii.ca/t/j6n2t>>.

¹⁵ *McKellar (Township of) (Re)*, 2023 ONOMBUD 3 [*McKellar*], online: <<https://canlii.ca/t/jv6ck>>.

¹⁶ *Calvin (Municipality of) (Re)*, 2023 ONOMBUD 9, online: <<https://canlii.ca/t/jxg32>> [*Calvin*];

Brockville (City of) (Re), 2022 ONOMBUD 12, online: <<https://canlii.ca/t/jrhjr>>.

¹⁷ *McKellar*, *supra* note 15.

¹⁸ *Ibid.*

¹⁹ *Calvin*, *supra* note 16.

²⁰ *Sault Ste. Marie (City of) (Re)*, 2023 ONOMBUD 1, online: <<https://canlii.ca/t/jts34>>; *Saugeen Municipal Airport Commission (Re)*, 2021 ONOMBUD 18, online: <<https://canlii.ca/t/jl964>>.

- 47 Accordingly, the Town of Midland, the Town of Penetanguishene, and the Township of Tiny did not comply with the open meeting rules when they failed to provide accurate public notice of the virtual location of the Task Force's April 19, 2022 presentation.

Minutes

- 48 Section 239(7) of the Act requires that committees of municipalities and local boards keep records of all resolutions, decisions, and other proceedings at meetings. The three municipalities' procedure by-laws reiterate this requirement for all committee meetings.²¹ I have previously noted that while minutes are not required to record a verbatim transcript of the discussion at a meeting, the substance of all discussions should be recorded, in addition to other details, including who attended.²²
- 49 While the April 19, 2022 presentation was recorded and is available on YouTube, my Office was told that no minutes were taken during the presentation. Consistent with their procedure by-laws, each municipality should have ensured that minutes were kept for the April 19 meeting.

Opinion

- 50 My investigation determined that the Huronia Airport Task Force was, at the time of its April 19, 2022 presentation, a joint committee of the Town of Midland, the Town of Penetanguishene, and the Township of Tiny, and the Task Force was required to comply with the open meeting rules under each municipality's procedure by-law. Further, the Task Force's April 19, 2022 presentation was a "meeting" for the purposes of the open meeting rules, and the open meeting rules in each procedure by-law applied.
- 51 The councils for the Town of Midland, the Town of Penetanguishene, and the Township of Tiny contravened these rules on April 19, 2022, when they failed to provide updated public notice of the electronic location of the Task Force's presentation, thereby interfering with the public's ability to observe the Task Force's business.

²¹ Midland Procedure By-law, *supra* note 8, s 12; Penetanguishene Procedure By-law, *supra* note 8, s 3.4.1(a), 8.1; Tiny Procedure By-law, *supra* note 8, s 12.

²² *Niagara Central*, *supra* note 2.

- 52 The councils for the Town of Midland, the Town of Penetanguishene, and the Township of Tiny also contravened their procedure by-laws on April 19, 2022, when they failed to record minutes of the Task Force's meeting.

Recommendations

- 53 I make the following recommendations to assist the Huronia Airport Task Force, the Town of Midland, the Town of Penetanguishene, and the Township of Tiny in fulfilling their obligations under the Act and their procedure by-laws and enhancing the transparency of their meetings:

Recommendation 1

All members of the Task Force and the councils for the Town of Midland, the Town of Penetanguishene, and the Township of Tiny should be vigilant in adhering to their individual and collective obligation to ensure that the municipalities comply with their responsibilities under the *Municipal Act, 2001* and their procedure by-laws.

Recommendation 2

The Town of Midland, the Town of Penetanguishene, and the Township of Tiny should ensure that all meeting notices, agendas, and webpages include accurate and up-to-date information about how the public can attend all meetings, including committee meetings.

Recommendation 3

The Town of Midland, the Town of Penetanguishene, and the Township of Tiny should ensure that complete and accurate records are kept of all meetings, including committee meetings.

Recommendation 4

The Town of Midland, the Town of Penetanguishene, and the Township of Tiny should ensure that when relying on a third party to uphold their open meeting obligations, they have procedures in place to confirm that the third party will take steps to fulfil its obligations or to report in a timely manner that it will not be able to do so.

Recommendation 5

The Town of Midland, the Town of Penetanguishene, and the Township of Tiny should ensure that members of committees and local boards are provided training on the open meeting requirements.

Report

- 54 The councils for all three municipalities were given the opportunity to review a preliminary version of this report and provide comments individually. My Office received and considered comments from all three councils in the preparation of this report.
- 55 In the Town of Midland's response, council noted that the Town follows proper procedures regarding notice, but supported and accepted my recommendations. I commend the Town's commitment to improving the accountability and transparency of its meeting practices.
- 56 In their responses, the councils for the Town of Penetanguishene and the Township of Tiny both disagreed with my finding that the Task Force was a committee of each of the municipalities, and instead felt the Task Force was a committee of the Commission. However, my review of the evidence – particularly the meeting records of the three municipalities – clearly indicates that the Task Force was originally conceived of and created by the three municipalities.
- 57 The councils for the Town of Penetanguishene and the Township of Tiny also expressed that the April 19, 2022 presentation was not a meeting because it was informational in nature and did not materially advance decision-making. Penetanguishene also indicated that it felt the meeting could have occurred in closed session under the open meeting exception for education and training at section 239(3.1) of the Act. As set out earlier in this report, the question is whether the business or decision-making of the Task Force was materially advanced, and my investigation found that the presentation and subsequent discussion on April 19, 2022 materially advanced the Task Force's business. This meant the presentation was a meeting, and that it would not fit within the education and training exception, which specifically prohibits members from materially advancing business or decision-making.
- 58 The Town of Penetanguishene also told my Office that it felt the meeting was open to the public because members of the public could individually request the Zoom link, it was livestreamed on YouTube, and it was also broadcast by the television network the following day. I acknowledge the steps the municipalities took to try to allow the public to view the meeting; ultimately, however, the advertised method for accessing the meeting in real time was not available, and the other mechanisms did not

satisfy the Act's open meeting requirements. The open meeting requirements set out in section 239 of the Act enshrine the public's right to observe municipal government in progress.

- 59 This report will be published on my Office's website, and should also be made public by the Town of Midland, the Town of Penetanguishene, and the Township of Tiny. In accordance with subsection 239.2(12) of the *Municipal Act, 2001*, each council is required to pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario