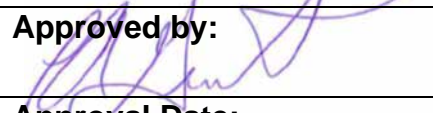


Approved by: 	Procedure Number: L02-001
Approval Date: November 27, 2007	Title: Processing Closed Meeting Compliance Investigations
Revision Date: January 8, 2020	

Purpose:

The Municipality of Clarington is committed to conducting actions and making decisions in accordance with the Municipality's Accountability and Transparency Policy. This Procedure details the steps in processing a request for Investigation of Compliance for the conduct of a closed meeting of Council/Committee.

Procedure:

1. Standard Form

All requests shall be filed by the investigation requester by completing the Application for Request for Closed Meeting Compliance Investigation. The Request Form shall be completed in its entirety and signed by the requester and submitted to the Municipal Clerk's Office.

2. Request Fee

There is no fee imposed on the investigation requester for filing a Request for Closed Meeting Compliance Investigation.

3. Assemble Request Package

Upon receipt of a complete Application for Request for Closed Meeting Compliance Investigation, the Municipal Clerk shall ensure that a package is assembled including the following records:

- The original request for an investigation
- A certified copy of the municipal procedure by-law and, if applicable, the procedure by-law for the local board

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- A certified copy of the municipal notice by-law and, if applicable, the notice by-law for the local board
- A certified copy of the agenda with all relevant attachments or handouts relating to the meeting(s) in question, including any closed meeting materials
- A certified copy of the notice given for the meeting(s)
- A certified copy of the minutes of the meeting(s)
- A certified copy of any audio or audio-visual recording of the meeting(s)
- A certified copy of the duties assigned by the municipality to the investigator
- A certified copy of the municipality or local board's investigation request or complaint procedure or protocol under s. 239.1 of the *Municipal Act, 2001*
- A contact list for all members of the council, local board or committee about which the request is made and for all other persons present at the meeting(s), including mailing and emails addresses and telephone numbers
- Such other information or documentation that the Clerk deems relevant;
- A completed copy of the checklist of materials, dated, with the name and contact information of the person completing it (Attachment 1)
- Comments, if any

A File is opened under PG.20.02 (Closed Meeting Investigator) and a copy of the complete package is filed.

4. Forward Package to Investigator

The Municipality of Clarington has appointed Local Authority Services Ltd. (LAS) as the investigator to conduct these reviews. The Municipal Clerk shall prepare a cover letter and forward the package to the LAS Investigator.

5. Disposition of Report Findings

Upon receipt of the of the Findings Report from the Meeting Investigator, the Municipal Clerk shall prepare a report to General Government Committee advising of the investigation findings, associated costs and any necessary actions to be taken in accordance with the Meeting Investigator's recommendations (where applicable).

If necessary, policies, procedures or the procedural by-law shall be amended to reflect the Meeting Investigator's recommendations.

The Meeting Investigator's Finding Report shall be filed with the original complaint and the copy of the complaint package that was forwarded to the Meeting Investigator.

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The file is closed.

Attachment 1 – LAS Investigator Program Information and Checklist of Materials

CHECKLIST OF MATERIALS
INVESTIGATION - SECTION 239.1 OF *MUNICIPAL ACT 2001*

- The original request for an investigation;
- A certified copy of the municipal procedure by-law and, if applicable, the procedure by-law for the local board;
- A certified copy of the municipal notice by-law and, if applicable, the notice by-law for the local board;
- A certified copy of the agenda with all relevant attachments or handouts relating to the meeting(s) in question, including any closed meeting materials;
- A certified copy of the notice given for the meeting(s);
- A certified copy of the minutes of the meeting(s);
- A certified copy of any audio or audio-visual recording of the meeting(s);
- A certified copy of the duties assigned by the municipality to the investigator;
- A certified copy of the municipality or local board's investigation request or complaint procedure or protocol under s. 239.1 of the *Municipal Act, 2001*
- A contact list for all members of the council, local board or committee about which the request is made and for all other persons present at the meeting(s), including mailing and emails addresses and telephone numbers;
- Such other information or documentation that the Clerk deems relevant;
- A completed copy of this checklist, dated, with the name and contact information of the person completing it;
- Comments , if any:

- Completed by:

Telephone No.:

Email Address:

Date: _____

Procedure By-law

The *Municipal Act, 2001* provides that every municipality and local board in Ontario is mandated to enact a by-law to govern the calling, location and proceedings of their meetings under s.238.

Open Meeting Rule

All municipal council meetings, a local board, or a committee of either of them must be held in an open public session unless an exception applies pursuant to s.239(1).

Exceptions for Closed Meetings

The *Municipal Act, 2001* sets out a number of exceptions to the open meeting rule based on the subject matter of the item that the council, local board, or committee is considering (ss.239(2), (3) and (3.1)). Council, local board, or committee must follow certain procedural requirements prior to convening into a closed session.

Investigations

Since 2008, s.239.1(1) of the *Municipal Act, 2001* has allowed any person to request that an investigation be conducted to determine whether a municipality or local board has complied with s.239, or a procedure by-law passed under s.238.

Investigator

Municipalities are authorized to appoint an independent investigator to conduct what has become known as a "closed meeting investigation" under s.239.2. In appointing an investigator, the municipality is to consider the following matters:

- the investigator's independence and impartiality
- confidentiality with respect to the investigator's activities
- the credibility of the investigative process

If a municipality does not appoint an investigator, the default investigator is the Ontario Ombudsman.

Investigator's Powers

An investigator is given significant powers to carry out its investigation, including the powers set out in s.19 of the *Ombudsman Act* which include the authority to summons any person and examine them under oath, and to require any

officer, employee or member of a municipality to provide such information and to produce such documents or things that the investigator requires.

The investigator operates under a duty of confidentiality but is entitled to disclose such matters as they consider appropriate in any report.

No Challenge

The investigator's powers are paramount and its proceedings cannot be challenged, except for lack of jurisdiction, and no decision or report from the investigator can be challenged, reviewed, quashed or called into question in any court.

Reports

If the investigator determines that there has been a contravention of the procedure by-law or s.239 of the *Municipal Act, 2001*, a report will be provided to the municipality or local board and the council or the local board are required to pass a resolution stating how they intend to address the report. The report is required to be made publicly available.

Why Appoint LAS as Investigator?

LAS offers closed meeting investigation services as it complements our programming. This service will assist municipalities in demonstrating they are responsible and accountable orders of government, capable of managing their own business and affairs.

As part of the program, LAS will provide an educational component to help municipalities in the understanding of the opening meeting rule, its exceptions, and the investigative process.

The LAS Program will ensure:

- municipal transparency and accountability
- independent, impartial and credible investigations and reports

Benefits to Participating Municipalities:

- experienced, knowledgeable and qualified investigators
- access to all completed reports via a secure website
- availability of on-going education/information
- no review by provincial Ombudsman



LAS INVESTIGATOR PROGRAM

Helping Municipalities Deal with Closed Meeting Investigations

For more information,
please contact:

Eleonore Schneider
LAS Program Manager
Local Authority Services
Tel: 416-971-9856 ext. 320
Toll Free: 1-877-426-6527
Email: escheider@amo.on.ca

The logo for AIRD BERLIS. It consists of the words "AIRD BERLIS" in a bold, blue, sans-serif font, enclosed within a thin blue rectangular border. A small yellow square is located at the top right corner of the border.

INVESTIGATION REQUEST PROCESS

