

Best Practices:

A Guide to Closed Council and Committee Meetings



OmbudsPEI

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Legal Framework for Meetings and Requirements for Municipal Councils

The Legal Framework for Council Meetings

Government transparency and the ability to observe the political process are foundational to democracy. Municipal government meetings across Canada are, by default, open to the public. This promotes government accountability and builds trust and confidence in the democratic process. As is the case with similar provincial legislation across Canada, PEI's *Municipal Government Act* (MGA) includes provisions that require the open and transparent exercise of municipal power.

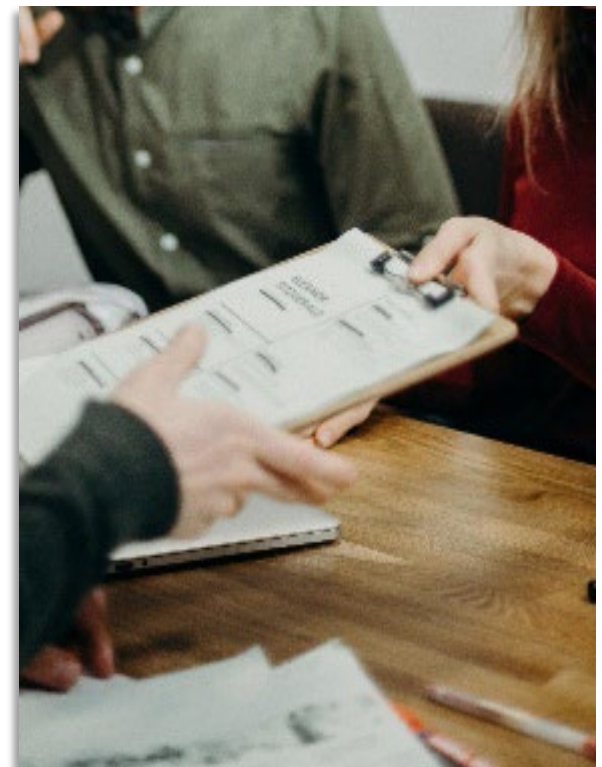
Sometimes, in order to preserve confidentiality, meetings may be closed to the public. The MGA contains provisions which limit the circumstances under which municipal councils can hold closed meetings. It also outlines the procedures which must be followed prior to the closure of a meeting.

This Guide reviews the legal obligations that municipal councils on PEI must follow in closing a meeting and explains the best practices that councils should follow when holding closed meetings.

Open Meeting Requirements

Section 118 of the MGA sets out the general rules for council meetings - including the requirement that council meetings (and council committee meetings) be conducted in public.

Councils can ensure the openness and accessibility of meetings in various ways. Often meetings are held at a regular time and place in an accessible location such as a council chamber or other room in a public building. For members of the public who are unable to attend in person, council meetings may be broadcast to allow broad public access to proceedings. Minutes of all meetings must be made available to the public. For more information see section 116 of the MGA.



Closed Meetings

Closing a Council Meeting

The decision to close a meeting to the public is a discretionary one. Section 119 of the MGA sets out the only reasons that a meeting can be closed to the public. The MGA does not contain any provisions which require a meeting to be closed to the public.

When a council decides to close a meeting to the public, they must do so in accordance with section 119 of the MGA which requires them to pass a resolution stating:

1. That a meeting (or part of a meeting) is to be closed; and
2. The reason for closing the meeting, citing the relevant section of the MGA which authorizes closing the meeting (see below for further details).

Councils should also provide as much detail as possible about the basis for closing the meeting without undermining the reason for closing the meeting in the first place. This will help to limit speculation, increase public trust and enhance the credibility of council.



Closing a Meeting Checklist:

- Clearly state which paragraph of ss. 119(1) applies for closing the meeting.
- Provide as much detail as possible about the basis for closing the meeting.
- Include a description of each distinct matter to be discussed and the authorizing provision in the resolution to close the meeting.
- Read the resolution to close the meeting aloud.
- State whether council will reconvene in an open meeting at the end of the closed session. If there are plans to continue with the council meeting, inform attendees of the expected duration of the closed session.

Provisions for Closing Meetings, Municipal Government Act s. 119

Commercial and/or Confidential Information (paras. 119(1)(a) and (b))

Includes information/discussions:	Does NOT include information/discussions:
<ul style="list-style-type: none"> ✓ Containing trade secrets, scientific, technical, commercial, financial or labour relations details 	<ul style="list-style-type: none"> × Where there is only a mere possibility or speculative risk of harm if the information were to be disclosed
<ul style="list-style-type: none"> ✓ Received in confidence that could significantly impact the municipality's competitive position or interfere with negotiations 	<ul style="list-style-type: none"> × About speculation regarding prospective acquisition or disposition of land, where no bargaining position yet exists
<ul style="list-style-type: none"> ✓ That has monetary value or potential monetary value 	<ul style="list-style-type: none"> × About real estate market volatility and its impact on land values in general
<ul style="list-style-type: none"> ✓ Is about the purchase or sale of municipal land, when the bargaining position of the municipality could be impacted by a public discussion of the matter 	<ul style="list-style-type: none"> × Where there is no proprietary or ownership interest in the information or there is no evidence that the municipality or local board could sell the information for money
<ul style="list-style-type: none"> ✓ About leased property, easements, or subdivision agreements relating to the municipality's property interests 	

Personal Information (identifiable individual) (para. 119(1)(c))

Includes information/discussions about:	Does NOT include information/discussions about:
<ul style="list-style-type: none"> ✓ Scrutiny of an individual's performance or conduct, including municipal staff 	<ul style="list-style-type: none"> × An individual in their professional or official capacity
<ul style="list-style-type: none"> ✓ Candidates for a job or committee, including education and employment history 	<ul style="list-style-type: none"> × Council members' remuneration or expenses and related policy
<ul style="list-style-type: none"> ✓ Allegations of an individual's possible violation of law 	<ul style="list-style-type: none"> × General working relations between council and staff × Information already in the public realm

Personal Information FOIPPA (para. 119(1)(c.1))(If Applicable)

Authority to close a meeting for discussion of personal information that is protected by section 15 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) if disclosure of personal information would be an unreasonable invasion of a third party's personal privacy. This provision only applies to the municipalities of Charlottetown, Cornwall, Stratford and Summerside.

Human Resource Matters (para. 119(1)(d))

Includes information/discussions about:	Does NOT include information/discussions about:
<ul style="list-style-type: none"> ✓ Labour relations or employee negotiations ✓ Unionized and non-unionized employees ✓ Compensation, benefits or vacation for specific employees ✓ Staff performance, conduct, discipline, hiring and firing ✓ Changes to workload or roles of specific employees ✓ Grievances under a collective agreement 	<ul style="list-style-type: none"> × Council members, including their remuneration × Organizational reviews or restructuring

Plans and Instructions for Negotiation (para. 119(1)(e))

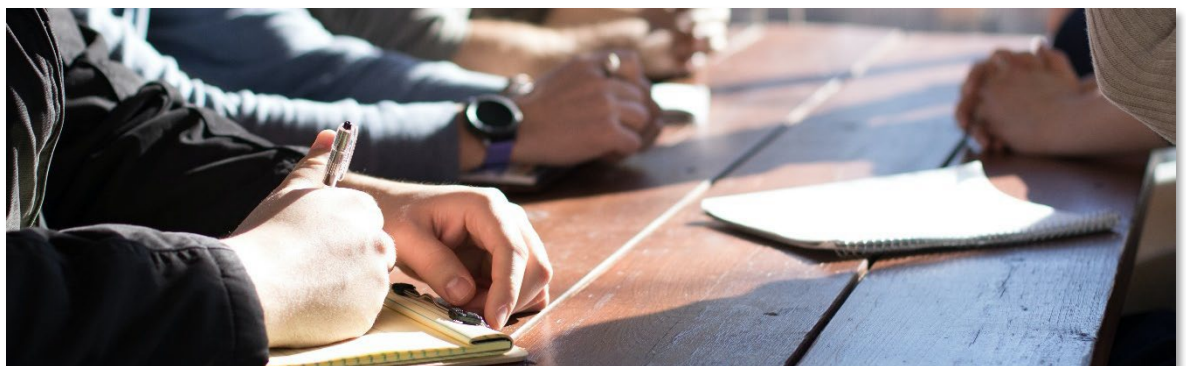
Includes information/discussions about:	Does NOT include information/discussions:
<ul style="list-style-type: none"> ✓ A position, plan, procedure, criteria or instruction ✓ Information intended to be applied to negotiations carried on by the municipality or local board ✓ Whether negotiations are ongoing or will be carried out in the future 	<ul style="list-style-type: none"> × Where there are no ongoing or planned negotiations × Where negotiations are concluded

Legal Proceedings/Advice (para. 119(1)(f))

Includes information/discussions about:	Does NOT include information/discussions about:
<ul style="list-style-type: none"> ✓ Ongoing litigation, including proceedings before administrative tribunals ✓ The real prospect of litigation, including a specific threat of litigation ✓ Advice from legal counsel that indicates there is a likelihood of litigation and that the local government's interests may be prejudiced by public discussion ✓ Deciding whether to litigate in a specific case ✓ Legal advice provided in writing or through staff 	<ul style="list-style-type: none"> × The mere prospect of litigation that could arise in future, or where there is no evidence of any current or future legal proceedings × Litigation that has concluded × A topic where the privilege has been waived, such as where a third party is present × Whether or not to seek legal advice

Investigation or Enforcement of an Act or Bylaw (para. 119(1)(g) and (h))

Includes information/discussions:
<ul style="list-style-type: none"> ✓ Where the disclosure of the information under discussion could prejudice security and maintenance of the law and harm either the conduct of an investigation, the enforcement of an enactment of a law or the maintenance of security.



Conduct and Resolutions

Conducting a Closed Meeting

During a closed meeting, municipalities should be careful to discuss only:

- Subjects authorized by the resolution to close the meeting;
- Clarifying rules that pertain to closed meetings such as the prohibition against voting on the reading or adoption of bylaws; and
- Matters relating to the recording and keeping of accurate minutes of what was discussed.

Resolutions During Closed Meetings

Resolutions passed in closed meetings should never be used to hide the decision-making process. Councils should try to provide as much information as possible about resolutions passed during closed meetings, including, when possible, the considerations on which they were based.

The actions council can take during a closed meeting are limited by subsection 119(2).

Resolutions may only be passed for the following reasons:

- a. Giving instructions to the lawyer for the municipality;
- b. Giving instructions to any person negotiating a contract on behalf of the municipality;
- c. Giving directions to employees on matters enumerated in subsection 119(1);
- d. Adjourning the closed meeting; or
- e. Opening the meeting to the public.

Subsection 119(2) of the MGA prohibits the passing of a bylaw during a closed meeting.



Minutes, Confidentiality and Unauthorized Topics

Minutes for Open and Closed Meetings

Section 116 of the MGA requires the chief administrative officer to keep minutes of all council (and committee) meetings – both open and closed. All minutes must include the date of the meeting, the names of those present, the subject matter discussed, and a record of any decisions made – at the very least. Best practice is to include a description of the discussion, any specific documents considered, all motions, resolutions or votes and any directions issued.

Subsection 116(2) of the MGA states that the only contents of the minutes of a closed meeting that may be disclosed publicly are limited to the date, names of those present and the type of matter discussed under s. 119 of the MGA.

Duty to Respect Confidentiality

Subsection 119(5) of the MGA imposes an obligation on councilors, committee members, and employees to maintain confidentiality of the information considered in a closed meeting. It states that a council member or former council member must, unless specifically authorized by council, keep in confidence information considered in a closed meeting unless and until council itself releases that information to the public.

Straying from Authorized Topics

If a conversation during a closed meeting strays from the section of the MGA referenced in the resolution to close the meeting, the closed meeting may no longer be authorized. All council members and staff attending a closed meeting should work to ensure that the conversation does not stray. If the discussion can be stopped before it begins, such as when a member announces their intention to speak about an unauthorized topic and someone else interjects to immediately stop discussion, it can be sufficient to simply table discussion about that topic for an open meeting.

If a mistake is made, it is important to correct it as soon as possible. If a matter should not have been discussed in a closed meeting, council should recognize the mistake publicly, usually at the next open meeting. The information and discussions should be disclosed as though they had taken place in an open meeting.

After a Closed Meeting

Subsection 119(4) of the MGA requires council (including a council committee) to make public any matter considered at a closed meeting when confidentiality is no longer required.

If a council member or municipal employee believes that a closed meeting was held in contravention of the MGA, they should immediately bring the matter to the attention of council or the chief administrative officer.

Conclusion and Checklist

Conclusion

Municipalities across Canada are moving towards more open and transparent decision-making. The open meeting provisions in the *Municipal Government Act* support open government by guaranteeing that the public can attend meetings of municipal local governments. Open meetings advance the democratic process by providing the public with an understanding of the considerations underlying local government actions and by allowing members of the public to observe the performance of their elected officials. They facilitate citizen participation in the policy development and decision-making processes and serve to build public trust and confidence in local government.

To assist municipalities with following best practices in those specific and limited circumstances when they believe it is necessary to close a meeting, a checklist of what needs to be considered has been added below.

Checklist

Before Closing a Meeting

1. Is closure of this meeting necessary? (Is there a reasonable and identifiable possibility of damage to the interests of the municipality, the public, or a third party?) Yes No
2. Is closure of this meeting authorized under ss. 119(1) of the *Municipal Government Act*? Yes No
3. Does the resolution to close the meeting include:
 - A statement to the effect that the meeting will be closed? Yes No
 - A description of the basis for closing the meeting including a description of each distinct matter to be discussed? Yes No
 - The paragraph(s) under ss. 119(1) authorizing or requiring the closure of the meeting? Yes No
4. Was the resolution to close the meeting read aloud? Yes No

During a Closed Meeting

5. Was discussion in the closed meeting limited to the topics stated in the authorizing resolution? Yes No
6. Were no votes held on the reading or adoption of bylaws during the closed meeting? Yes No
7. Were minutes of the closed meeting recorded and retained? Yes No

After a Closed Meeting

8. Will minutes and other records be reviewed and released once confidentiality is no longer required? Yes No

Note: Council should have answered “Yes” to all of these questions. If council has answered “No” to any of the questions, they must revisit ways to correct the situation.