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<b>Date</b>	Wednesday, December 19, 2018
<b>From</b>	Wendi Hunter, Clerk / Director of Legislative Services
<b>Subject</b>	<b>Contract with Local Authority Services Limited for Closed Meeting Investigation Services</b>
<b>Report</b>	No. LEG2018- 43

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### Recommendation

- 1) That the report from Wendi Hunter, Clerk/Director of Legislative Services, regarding the Contract with Local Authority Services Limited for Closed Meeting Investigation Services, be received, and
- 2) That the contract with Local Authority Services Limited (LAS) for Closed Meeting Investigation Services not be renewed, and
- 3) That a by-law be passed to repeal By-law 77-2007, which appoints LAS, and
- 4) that Council acknowledge that Ombudsman Ontario will provide closed meeting investigation services to the Township, and
- 5) That staff be directed to communicate the change to the public through the Township website.

### Background

Section 239 of the *Municipal Act, 2001*, as amended (the Act), establishes circumstances under which a Council or Committee meeting may or must be closed to the public. The circumstances are also set out in Georgian Bluffs Procedure By-law 2017-091, as amended.

Section 239.1 of the Act provides that a person “may request that an investigation of whether a municipality or local board has complied with section 239 or a procedure by-

law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public be undertaken.” The investigation may be carried out by an investigator appointed by the municipality (and enabled by Section 239.2 of the Act), or by the Provincial Ombudsman.

On October 17, 2007, through By-law 77-2007, the Township entered into an agreement with Local Authority Services Limited (LAS) to act as Closed Meeting Investigator on behalf of the Township. The agreement was for a two year term, renewable for subsequent two year terms. It appears that renewal of the agreement has continued automatically since then.

By-law 77-2007 also established some procedures for initiating an investigation, conduct of an investigation, and reporting to Council. To the best of staff’s knowledge, since 2007, the Township has not been the subject of a closed meeting investigation.

Staff have recently received notice of renewal of the agreement with LAS. It was deemed appropriate for staff to consider alternatives to the renewal.

## Analysis

Information provided by LAS regarding the renewal of the agreement includes notice that the annual program retainer fee is \$330 plus HST, and the investigation fee is \$225 per hour plus HST. These fees have not changed since the last invoice.

The processes with LAS are as follows:

- Any request for a closed meeting investigation would be sent to the Township Clerk, and forwarded to LAS for investigation.
- The Investigator may make such enquiries as the Investigator sees fit.
- During the investigation, the Investigator may give the municipality an opportunity make representations regarding an adverse report or recommendation.
- After conducting an investigation, the Investigator shall report to the municipality, and the report shall be included on the next Council agenda.

Staff have contacted the Ontario Ombudsman’s Office to discuss their closed meeting investigation services. The Ombudsman’s Office provides the service at no cost to municipalities – neither retainer nor hourly investigation fees. The processes are similar to those of LAS, although generally complaints are made directly to the Ombudsman, rather than through the Clerk’s Office. The Ombudsman does encourage complainants to seek resolution directly with the municipality before filing a complaint.

The Ombudsman’s Office was asked about the municipality’s opportunity to comment on findings, and received the following response:

“The Ombudsman is legislatively required to allow a municipality to review and respond to adverse findings before a report is finalized or made public. The

specific provision that applies to this process is found in section 18(3) of the Ombudsman Act, which states:

The Ombudsman may hear or obtain information from such persons as he or she thinks fit, and may make such inquiries as he or she thinks fit and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman, but, **if at any time during the course of an investigation, it appears to the Ombudsman that there may be sufficient grounds for him or her to make any report or recommendation that may adversely affect any public sector body or person, the Ombudsman shall give to that public sector body or person an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.**

We call this our “preliminary reporting process”, and it typically involves providing confidential copies of our report to council for consideration and comment in closed session. Comments received are taken into consideration before the report is finalized and released publically.”

A scan of municipalities in Grey County indicates that six are using the Ombudsman’s service, two (including Grey County) are using LAS, and one another closed meeting investigator service.

Staff have reviewed some of the reports issued by the Ombudsman as a result of closed meeting investigations. The reports appear to be comprehensive, clear and concise, and contain recommendations to assist municipalities in clarifying procedures and achieving compliance with legislation. These reports may be found on the Ombudsman’s website here - <https://www.ombudsman.on.ca/have-a-complaint/who-we-oversee/municipalities/municipal-closed-meetings>

Staff recommends that the contract with LAS not be renewed, that By-law 77-2007, appointing LAS, be repealed, and that Council acknowledge that Ombudsman Ontario will provide closed meeting investigation services to the Township. Staff will communicate the change through the Township website. Information included will be the suggestion that the public reach out to the Clerk’s office in the event of a concern about a closed meeting, information about requests for formal investigations, and links to the Ombudsman’s website.

The Ombudsman’s website contains guidance for municipalities regarding closed meeting best practices. Staff will be reviewing Procedure By-law 2017-091 early in the new year, and will take these best practices into consideration when recommending changes to Council.

## Financial Impact

The financial impact at the outset is minimal, saving the municipality a yearly retainer fee of \$330 plus HST. The financial impact is significant if a request for an investigation is received, since the Ombudsman's Office does not charge municipalities for closed meeting investigations.

## Implications

Allowing our contract with LAS to expire, and using the Ontario Ombudsman for closed meeting investigation services will not impact the ability of members of the public to request a closed meeting investigation, but will save the Township fees for such an investigation.

## Strategic Priorities

This report achieves the overall Strategic Plan principle of Accountability:

Communicate actively and transparently while providing a high level of customer service to ratepayers, associations, business interests, visitors and others involved in Township initiatives.

## Conclusion

Changing the service provider for closed meeting investigations will not impact residents, and will have a positive financial impact for the Township. Staff recommends:

- that the contract with LAS not be renewed,
- that By-law 77-2007, appointing LAS, be repealed,
- that Council acknowledge that Ombudsman Ontario will provide closed meeting investigation services to the Township, and
- that staff be directed to communicate the change to the public through the Township website.

Respectfully Submitted:

Reviewed by:

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Wendi Hunter  
Clerk / Director of Legislative Services

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Rick Winters, Acting CAO