

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2012-0334

MANITOBA FAMILY SERVICES AND LABOUR

ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISION CONSIDERED: 12(1)(c)(i)

REPORT ISSUED ON JANUARY 8, 2013

SUMMARY: The complainant requested access to financial records relating to the transfer of Aboriginal (First Nation) pension plans from the federal regulator to the Province of Manitoba. Family Services and Labour indicated that the records did not exist. The Ombudsman found that the Department conducted a reasonable search for the records in question and the complaint was not supported.

BACKGROUND

A recent Supreme Court of Canada decision (*NIL/TU,O Child and Family Services Society v. BC Government and Service Employees' Union*) found labour relations of native child welfare agencies to be under provincial rather than federal jurisdiction.

Following the decision, the federal government determined that the federal pension regulator, the Office of the Superintendent of Financial Institutions (OSFI), did not have jurisdiction over some First Nation pension plans and that they would become the responsibility of provincial regulators.

As a result, approximately 40 First Nation plans have been transferred to the Manitoba Office of the Superintendent – Pension Commission (OSPC), which is part of the Department of Family Services and Labour.

THE COMPLAINT

On July 13, 2012, Family Services and Labour received the complainant's request for information relating to the transfer and management of Aboriginal (First Nation) pension plans. The complainant's request identified eight different areas in which he was seeking information.

The request was forwarded to OSPC which manages the day-to-day administration of the Pension Benefits Act of Manitoba and its regulations. This Act governs registered pension plans run by employers, groups of employers or unions for their employees or members.

In a response letter dated August 8, 2012, OSPC provided access to some of the requested information but refused access to items (1), (2), (7) and (8) on the complainant's list. A complaint was made to the Ombudsman on October 11, 2012.

The complainant advised our office that he did not take issue with OSPC's decision concerning items (1), (7) and (8) but was contesting the refusal of access to item (2) in which the following record was requested:

Yearly budget of the expenses and revenues related to the transfer and management of Aboriginal (First Nation) pension plans from Canada to Manitoba jurisdiction.

The complainant believed it reasonable to expect that OSPC would require additional resources as a result of having to now manage the First Nations pension plans in question. Moreover, the complainant believed that the additional resources required would be reflected in OSPC budget documents.

In refusing access, OSPC relied on clause 12(1)(c)(i) of FIPPA, indicating that the responsive record did not exist.

POSITION OF THE PENSION COMMISSION

OSPC is responsible for administering The Pension Benefits Act which governs approximately 400 employer-sponsored registered pension plans covering about 188,000 plan members. This includes the recently transferred Aboriginal (First Nation) pension plans which are the subject of the complaint.

When the complainant's request was received, senior staff members at OSPC were consulted and indicated that no records existed. In representations to our office, OSPC advised that the transfer of pension plans from other jurisdictions was not uncommon and that it does not specifically allot funds for administering or managing transferred plans.

OSPC indicated that plans transferred from the federal jurisdiction are administered or managed with all other plans under Manitoba's jurisdiction, utilizing existing resources. Any work of OSPC staff with regards to the transfer of plans is included in the overall budget for compliance and enforcement. As such, there is no specific record identifying financial costs associated with

the transfer and management of the Aboriginal (First Nations) plans identified by the complainant.

ANALYSIS OF ISSUES AND FINDINGS

Was the decision of the public body to refuse access compliant with FIPPA?

A public body is required to advise an applicant whenever access to a record is refused because the record does not exist:

Contents of response

12(1) In a response under section 11, the head of the public body shall inform the applicant

(c) if access to the record or part of the record is refused,

(i) in the case of a record that does not exist or cannot be located, that the record does not exist or cannot be located

In considering a complaint that the responsive records do not exist or cannot be located, our office looks at whether the circumstances show that reasonable efforts were made to search for the responsive records.

It is clear that any records relating to the complainant's request would be in the custody of OSPC. Senior staff members at OSPC were involved in the search and it is reasonable to assume that those employees would be aware of the existence of any records responsive to the request. Moreover, those staff members would be involved in creating such a document if it did exist.

We note that the complainant in his request used the word budget to describe the document he was seeking. We asked OSPC if it was possible that a document by a different description (ex. a memo, estimate, etc.) might exist and contain the information sought by the complainant. OSPC conducted a further search and indicated that nothing existed.

Our office asked OSPC if it was possible to create the requested record by extracting financial information from the global budget. The public body advised our office that such a calculation was not feasible as there was no way to accurately attribute transfer/management costs to specific plans.

Based on our review and of the representations given to our office by OSPC, it is our view that OSPC conducted a reasonable search for the records and we are satisfied that such records do not exist. We note that the appropriate locations were searched and senior staff members that would have knowledge of the existence of a responsive record were canvassed.

CONCLUSION

Based on the finding of the Ombudsman, the complaint is not supported

In accordance with subsection 67(3) of *The Freedom of Information and Protection of Privacy Act*, the complainant may file an appeal of the refusal of access decision by Manitoba Family Services and Labour – OSPC to the Court of Queen’s Bench within 30 days after receipt of this report.

January 8, 2013
Manitoba Ombudsman