

Manitoba Ombudsman

REPORT WITH RECOMMENDATIONS ISSUED ON JUNE 27, 2011

AND

RESPONSE TO THE RECOMMENDATIONS

UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2011-0059

MANITOBA CONSERVATION

ACCESS COMPLAINT: FAILURE TO RESPOND

PROVISIONS CONSIDERED: 9, 11(1)

PUBLICLY RELEASED ON SEPTEMBER 26, 2011

SUMMARY OF REPORT WITH RECOMMENDATIONS AND RESPONSE

The complainant applied for records of reports made to the Environmental Accident Reporting phone service since January 2008 and made a complaint that Manitoba Conservation did not respond to her access request. Our investigation determined that the public body failed to respond within the time period provided for under FIPPA. The Ombudsman also found that the public body failed in its duty to assist an applicant by not responding openly and without delay. The investigation report contained three recommendations made to the public body.

The public body responded to the Ombudsman's report in accordance with FIPPA and accepted the three recommendations. The public body demonstrated that it had fully complied with two of the three recommendations but had not fully complied with one of the recommendations; its response to the complainant was incomplete in that there was no mention of the right to complain about any refusal of access. The Ombudsman informed both the public body and the complainant of this requirement.

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REPORT WITH RECOMMENDATIONS UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2011-0059

MANITOBA CONSERVATION

ACCESS COMPLAINT: FAILURE TO RESPOND

PROVISIONS CONSIDERED: 9, 11(1)

REPORT ISSUED ON JUNE 27, 2011

SUMMARY: The complainant applied for records of reports made to the Environmental Accident Reporting phone service since January 2008 and alleged that the public body did not respond to her request for access within the time limit set out under *The Freedom of Information and Protection of Privacy Act* (FIPPA). Our investigation determined that the public body failed to respond within the time period provided for under FIPPA and has yet to respond to the request. The Ombudsman found that the complaint was supported. The Ombudsman also found that the public body failed in its duty to assist an applicant by not responding openly and without delay. This report contains recommendations to the public body.

THE COMPLAINT

The complainant submitted an application for access under *The Freedom of Information and Protection of Privacy Act* (FIPPA) to Manitoba Conservation. The application was worded as follows:

Requests access to the content or transcript of all reports made to the Environmental Accident Reporting phone number 944-4888 since January, 2008.

The complainant filed a complaint with the Ombudsman. The complaint was received by our office on February 10, 2011, and alleged that the public body had failed to respond to the request within the legislated time period.

POSITION OF MANITOBA CONSERVATION

The public body received the application for access on October 25, 2010. It sent an acknowledgement letter to the complainant on October 26, 2010. As at today's date, the public body has not responded to the complainant to advise whether access to the requested records would be granted.

ANALYSIS OF ISSUES AND FINDINGS

Did Manitoba Conservation fail to respond to a request as set out in subsection 11(1) of FIPPA?

FIPPA prescribes a time limit in which a public body is required to respond to a request for access:

Time limit for responding

11(1) The head of a public body shall make every reasonable effort to respond to a request in writing within 30 days after receiving it unless

(a) the time limit for responding is extended under section 15; or

(b) the request has been transferred under section 16 to another public body.

The access request was received by the public body on October 25, 2010. There is a requirement under FIPPA to make every reasonable effort to respond to the request within 30 days of receipt, unless extended under section 15 or transferred under section 16. According to our records, the public body did not proceed with an extension and the records are within its custody or control. Therefore, the 30 day time limit for responding to the application was November 24, 2010.

Our office received the "no response" complaint on February 10, 2011. We notified the public body of the complaint in writing on February 14, 2011. Our letter requested that the public body provide its response to the complainant by March 8, 2011. The public body did not respond nor did it contact our office to explain the delay. Between March 15 and the date of this report, our office contacted the public body by telephone on several occasions asking for the status of its response. Additionally, we wrote to the public body on April 21 and May 5. Our April 21 letter, sent to the public body's Access and Privacy Officer, asked that a response be provided to the complainant within two (2) business days of receiving the letter. Our May 5 letter, sent to the public body's Access and Privacy Officer and copied to the public body's Assistant Deputy Minister, reiterated the substance of our April 21 letter and included that we had contacted the public body by telephone on March 5, 25, April 5, 13, 19, May 2 and 4, inquiring about the status of its response and asking for a detailed explanation for the delay. We again stressed the urgency of providing a response to the complainant.

On May 11, 2011 our office proceeded with an extension of 45 days to complete our investigation (June 27, 2011) provided for under section 65 of FIPPA. The extension letter was sent to the public body's Access and Privacy Officer, and was copied to the complainant and the

public body's Assistant Deputy Minister. Again, our office asked that an explanation for the delay be provided.

Our office followed up with numerous calls to the public body since that time, asking for the status of its response and reasons for the delay.

The public body has yet to respond to the complainant, and has yet to provide any specific reasons for the delay. The Ombudsman found that Manitoba Conservation failed to respond within the time period as set out in subsection 11(1) of FIPPA.

Did Manitoba Conservation fulfill its duty to assist an applicant as set out in section 9 of FIPPA?

FIPPA imposes a duty on public bodies that reasonable efforts be made to assist applicants, in terms of responding without delay, openly, accurately and completely. Section 9 of FIPPA states as follows:

Duty to assist applicant

9 The head of a public body shall make every reasonable effort to assist an applicant and to respond without delay, openly, accurately and completely.

The public body has not responded openly and without delay to advise the complainant whether access would be granted, nor has it provided any reasons for the delay, to the complainant. According to our records, the last time the public body corresponded with the complainant was on October 25, 2010 when it provided its acknowledgement letter to the complainant.

The Ombudsman found that Manitoba Conservation failed in its duty to make every reasonable effort to assist an applicant and to respond openly and without delay.

RECOMMENDATIONS

The Ombudsman has made the following recommendations, in consideration of the various attempts made by our office to resolve this matter.

1. The Ombudsman recommends that the public body respond to the complainant and provide a decision on whether access will be granted, in accordance with section 12 of FIPPA.
2. The Ombudsman recommends that the public body explain the delay to the complainant and apologize in providing its response.
3. The Ombudsman recommends that the public body provide our office with a copy of its correspondence to the complainant.

HEAD'S RESPONSE TO THE RECOMMENDATIONS

Under subsection 66(4), Manitoba Conservation must respond to the Ombudsman's report in writing within 15 days of receiving this report. As this report is being sent by courier to the head

on this date, the head shall respond by July 12, 2011. The head's response must contain the following information:

Head's response to the report

66(4) *If the report contains recommendations, the head of the public body shall, within 15 days after receiving the report, send the Ombudsman a written response indicating*

- (a) that the head accepts the recommendations and describing any action the head has taken or proposes to take to implement them; or*
- (b) the reasons why the head refuses to take action to implement the recommendations.*

OMBUDSMAN TO NOTIFY THE COMPLAINANT OF THE HEAD'S RESPONSE

When the Ombudsman has received Manitoba Conservation's response to her recommendations, she will notify the complainant about the head's response as required under subsection 66(5).

HEAD'S COMPLIANCE WITH RECOMMENDATIONS

If the head accepts the recommendations, subsection 66(6) requires the head to comply with the recommendations within 15 days of acceptance of the recommendations or within an additional period if the Ombudsman considers it to be reasonable. Accordingly, the head should provide written notice to the Ombudsman and information to demonstrate that the public body has complied with the recommendations and did so within the specified time period.

Alternatively, if the head believes that an additional period of time is required to comply with the recommendations, the head's response to the Ombudsman under subsection 66(4) must include a request that the Ombudsman consider an additional period of time for compliance with the recommendations. A request for additional time must include the number of days being requested and the reasons why the additional time is needed.

June 27, 2011
Irene A. Hamilton
Manitoba Ombudsman

Manitoba Ombudsman

RESPONSE TO THE RECOMMENDATIONS UNDER *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

CASE 2011-0059

MANITOBA CONSERVATION

ACCESS COMPLAINT: FAILURE TO RESPOND

PROVISIONS CONSIDERED: 9, 11(1)

SUMMARY: On July 12, 2011 the public body provided its response to the Ombudsman, accepting the three recommendations. Its response demonstrated that the public body had complied with two of the three recommendations but had not fully complied with one of the recommendations in that its response to the complainant was not complete; the public body had provided the complainant with its decision on whether access would be granted, yet had not informed the applicant of the right to complain to the Ombudsman about any refusal of access. The Ombudsman advised the complainant and the public body of this right in its July 13, 2011 notification letter to the complainant.

RESPONSE TO THE RECOMMENDATIONS

Under subsection 66(4), Manitoba Conservation was required to respond to the Ombudsman's report in writing within 15 days of receiving the report. As the report was sent by courier on June 27, the head had until July 12, 2011 to respond. The head's response was to contain the following information:

Head's response to the report

66(4) *If the report contains recommendations, the head of the public body shall, within 15 days after receiving the report, send the Ombudsman a written response indicating*

- (a) that the head accepts the recommendations and describing any action the head has taken or proposes to take to implement them; or*
- (b) the reasons why the head refuses to take action to implement the recommendations.*

Manitoba Conservation provided its response to the Ombudsman on July 12, 2011 fully accepting the following recommendations:

- 1. The Ombudsman recommends that the public body respond to the complainant and provide a decision on whether access will be granted, in accordance with section 12 of FIPPA.**
- 2. The Ombudsman recommends that the public body explain the delay to the complainant and apologize in providing its response.**
- 3. The Ombudsman recommends that the public body provide our office with a copy of its correspondence to the complainant.**

Our office notified the complainant about the head's response as required under subsection 66(5) on July 13, 2011.

Subsection 66(6) required the head to comply with the recommendations within 15 days of acceptance of the recommendations. The public body's July 12 response to the Ombudsman included a copy of its June 29, 2011 response to the complainant. The response letter demonstrated that the public body had complied in full with two of the three recommendations and in part with one of the recommendations; while the June 29 response letter provided the public body's decision on whether access would be granted, the letter failed to inform the applicant that she could complain to the Ombudsman about the decision to refuse access, a requirement under section 12 of FIPPA. The Ombudsman advised the complainant and the public body of this in our July 13, 2011 notification letter.

Irene A. Hamilton
Manitoba Ombudsman