



MANITOBA
OMBUDSMAN

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT INVESTIGATION REPORT

Manitoba
Environment and
Climate Change

Access to
Information

CASE# MO-11757
Final Report

Issue Date:
August 26, 2025

Provisions considered:
FIPPA - 49(a)(i), 11(1),
11(2), 12.1(1), 12.1(4)



INTRODUCTION

This report concerns an investigation under The Freedom of Information and Protection of Privacy Act (FIPPA or the Act) relating to an access request made to Manitoba Environment and Climate Change (the public body). An individual made a complaint to our office that the public body did not respond to their request within the time limit set out under FIPPA.

As the request was made more than 120 days prior to contacting our office, the individual no longer had a right of complaint about this matter under the Act. However, our office initiated our own investigation because of what appeared to be a significant delay in responding to the individual's request.

Based on our review, we determined that the public body failed to respond to the individual's request within the time limit set out under FIPPA and this did not comply with the requirements of the Act.

BACKGROUND

The individual advised our office that they filed an access request to the public body under FIPPA on November 25, 2024, requesting access to the following records:

"All records and data including but not limited to all documents, correspondence, intranet files, emails, and texts about: [individual's name], and or [third party individual], and or the legal land description [location]; the following roads surrounding [location]: the intersection of Road [#]N and [#]W, Road [#]N, Road [#]W, and Road [#]W; and including all applications for license to construct drainage control works around [location]; exclusive of all inspection notes, all data collected, all maps, all surveys, all assessments, and overlain survey, and proof of all assessment claims from Drainage Complaint IDs [complaint numbers] FIPPA [Request Numbers], FIPPA Complaints [File Numbers]."

The public body confirmed receipt of the access request (2425-ECC-1716) on November 28, 2024, and on January 9, 2025, issued a letter to the individual requesting additional information related to the scope of the request. Through email discussions, the individual provided the requested information on January 17, 2025.

On February 4, 2025, the individual was advised that an estimate of costs was being prepared, which was issued on February 13, 2025.

The individual accepted the fee estimate and the public body confirmed receipt of the payment of fees on March 7, 2025, and advised they would be proceeding with processing the request. The individual regularly requested and received updates from the public body on the processing of the request.

The public body advised the individual that the record package was large, consisting of over 600 emails and it was taking them a considerable amount of time to convert the records, remove duplicates, and determine what records had already been provided. On May 15, 2025, the public body advised that the peer review process was almost complete and then they would move on to the approval process.

The individual contacted our office on May 16, 2025, to express concern about the length of time the public body was taking to process the request after the payment of fees had been provided.

INVESTIGATION AND ANALYSIS

Subsection 60(3) sets a time limit of 120 days for a complaint of failure to respond to be made to our office.

120-day time limit for failure to respond

60(3) *If the head of a public body fails to respond in time to a request for access to a record, the failure is to be treated as a decision to refuse access, in which case the complaint must be delivered to the Ombudsman within 120 days after the request for access was made.*

We determined that the complaint had not been received by our office within the required time frame, and the individual no longer had a right of complaint about the public body's failure to respond. However, upon review we noted a significant delay in the public body's processing of this request. We decided to initiate our own investigation of the circumstances, in accordance with our authority under subclause 49(a)(i) of FIPPA:

General powers and duties

49 *In addition to the Ombudsman's powers and duties under Part 5 respecting complaints, the Ombudsman may*

- (a) conduct investigations and audits and make recommendations to monitor and ensure compliance*
- (i) with this Act and the regulations,*

Under subsection 11(1), public bodies in Manitoba are required to respond to access requests made under FIPPA within 45 days:

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 45 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 failure to respond within 45 days constitutes a decision to refuse access:

Failure to respond

11(2) *The failure of the head of a public body to respond to a request within the 45-day period or any extended period is to be treated as a decision to refuse access to the record.*

When a public body formally requests additional information from an applicant that is necessary to process a request (as happened in this case), the time limit is suspended until the information is received, in accordance with provisions of section 12.1 of FIPPA:

Additional Information

12.1(1) *The head of a public body may require an applicant to provide additional information in relation to an application, including requesting additional information that is necessary to identify a requested record.*

Effect of request on time limits

12.1(4) *When a request is given to an applicant under this section, the time within which the head is required to respond under subsection 11(1) is suspended until the applicant provides the additional information.*

When considering the time limit was paused between January 9 to 17, while the public body sought clarification from the individual, the due date for the response would have been January 21, 2025. When a fee estimate is issued, this would also suspend the time limit for responding until the fee estimate is accepted. However, it appeared that the

public body was already beyond the time limit for responding when they issued the fee estimate.

At the time the individual contacted our office (70 days after they paid the fee estimate), it was 115 days beyond the time limit for the public body to provide its response to the access request. There was no indication from the correspondence provided to our office by the individual that the public body extended the time limit under subsection 15(1) of the Act, and the public body did not request or receive the Ombudsman's agreement for an extension of greater than 30 days of the time limit for responding.

We contacted the public body on June 2, 2025, to advise that we were opening our own investigation into this matter and asked them if an access decision had since been issued and if not, that it be provided to the individual without further delay. We asked the public body to provide our office with a definitive date that the access decision will be issued, which must be no later than June 16, 2025.

On June 18, 2025, we sent a follow up email to the public body advising that as we had not received a response, we would be consulting with the Ombudsman about issuing a formal recommendation that the public body comply with the requirements of FIPPA and respond without further delay. The public body replied and advised that the access decision continued to be under review and did not provide an anticipated timeline for the response.

On July 14, 2025, we advised the public body that our final report, which included formal recommendations, had been drafted and we wanted to confirm whether the access decision had been issued before sending the report to the Ombudsman for her review.

On July 15, 2025, the public body advised our office that the records package was with the Deputy Minister and requested we allow an additional two weeks before issuing formal recommendations to allow the Deputy Minister time to review the records package.

We reached out to the public body on July 29, 2025, before finalizing our report and were advised that the request had been processed on July 25, 2025, and the applicant had been contacted to make arrangements to receive the records package. The public body provided our office with a copy of the access decision letter issued to the applicant, in which access to the records had been granted in part.

FINDINGS

Our office considered the time limit to respond to an access request set out under FIPPA and whether the public body made every reasonable effort to respond to the request in writing within 45 days, or by January 21, 2025, after reflecting the suspension of the time limit between January 9 to 17, 2025.

Our investigation found that Manitoba Environment and Climate Change did not provide a response within the time limit under FIPPA and although they communicated some information to the individual about the size of the records and the cause of the delay, based on the information provided by the public body we could not determine they made every reasonable effort to respond without delay.

As an access decision was provided to the applicant prior to the issuing of this final report, it was not necessary to make a formal recommendation to the public body to respond to the request without further delay.

ADDITIONAL COMMENTS

Our review of the circumstances of this case highlighted challenges with the access request administration process between the Access and Privacy Branch and the department.

When the individual contacted our office, the public body was already 115 days beyond the time limit to provide its response to the access request. At the time the access decision was issued, the public body was 185 days (just over 6 months) passed the time limit. This means the public body took approximately five times the amount of time legislated in the Act to complete the processing of this request.

In addition to observing the legislated time limit for responding to requests, public bodies also have a duty, under section 9 of FIPPA, to assist applicants and to respond without delay, openly, accurately and completely. The significant delay in responding to this request was not only inconsistent with the legislated time limit, it contravened the requirements of section 9 of FIPPA to respond without delay.

While we were not provided an explanation for the cause of this delay beyond that the record package was large in size and a consult with legal was underway, we note that the

consultation process with legal, the subsequent need to re-review the records, and the approval process with the department alone took approximately 37-39 days to complete.

Given that the Act specifies a time limit of 45 days (unless the time limit is extended), public bodies cannot reasonably expect to fulfill requests within this time limit if internal review and approval process takes almost all of that time. By contrast, our office's guidance on Time Frames for Processing a FIPPA Request, suggests that in order to achieve the time limit set out in FIPPA, a public body should anticipate spending up to 10 days to review records, obtain a legal opinion if necessary and prepare a draft response package (including a draft access decision letter and severed records) and not more than 5-10 days for internal review and finalizing and issuing the decision. This guidance is available on our website at the following link:

<http://www.ombudsman.mb.ca/wp-content/uploads/2025/07/PN-FIPPA-guideline-on-time-frames-for-processing-request-EN.pdf>

A copy of this guidance is also attached with this report for ease of reference.

As the processing of this access request was significantly delayed, we believe the Access and Privacy Branch and the public body should review the circumstances of this case together to identify what led to the delays at each stage of the process and take steps to address these areas to ensure the administrative process supports the public body's ability to comply with the time limit requirements of FIPPA when processing future access requests.

This report concludes Manitoba Ombudsman's review of this matter.

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