

# Manitoba mbudsman

## REPORT UNDER

### *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

CASE 2012-0250

#### THE WINNIPEG SCHOOL DIVISION

#### ACCESS COMPLAINT: REFUSAL OF ACCESS

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

REPORT ISSUED ON FEBRUARY 26, 2013

**SUMMARY:** The complainant requested access to information from the Winnipeg School Division relating to the mathematics portion of an assessment program. The Winnipeg School Division refused access to this information on the basis that such records did not exist. Our office found that the Winnipeg School Division's decision to refuse access was in compliance with FIPPA.

#### THE COMPLAINT

The complainant requested access to the following records under *The Freedom of Information and Protection of Privacy Act* (FIPPA) on April 30, 2012:

*I am requesting data related to the mathematics portion of the Comprehensive Assessment Program (CAP). I am requesting the following information from years 2007-2011:*

- 1. Overall percentages for the entire Winnipeg School Division (broken down by key competency classes and percentage of children at, above, or below grade level for each grade).*
- 2. Overall percentages for the South District of the Winnipeg School Division (broken down by key competency classes and percentage of children at, above, or below grade level for each grade).*

Initially, the complainant was forwarded a response from the Winnipeg School Division dated May 23, 2012 denying access on the basis of clause 17(3)(i) that disclosure would be inconsistent with the purpose for which the information was collected. The complainant filed a refusal of access complaint with our office on July 20, 2012. During the course of our

investigation, the Winnipeg School Division further advised the complainant that access was refused in accordance with clause 12(1)(c)(i) of the Act, as the records did not exist.

## **POSITION OF THE WINNIPEG SCHOOL DIVISION**

The Winnipeg School Division took the position that the records containing the information requested in the complainant's application for access did not exist. Specifically, the public body explained the status of the information as follows:

*The purpose [of the CAP assessment data] is not to identify whether a student is at, above, or below grade level as requested by [the complainant] as the information is not collected nor collated in this manner.*

*In addition, it would be impossible to provide an accurate overall percentage using the median score for each school by using an average score as the median would indicate the score at which 50% scored higher and 50% scored lower. This method would provide an inaccurate and misleading percentage as this would only produce results of that half the scores were below and half the scores were above that level. The Division does not have a report such as this.*

*Due to changes in the Kindergarten - Grade 6 Mathematics curriculum implemented by Manitoba Education in 2007/2008, the data for the mathematics portion of the Comprehensive Assessment Program for the school years 2007/2008, 2008/2009, and 2009/2010 was not considered valid because the assessment was still based on the former curriculum. In addition, the Division and District N-4 reports for these years do not indicate the percentage of children at, above, or below grade level for each grade. The grade 5 and 6 data does not provide results by key competency and also does not indicate the percentage of children at, above, or below grade level by grade.*

*...The Division...ran field tests in select schools during the 2008/2009 and 2009/2010 school years and then piloted the assessment division-wide during the 2010/2011 school year.*

*Although student data from the 2010/2011 pilot year was collected, the assessment data was not included in the student CAP profile as this was a pilot year.*

*Upon a further review ... your request for access is refused pursuant to Section 12(1)(c)(i) of the Freedom of Information and Protection of Privacy Act as the records as requested do not exist.*

## **ANALYSIS OF ISSUES AND FINDINGS**

**Was the public body's decision to refuse access compliant with the Act?**

Clause 12(1)(c)(i) of FIPPA requires the head of the public body to inform the applicant in its response letter that access to the record is being refused as the record does not exist. The foregoing clause states as follows:

***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.*

As part of our investigation, we asked the public body to establish that the records did not exist. Based on our consideration of the explanation provided during the course of the investigation, we are satisfied that the information responsive to the complainant's request did not exist. Data arising from the mathematics portion of the Comprehensive Assessment Program (CAP) is not categorized according to the groupings referred to by the complainant as "at, above, or below grade level" and for that reason it does not exist in such a format.

We found that The Winnipeg School Division's decision to refuse access on the basis that the records did not exist was in compliance with FIPPA.

**CONCLUSION**

Based on our findings, 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 Winnipeg School Division's decision to refuse access to the Court of Queen's Bench within 30 days following receipt of this report.

February 26, 2013  
Manitoba Ombudsman