

Manitoba mbudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2012-0294

THE UNIVERSITY OF MANITOBA

ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISIONS CONSIDERED: 12(1)(c)(i), 17(1), 17(2)(e)

REPORT ISSUED ON FEBRUARY 28, 2013

SUMMARY: The complainant requested access to records used to tabulate examination marks. The public body initially refused access to this information on the basis that disclosure would be an unreasonable invasion of a third party's privacy with respect to educational history. Subsequent clarification of the complainant's request led to the public body's determining that the records did not exist. Our office found that the public body's decision to refuse access was in compliance with FIPPA.

THE COMPLAINT

On July 25, 2012, the complainant requested access to the following records under *The Freedom of Information and Protection of Privacy Act* (FIPPA):

Copy of the document(s) used to tabulate the marks on test 2 and the final exam of [University Course] instructed by [name] in May / June 2012. All names & other identifying information should be removed. (Emphasis ours)

Just the form(s) showing the tabulation of marks by student (without names or student numbers), presumably showing original grades awarded and any subsequent adjustments. Should include any hand written information used to complete computer documents.

The complainant was forwarded a response from the University of Manitoba dated August 17, 2012 advising that the document used to tabulate marks contains additional information which could not be severed and as such the privacy of the individual students would be maintained. Access to these records is therefore refused. A refusal of access complaint was filed with our office on August 27, 2012.

POSITION OF THE UNIVERSITY OF MANITOBA

The University of Manitoba took the position that the information contained in the requested records was personal information within the meaning of clause 17(2)(e) of *The Freedom of Information and Protection of Privacy Act*. Disclosure of this information would be an unreasonable invasion of third parties' privacy.

The original responsive record consists of an alphabetical listing of student names, followed by their student numbers along with their corresponding grades for Quiz 1, Midterm (Quiz 2), Final Exam, Total marks and Final letter grade. Notwithstanding that the complainant was only seeking information with respect to test 2 and the final exam, the University examined the possibility of severance and concluded as follows:

After examining the responsive record, it became clear that severing only the names and unique student numbers would not ensure the anonymity of the students. There was a high likelihood that the applicant, himself a student of the class, could readily identify individual students and their corresponding grades. This was deemed to be an unacceptable invasion of the privacy of those students under Section 17(1) and 17(2)(e) of the Act.

However, the public body did provide the complainant with "non-identifiable information". A final grade distribution chart for the course was created and forwarded to the complainant in anticipation that it would satisfy his request.

In support of its position, the University cited the following FIPPA provisions:

Disclosure harmful to a third party's privacy

17(1) *The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's privacy.*

Disclosures deemed to be an unreasonable invasion of privacy

17(2) *A disclosure of personal information about a third party is deemed to be an unreasonable invasion of the third party's privacy if*

(e) the personal information relates to the third party's employment, occupational or educational history.

ANALYSIS OF ISSUES AND FINDINGS

Was the public body's refusing access compliant with the Act?

In light of the University's response, the complainant filed a refusal of access complaint with our office. The complainant appended to his complaint form the following comments with respect to the public body's position:

*Further to the enclosed complaint, I have been denied access...to **documents used to tabulate and record marks** on [University Course] delivered in May/June 2012. I specifically asked that the student numbers and names be removed from said documents. In spite of this, the University is denying access based on third party privacy. I do not understand why the student number, name and any other identifying information cannot be severed to remove personal information; consequently I am making a complaint to you about this denial of access. (Emphasis ours)*

We note the University's initial response letter to the complainant confirmed that the requested document was an electronic spreadsheet containing no hand written or electronic comments or previous iterations. And after further review of the complainant's request in combination with the University's foregoing response, it became evident that the resulting information being withheld was the midterm (quiz 2) and final exam marks.

The University steadfastly contended throughout the course of our investigation that:

As section 17 is a mandatory exception to disclosure, we could not, in good conscious (sic), release the marks when we believe there is the serious possibility that the data could be used either alone or in combination with other information that could be available or potentially available to the applicant to identify fellow students.

This speculation on the part of the University together with the wording employed in the Access Application prompted us to contact the complainant and ask him what record(s) he considered were within the scope of his request. The complainant confirmed that what he was seeking was the course instructor's administrative tabulation documents used in the calculation of the second test and final grade scores and that he was not interested in receiving a list of the final grades.

We then contacted the University of Manitoba and requested it confirm there were no undisclosed documents utilized in the tabulation of the second test and final grade scores. Following discussions with the course instructor, the public body advised that there was no paper grade book and that the only record containing grading information for the course in question was the previously referenced electronic spreadsheet. As previously determined, this spreadsheet only documented information concerning student names, student numbers, test marks and final grades, which was not being sought by the complainant.

Clause 12(1)(c)(i) of FIPPA 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.

Notwithstanding that this particular clause was not specifically cited as an exception to disclosure, it nevertheless became applicable following the University's establishing that records used in the tabulation of marks did not exist.

We found in accordance with our investigation that the University of Manitoba's refusing access was in compliance with the Act.

Given that the requested record(s) did not exist, it was therefore unnecessary to determine the applicability of 17(1) and 17(2)(e) of FIPPA to the record(s) in question.

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 University of Manitoba's decision to refuse access to the Court of Queen's Bench within 30 days following receipt of this report.

February 28, 2013
Manitoba Ombudsman