

Manitoba mbudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2012-0396

MANITOBA CONSERVATION AND WATER STEWARDSHIP

ACCESS COMPLAINT: FAILURE TO RESPOND

PROVISIONS CONSIDERED: 11(1), 15(1)

REPORT ISSUED ON FEBRUARY 5, 2013

SUMMARY: The complainant requested access to information involving such words as Makoon, cub, bear cub, Assiniboine Park Zoo for the period from March 15 to July 10, 2012. Manitoba Conservation and Water Stewardship extended the deadline to respond by an additional 30 days and then approached the Ombudsman twice for additional extensions. The Ombudsman agreed to one further extension of 60 days to October 17, 2012. The public body provided its first release of records to the complainant in November, 2012 and the second and final release of records on February 1, 2013. The public body's response(s) exceeded the timelines as provided for under FIPPA.

THE COMPLAINT

On June 21, 2012 Manitoba Conservation and Water Stewardship (the public body) received the complainant's application for access under *The Freedom of Information and Protection of Privacy Act* (FIPPA) as follows:

All interoffice emails and documents with the words Makoon, cub, Bear Cub, Assiniboine Park Zoo or [name of individual] in the title or body of document. Please include search period to cover from March 15, 2012 to July 10, 2012.

The complainant filed a complaint with the Ombudsman on November 29, 2012 that the public body had failed to respond to the request within the timelines as prescribed under FIPPA.

ANALYSIS OF ISSUES AND FINDINGS

Did Manitoba Conservation and Water Stewardship comply with the requirement for responding to a request as set out in subsection 11(1) and clause 15(1)(b) of FIPPA?

FIPPA prescribes a time limit of 30 days 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.

On July 19, 2012 the public body sent a letter to the complainant, acknowledging receipt of the application and advising that it was extending the 30 day time period for responding to the request by an additional 30 days, under clause 15(1)(b) of FIPPA. This rendered the deadline for responding August 22, 2012.

Extending the time limit for responding

15(1) *The head of a public body may extend the time for responding to a request for up to an additional 30 days, or for a longer period if the Ombudsman agrees, if*

(b) a large number of records is requested or must be searched, and responding within the time period set out in section 11 would interfere unreasonably with the operations of the public body

Subsequently, on August 22, 2012 the public body approached the Ombudsman for an additional time extension. Its reasons for requesting the extension related to the significant number of staff that would have to be canvassed and the large number of documents that would have to be reviewed. At that time, the public body advised that it was experiencing a peak service delivery period. The Ombudsman agreed to an extension to October 17, 2012.

The public body wrote the complainant on September 6, 2012, advising of the Ombudsman's agreement to extend the deadline to October 17, 2012 under clause 15(1)(b) of FIPPA.

On October 12, 2012 the public body again requested that the Ombudsman consider an additional time extension to December 31, 2012. The public body advised that, while much work had been accomplished on the access request, it would not be able to meet the deadline of October 17, 2012. The public body had completed a preliminary review of the documents and had begun to sever where appropriate. It advised, however, that the subject of the request generated a high volume of detailed documents requiring review, and that some of these documents required third-party consultations.

Regardless of the Ombudsman's decision about a further extension, the public body advised that it would remain committed to processing this request as quickly as possible. In this regard, it would contact the complainant to determine whether the request could be further streamlined. The public body would also consider providing interim packages of information to the complainant beginning the week of November 5, 2012 and would dedicate its Access and Privacy Officer exclusively to processing the request.

The Ombudsman wrote the public body on October 22, 2012 denying an additional extension of time. The Ombudsman stated that many of the factors identified by the public body in seeking a further extension were factors that had already been considered in determining that the extended due date of October 17, 2012 was appropriate. The Ombudsman further advised that while he recognized that consultations had only recently begun with third parties and that this could be a basis for an extension under clause 15(1)(c) of FIPPA, there was no explanation as to why these consultations could not have commenced earlier in the processing of this request.

Manitoba Conservation and Water Stewardship provided the first release of records to the complainant on November 29, 2012. We received the complaint about "no response" on that same day. We notified the public body of receipt of the complaint.

Subsequently, the public body wrote our office on December 21, 2012 stating that it was committed to a continued process of improvement in order to increase responsiveness and overall access to information. It advised that on November 29, 2012 it had provided the complainant with over 60% of the responsive documents. The public body anticipated that the remainder of the documents would be provided to the complainant during the week of January 14, 2013. We advised the complainant accordingly. During that week and the following weeks, our office followed up with the public body respecting release of the remainder of the records. The final release was made to the complainant on February 1, 2013.

We found that Manitoba Conservation and Water Stewardship did not comply with the requirement for responding within the timelines as set out in subsections 11(1) and 15(1) of FIPPA.

CONCLUSION

Based on our finding in this matter, the complaint is supported.

February 5, 2013
Manitoba Ombudsman