

Manitoba mbudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2012-0408

MANITOBA AGRICULTURAL SERVICES CORPORATION

ACCESS COMPLAINT: DUTY TO ASSIST

PROVISION CONSIDERED: 9

REPORT ISSUED ON JANUARY 18, 2013

SUMMARY: The complainant requested access to records that had been provided to Manitoba Agricultural Services Corporation (MASC) by a third party regarding damage to and estimates to repair his family cottage. The public body advised the complainant that access was provided in full, and enclosed a copy of the complete report. The complainant alleged that information was severed from the report and that additional information/records should exist, responsive to his request. We asked the public body to provide additional information to support that no further information or records exist. The public body explained the contents of the records that had been provided to the complainant. We found that the public body had undertaken all reasonable efforts to respond completely in its duty to assist. The complaint is not supported.

THE COMPLAINT

On September 25, 2012, the complainant submitted a request to Manitoba Agriculture, Food and Rural Initiatives (MAFRI) for access to the following records under *The Freedom of Information and Protection of Privacy Act* (FIPPA), as follows:

Would like to receive a copy of the complete report provided to MASC by [Information Removed] regarding structural and damage/repair estimates for family cottage [address]. This report according to partial document to myself by MASC would include opening statement, detail estimate, summary, photos and sketches. Currently have only been provided the opening statement [sic]. The claim number reference for this is [claim number]. The Client number reference for this is [client number]. The file number specific for this report as per [Information Removed] is [file number].

On September 25, 2012, MAFRI confirmed receipt of the request and then, on October 2, 2012, advised the complainant that it had transferred his request for access to Manitoba Agricultural Services Corporation.

MASC responded to the complainant on October 25, 2012, providing full access to the records. The cover letter clarified that the complete report did not include a detailed estimate and summary for the reasons noted in the opening pages of the report.

The complainant lodged a complaint with our office on December 7, 2012, asking us to investigate whether the public body had met its duty to assist, in responding completely to his request. In his complaint, he alleged that the records were incomplete in that the estimate details were not included.

RECORDS/INFORMATION AT ISSUE

Prior to making a formal request for access under FIPPA, the complainant had informally requested that he be provided with a copy of the structural report regarding damage and cost to repair his family cottage. Initially, the public body had advised that because he was paid “fair market value”, the appraisal report could not be released. It subsequently provided the complainant with a three-page appraisal report that it had received from the adjustors. The email to the complainant, to which was attached the three-page report, explained that, generally, clients are not provided with both the repair report and the appraisal - they are provided with a report that corresponds with the payment (the lesser of the two amounts). It is our understanding that the email intended to say that, generally, clients are not provided with the repair report and the fair market value report. The email further advised that there was no actual [detailed estimate] completed because the adjustor felt the repair cost would be higher than the property assessment. The adjuster had been instructed not to complete [detailed estimates] in cases such as this.

Upon receipt of records responsive to the formal request for access under FIPPA, the complainant had again been provided with this three-page report, along with other records. In his complaint, he advised that the third page of the three-page report, provided through the formal process, included information that was not included in the records he had received informally. As such, the complainant felt that the records initially provided had not been complete. Based on our review, the informal request yielded a three-page summary and the formal request yielded the same information on the three-page summary, along with additional information at the bottom of that page and 33 other responsive pages. The issue for purposes of our investigation is whether the records provided in response to the complainant’s formal access request made on September 25, 2012 are complete.

INVESTIGATION

Did MASC meet its duty to assist, in terms of providing a complete response to the complainant?

Public bodies are required to make reasonable efforts to respond to access requests in an accurate and complete manner, reflected in section 9 of FIPPA:

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.

We contacted the public body on December 14, 2012, asking for a response to the complainant's allegations that the records with which he was provided were not complete. The public body wrote to us on January 11, 2013 and provided the following explanation.

In accordance with the terms and conditions of Part C – Lake Manitoba Business, Principal and Non-Principal Residence Component of the Lake Manitoba Financial Assistance Program, the compensation paid was based on the lesser of the repair costs or fair market value. MASC hired qualified appraisers, who inspected the premises and considered the repair costs compared to the assessed value of the property. If the estimated costs of repair exceeded the value, then MASC, to save time and expense, instructed the appraisers to not complete a detailed estimate for the reason that this detail was not relevant to the amount compensable under the program.

Initially, MASC staff were reluctant to provide the report on the estimated cost of repairs because it was not necessarily the final report containing the details in support of the amount of compensation. Therefore, staff gave the above explanation in addition to providing the relevant (to the amount compensable under the program) portions of the appraiser's report. In this case, the [complainant] received a copy of the report on the fair market value together with a cheque and notice of the option to appeal the final settlement.

The public body advised that the response to the complainant's formal request for access to the complete report included pages 4 and 5, which showed no details because none were compiled to populate these pages. The public body believed that when it provided its explanation along with the full document (36 pages) in response to the formal access request, the complainant would understand that access to the records had been provided in full. The public body's explanation indicated that there were no details of repair estimates for the reasons stated in the opening pages of the report, namely, that in the appraiser's opinion, the cost of repairs would exceed the established value provided by a third party and there was too much damage to merit repairing the cottage. MASC had accepted the appraiser's opinion and was satisfied that, based on its knowledge as program administrator, the repair cost would exceed the fair market value.

Based on MASC's explanation of the process for determining compensation and our review of the records, we are satisfied that MASC met its duty to assist in making all reasonable efforts to respond completely to the complainant.

CONCLUSION

As we found that the public body had made all reasonable efforts in its duty to assist, the complaint is not supported.

January 18, 2013
Manitoba Ombudsman