REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2012-0417

WINNIPEG REGIONAL HEALTH AUTHORITY

ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISION CONSIDERED: 18(1)(c)(i)

REPORT ISSUED ON FEBRUARY 26, 2013

SUMMARY: **The complainant requested access to records on mobile health care services that were contracted by the Winnipeg Regional Health Authority (the WRHA or the public body) over the past two years and advised that a summary document including the contractor's name, a description of services, the time period and the amount of the contract would suffice. The public body refused access to some of the information on the basis that disclosure would be harmful to the third parties' competitive positions and would interfere with their contractual negotiations. The Ombudsman found that the public body's decision to refuse access was in compliance with *The Freedom of Information and Protection of Privacy Act* (FIPPA or the Act).**

THE COMPLAINT

On October 1, 2012 the complainant requested access to the following records under the Act:

> *Please provide documentation on mobile health care services that were contracted by the Winnipeg Regional Health Authority over the past two years. A summary document would suffice – one that indicates the amount of the contract, company's name and origin, period as well as description of the service. "Mobile" services would include services that are temporary* [sic] *set-up in a vehicle or in a space by an outside firm.*

The complainant received a response from the public body dated November 7, 2012.

In regard to the complainant's request, the public body advised the complainant that access to some of the information, i.e., the amount of the contracts, was refused as this information fell within the exceptions to disclosure found in subclauses 18(1)(c)(i) and (ii) of FIPPA.

A complaint about refused access was received by our office on December 18, 2012. The complainant noted that, with respect to a subsequent request, the public body had provided details of its estimates for MRI services. As such, the complainant was of the opinion that the public body, in withholding the actual amounts of the contracts relative to this request, was inconsistent in its application of the Act.

POSITION OF THE WINNIPEG REGIONAL HEALTH AUTHORITY

The public body withheld the amounts of the contracts on the basis that this information would reveal information that: could harm the competitive position of the third parties [subclause 18(1)(c)(i)]; and could interfere with contractual or other negotiations of the third parties [subclause 18(1)(c)(ii)].

During our investigation, the public body advised that the third parties had been given an opportunity to make representations regarding disclosure of the requested information (the “summarized” information). The complainant was made aware of the public body’s notification to the third parties in this regard. The third parties’ responses to the public body indicated that disclosure of the “amount(s) of the contract” would reveal financial information and, if disclosed, could reasonably be expected to harm their competitive positions and interfere with contractual or other negotiations with which they could be involved. Specifically, and with reference to subclause 18(1)(c)(i), it was held that the competitive position(s) would be significantly compromised if pricing were to become part of the public domain; providing pricing information would give competitors a window into the costs incurred in providing the interim mobile lab and support services to clients.

The WRHA considered the representations by the third parties and relied on subclauses 18(1)(c)(i)(ii) of FIPPA to withhold the amounts.

In response to the complainant’s opinion that the WRHA was not consistent in its application of the Act, the WRHA advised our office that the complainant had, subsequent to the public body’s response to the access request, submitted an additional request for information. The WHRA had responded, indicating that no records responsive to that request existed. However, in its duty to assist, the public body had enclosed some information that it thought would be of interest to the complainant. It further explained that the information had been used to facilitate verbal discussions between the WRHA and the Minister’s Office regarding the reduction of the MRI wait list and contained preliminary figures as part of the background analysis and estimates as at March 2011. The public body further advised our office that the actual amounts negotiated with the third parties differed from the preliminary estimated amounts and that the preliminary analysis/estimates did not include information specific to the third parties with whom the WRHA eventually negotiated contracts for the provision of mobile MRI services.

ANALYSIS OF ISSUES AND FINDINGS

1. Did the mandatory exceptions to disclosure in subclauses 18(1)(c)(i) and (ii) apply to information withheld from the records?

The mandatory exceptions contained in subclauses 18(1)(c)(i) and (ii) of FIPPA protect a third party's business interests and involve a *reasonable expectation of harm test*. The focus of these provisions is not the source of information, but rather, whether the specified harm might reasonably be expected to result from disclosure. If information in the records falls within one of these exceptions, an applicant is not entitled to access that information, unless the information falls within any of the clauses of subsection 18(3). Subclauses 18(1)(c)(i) and (ii) and subsection 18(3) read as follows:

> ***Disclosure harmful to a third party's business interests***
> ***18(1)*** *The head of a public body shall refuse to disclose to an applicant information that would reveal*
> *(c) commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to*
> *(i) harm the competitive position of a third party*
> *(ii) interfere with contractual or other negotiations of a third party*
>
> ***Exceptions***
> ***18(3)*** *Subsections (1) and (2) do not apply if*
> *(a) the third party consents to the disclosure;*
> *(b) the information is publicly available;*
> *(c) an enactment of Manitoba or Canada expressly authorizes or requires the disclosure; or*
> *(d) the information discloses the final results of a product or environmental test conducted by or for the public body, unless the test was done for a fee paid by the third party.*

For clause 18(1)(c) to apply, a public body must establish that the following two required elements are met:

- The information must be one of the following types: commercial, financial, labour relations, scientific or technical information.

- An existing or potential business rival must exist and there must be a reasonable expectation of a specific type of harm that will result from the disclosure, i.e, the disclosure shall not simply hinder or cause minimal interference. In the case of subclause 18(1)(c)(i), the specific harm would be to a third party’s competitive position; in the case of subclause 18(1)(c)(ii), the specific harm would be to a third party’s negotiations. Individual circumstances would need to be considered in each case.

While the Act does not define the term “financial information”, it is generally understood as meaning information relating to finance – money and the monetary resources of a person,

company, etc. Examples include information on pricing practices, profit and loss data, overhead and operating expenses. In this case, the actual amounts of the contracts to supply MRI services would be considered financial information.

The WHRA had provided the complainant with information such as the company name, the period of the contract, and the service. It also included the note that the "Mobile MRI and CT scanner equipment were managed by site staff (HSC and Seven Oaks) not the suppliers". Therefore, inasmuch as the total amounts of the contracts did not include staff costs, we found that, in disclosing the total amounts of the contracts, other businesses could reasonably determine the more specific costs (pricing structures) that factored into the total amounts of the contracts. Additionally, the services provided by the third parties were for very limited periods of time and for very specific purposes. In consideration of these factors, we found that releasing the amounts of the contracts could reasonably be expected to harm the competitive position(s) of the third parties, as set out in subclause 18(1)(c)(i) of FIPPA.

Our review determined that the required elements were met in applying subclause 18(1)(c)(i) to withhold the "amounts of the contracts". As we found that the mandatory exception to disclosure set out in subclause 18(1)(c)(i) of FIPPA applied to the withheld information and that none of the limits in subsection 18(3) applied, we did not further consider the application of subclause 18(1)(c)(ii).

CONCLUSION

Based on the Ombudsman's findings, the complaint is not supported.

In accordance with subsection 67(3) of *The Freedom of Information and Protection of Privacy Act,* the applicant may file an appeal of the Winnipeg Regional Health Authority'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