

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2013-0022 (web version)

CITY OF WINNIPEG
WINNIPEG POLICE SERVICE

COMPLAINT: OTHER

PROVISION CONSIDERED: 9

REPORT ISSUED ON OCTOBER 22, 2013

SUMMARY: The complainant submitted an access request to the City of Winnipeg, Winnipeg Police Service, for any and all records with respect to himself and a group which he represents. The public body contacted the complainant to confirm whether the search for records could be confined to certain employees or areas of the WPS, however, an agreement could not be reached in that regard. The WPS then issued a letter detailing the amount of time that would be involved in various aspects of searching for responsive records, in an effort to help the complainant understand the process and potential costs involved in processing his request and to provide him with another opportunity to modify his request. The WPS also advised the complainant that if the request were not narrowed, it would have no option but to refuse access in full as processing the request in its current scope would unreasonably interfere with the operations of the WPS. In light of the steps/time that would be involved to search for and locate responsive records, we found that the WPS' decision to proceed with an informational letter, demonstrating its willingness to ensure the complainant could be provided with some information at a reduced cost, was reasonable and appropriate in the circumstances, and that the WPS fulfilled its duty to assist the applicant.

COMPLAINT

On November 30, 2012 the complainant made an application for the following information under *The Freedom of Information and Protection of Privacy Act* (FIPPA or the act):

Any and all documents including emails that include reference/mention of [name of complainant], also [name of group of citizen activists] (in 2009, 2010, 2011 & 2012)....

The Winnipeg Police Service (the WPS or the public body) responded to the complainant in its letter dated December 17, 2012. While the letter did not attach a completed Estimate of Costs form, it provided costing information about what would be involved in responding to the request in the event that the complainant did not narrow its scope.

The letter indicated that the WPS had spoken with the complainant on December 3, 2012, and had asked him about focusing his request to specific WPS member names and/or specific areas of the WPS, but that he had declined to modify his request as he wanted “everything.” The December 17, 2012 letter provided specific information regarding the steps and the amount of time it would take the WPS to search for records. This information was broken down by department, for example, Information Technology (IT), Legal, Chief’s Office, as well as by certain identified members of the WPS, which were most likely to have records relating to the complainant and/or his organization.

The WPS had chosen not to proceed with a formal Estimate of Costs at that time; its intention in sending the letter was to help the complainant understand the magnitude of his request and, hence, possibly narrow its scope. Additionally, the WPS maintained that, even if it were to proceed with a formal Estimate of Costs and the complainant were to provide payment, the WPS would be required to refuse access in its entirety as processing the original request would interfere unreasonably with its operations.

Our office received a complaint on January 23, 2013 asking that we investigate the fees estimated by the public body.

The complainant could not comprehend how the search for responsive records could be so time consuming. On his complaint form, he asserted that emails and documents can be searched in minutes, not years. He had earlier commented that he thought “it would be reasonably straightforward for emails to be pulled using his name on the search line.”

INVESTIGATION

Although the complainant indicated that he was complaining about a “fee estimate”, we observed that a formal fee estimate, using the form required under FIPPA, had not been issued. As no fee estimate had been issued, we could not investigate a complaint about a fee estimate. However, we could investigate the decision by the WPS to send the December 17, 2012 letter to the complainant, in relation to section 9 of FIPPA, which imposes on public bodies a duty to assist an applicant, as follows:

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 determined that our investigation would focus on the description of the search for the most significant bulk of the records, involving the WPS’ IT department (previous server, current server and examination of files for relevant emails), as this was the area that appeared to be of the most concern to the complainant.

What would be involved in searching email back-ups for responsive records?

During the course of our investigation, we wrote to the public body indicating that, in our experience with a search for emails on a server-wide basis (including the public body's deleted or archived emails), this would typically involve restoring server back-ups and then searching through the restored information, similar to what the WPS described in its letter to the complainant. We acknowledged that this would be time-consuming and vastly different than the type of search that members of the public are used to conducting on their own desktop computers. However, we also indicated that it was our understanding that some software programs did now exist that could be used to index, query and retrieve information from an organization's servers in a less cumbersome and more efficient manner.

As we were uncertain about what software or other IT resources the WPS might have that could facilitate searching for email records, we asked that the WPS provide further information about how it determined that locating responsive IT email records would involve 30 days to restore data from past and present servers, as well as 15,949 hours to examine the files for responsive emails.

According to the information we received, the WPS did not have the software or technological resources to search its servers by simply keying in the complainant's name (or the name of the organization). Instead, the WPS would have needed to utilize backed-up data in order to conduct a search of email records for the entire organization for the three-year period in question. We were advised that a search through backed-up data for responsive emails would involve far more than simply specifying search terms.

A data back-up system creates "snap-shots" of users' electronic messages for the entire organization at particular points in time, which, in the event of a catastrophic failure of the system, can be used to recreate the lost data. In this case, to conduct a search of back-ups of email records, the WPS would need to first individually restore and manually name each back-up file before being able to open the files in the email application. Only then could each file of emails be searched using the specified search terms, in order to locate any email records bearing the name of the complainant and/or his organization.

Prior to sending the December 17, 2012 letter to the complainant, the WPS had asked its Information and Technology Solutions (ITS) Division to prepare a detailed description of the steps involved in the restoration and search of back-up files, including an estimate of the number of files, volume of data, and rate of restoration. This was shared with our office, and we observed that there were over 90,000 "items" (back-ups) to be restored, representing approximately 15,000 GB of data. Based on our own calculations, that amount of data would fill well over 3,000 standard DVD-R discs. The ITS Division estimated that the data could be restored at a rate of just over 30 GB/hour. Together with the time estimated to manually name and save each file in the email program, it would take roughly 30 days to restore the back-ups from both servers. Subsequently, each file would have to be opened and the emails contained therein could then be searched for responsive emails. The ITS Division estimated that this aspect of the search would take approximately 10 minutes per back-up file, translating into over 15,000 hours.

Clearly, based on this volume of items, data, and the rate of restoration and searching, just locating responsive email records using this approach, were it even necessary, would not be feasible.

Could email records be located without having to restore and search through back-ups?

In our office's experience, a search for email records would most often be completed by employees of the public body using the search function of their email program. This approach is particularly effective when the subject matter of the request is a core function of the public body and defined records are kept about the subject matter for operational purposes, by a limited number of employees. Had the complainant asked for emails relating to a particular police investigation, a particular police project, or any of his past FIPPA requests, such records would have been comparatively easy to locate, as they would be kept by a small number of people and/or in a small number of files in order to serve the organization's operational purposes.

When an organization is the size of the Winnipeg Police Service, with close to 2,000 employees (civilians and officers), knowing which employees and/or service areas are likely to have records is the most important factor in conducting an effective and efficient search for responsive records.

The WPS did anticipate at the outset of processing this request that certain identified employees and certain areas (WPS Legal Services, Chief's Office) would have records, and that records would also be found in files for the complainant's own past FIPPA requests. In fact, the December 17, 2012 letter from the WPS makes specific reference to these individuals, areas, and file types, and provides specific descriptions of the number of records that each would be likely to have.

In accordance with section 9 of FIPPA, a public body is required to make every reasonable effort to locate responsive records, which encompasses making reasonable and informed decisions about where and with whom the requested records are likely to be kept, and searching in those defined areas. However, the complainant's request was for any and all records bearing his name or his organization's name.

When such a request is made, our office consistently and strongly encourages applicants and public bodies to talk about how the processing of the request will proceed. The public body can explain where it is expecting to find records, and in turn, the applicant has an opportunity to provide contextual information if they expect records to exist in a different program area or with different employees of the public body. This type of discussion may result in modifying the FIPPA request to focus on specific types or locations of records, or it may simply allow a public body to make a better-informed decision about where to search for the originally requested records.

In this case, the December 3, 2012 telephone discussion between the WPS and the complainant did not result in either of the aforementioned outcomes. It is our view that the WPS had two options available at that point for processing the request. The option implemented by the WPS

was to send the complainant a letter with the detailed information breaking down the potential options for how and where the search for records could be conducted. This would give an applicant the opportunity to make choices about which records to pursue and about where the public body would look for them.

The other option was for the WPS to decide, unilaterally, to confine its search to only those areas where it expected to have responsive records (based on knowledge of the complainant's interest in a specific program) and to proceed on that basis. In our view, in the absence of additional contextual information from an applicant, it is open to a public body to make some reasonable and well-informed assumptions about the type of records likely to exist and the likely location of these records. The public body could then simply explain to the applicant what these assumptions were and how the search for records was conducted.

Either option, in our view, would have been consistent with the duty to assist the applicant.

CONCLUSION

Although the complaint is not supported, we are hopeful that the additional information provided in this report will assist the complainant in better understanding the WPS' approach to processing his request.

As indicated in our *User's Guide to FIPPA* (for the public) and our practice notes (for public bodies) available on our website, we strongly encourage open communication between public bodies and applicants. Communication helps improve the likelihood of applicants receiving the information they truly need, and helps ensure that public bodies are not conducting a potentially unnecessary review of a large volume of records. Open communication can also help reduce search and preparation fees payable by an applicant and may facilitate access to records in a more timely manner.

October 22, 2013
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