

# Manitoba mbudsman

## REPORT UNDER

### *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

CASE 2013-0178 (web version)

#### TOWN OF THE PAS

#### ACCESS COMPLAINT: REFUSAL OF ACCESS

**PROVISIONS CONSIDERED: 12(1)(c), 22(1)(b), 23(1)(a) and (b)**

**REPORT ISSUED ON AUGUST 26, 2013**

**SUMMARY:** The complainant requested access to a copy of a water fluoridation study prepared for the Town of The Pas. The public body refused access pursuant to clauses 22(1)(b) and 23(1)(a) and (b) of FIPPA. Our office found that clause 22(1)(b) was applicable to the withheld record, which had been considered during an in camera meeting of the council of the Town of The Pas. As we found that clause 22(1)(b) applied to the record in question, we did not give further consideration as to whether clauses 23(1)(a) and/or (b) also applied to information in the record.

#### THE COMPLAINT

On or about April 18, 2013, the complainant requested access to the following under *The Freedom of Information and Protection of Privacy Act* (FIPPA):

I as a citizen of the Town of The Pas would like a copy of a ten page water fluoridation study that [name removed] the Assistant Municipal Superintendent of the Town of The Pas wrote.

The Town of The Pas sent the complainant an initial response letter dated April 18, 2013 refusing access to the requested record.

#### PRELIMINARY MATTER - COMPLIANCE WITH SECTION 12

Section 12 of FIPPA requires that a public body's response under section 11 shall inform the complainant amongst other things of the following:

(c) if access to the record or part of the record is refused,

- (ii) in the case of a record that exists and can be located, the reasons for the refusal and the and the specific provision of this Act on which the refusal is based,
- (iii) of the title and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal and,
- (iv) that the applicant may make a complaint to the Ombudsman about the refusal.

As the town's response omitted some of the required information, our office requested that the public body issue a revised response which complied with section 12. The Town of The Pas sent out a revised response letter dated June 12, 2013, to the complainant advising that access to the responsive record was being refused pursuant to clause 22(1)(b) and clauses 23(1)(a) and (b) of FIPPA.

### **POSITION OF TOWN OF THE PAS**

The position of the Town of The Pas was that disclosure of the information contained in the record in question could reasonably be expected to reveal the substance of deliberations of the Town of The Pas council during in camera meetings. The information comprising this record was not discussed or adopted in a meeting open to the public. Clause 22(1)(b) states:

#### **Local public body confidences**

**22(1)** The head of a local public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal

- (b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its elected officials or governing body, if an enactment or a resolution, by-law or other legal instrument by which the local public body acts authorizes the holding of that meeting in the absence of the public.

The Town of The Pas also advised the complainant that release of the records would reveal advice, opinions and recommendations to a public body and therefore access was refused under the following clauses of subsection 23(1) of FIPPA:

#### **Advice to a public body**

**23(1)** The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal

- (a) advice, opinions, proposals, recommendations, analyses or policy options developed by or for the public body or a minister;
- (b) consultations or deliberations involving officers or employees of the public body or a minister.

## ANALYSIS OF ISSUES AND FINDINGS

### **Does the discretionary exception to disclosure provided by clause 22(1)(b) of FIPPA apply to the withheld record?**

Clause 22(1)(b) provides discretion to a local public body to refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal the substance of deliberations of a meeting of its elected officials authorized to be held in the absence of the public.

The authority for the Town of The Pas to hold a meeting in the absence of the public is derived from *The Municipal Act*, specifically subsection 152(3) which provides as follows:

#### **When council or council committee may close meeting**

**152(3)** Despite subsections (1) and (2), a council or council committee may close a meeting to the public

- (a) if
  - (i) in the case of the council, the council decides during the meeting to meet as a committee to discuss a matter, and
  - (ii) the decision and general nature of the matter are recorded in the minutes of the meeting, and
- (b) if the matter to be discussed relates to
  - (iii) a matter that is in its preliminary stages and respecting which discussion in public could prejudice a municipality's ability to carry out its activities or negotiations.

The Town of The Pas advised that the information contained in the requested record was not adopted in an open meeting and consequently was not accessible to the public.

Our investigation confirmed that on August 27, 2012 at 6:00 p.m. the council for the Town of The Pas was in attendance at the regularly scheduled committee of the whole meeting. At the conclusion of this meeting, a councilor moved that council meet in-camera. The mayor requested that all townspeople now in attendance were required to leave. The fluoride report was then discussed at this in-camera meeting of council. Copies of both the committee of the whole agenda and the committee of the whole in-camera agenda were provided to our office confirming that the council did close its meeting to the public as provided for in subsection 152(3) of *The Municipal Act* when it discussed the requested record.

We found that the disclosure of the withheld information could reasonably be expected to reveal the substance of deliberations of a meeting held in the absence of the public by the elected officials of the Town of The Pas. The exercise of discretion by the Town of The Pas to refuse to disclose information to the complainant under clause 22(1)(b) was determined to be reasonable.

Although the Town of The Pas cited additional exceptions to disclosure (clauses 23(1)(a) and (b) ), it became unnecessary to investigate the applicability of these exemptions inasmuch as we had concluded that the exception to disclosure contained in clause 22(1)(b) applied to all of the information in the requested record.

## **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 Town of The Pas' decision to refuse access to the Court of Queen's Bench within 30 days of receiving this report.

Manitoba Ombudsman  
August 26, 2013