

Manitoba Ombudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE 2013-0185

CITY OF WINNIPEG (311 SERVICE)

REPORT ISSUED ON MAY 12, 2014

CASE SUMMARY

A resident of the City of Winnipeg complained that the 311 phone service operated by the city does not provide the identity of owners of real property within the city, even though this information is publicly available on computers at City Hall and at the city's Assessment and Taxation Department.

The complainant says that there is no principled distinction between the disclosure of ownership information at one of the city's computers and giving it out on the phone, and as such the refusal to give it out is a "capricious, arbitrary, and petty" policy. He does not feel that he should be forced to travel to the city's computers to access the information. In reply, the city states that it is in compliance with all relevant laws and policies.

The information that the complainant seeks to have made available to him through the 311 service is "personal information" as defined in *The Freedom of Information and Protection of Privacy Act* (FIPPA). As such, the disclosure of the names of property owners must be done in accordance with the terms of FIPPA. Disclosure by the city of personal information must be consistent with the purposes for which it was collected, and done in a way that encroaches on an individual's right to privacy as little as possible while still achieving the goal of the taxation regime.

The purpose for which the personal information in question was collected by the city was the operation of its regime of property taxation. The regime publicizes information respecting property ownership in order for citizens to assess the fairness of their own property's assessed value by comparing it to that of similar properties. In conducting this analysis, information respecting ownership of property is simply not relevant. The disclosure of ownership information over the 311 service would not advance the policy goals of the regime, which are well met with the current level of disclosure.

Anyone asking for ownership information in addition to that which is already provided is asking for the disclosure of personal information for a purpose other than that for which it was collected, and in that circumstance disclosure would breach FIPPA.

The city's operation of fee-for-service phone and/or computer programs to which law firms, real estate agencies, and similar businesses may subscribe to obtain the same information sought by the complainant is reasonable. These entities are integral to the proper functioning of the city's taxation regime and the disclosure of personal information to them is acceptable; the considerations that apply to them do not apply to the complainant. Given the large volume of requests for information they make of the city, charging a fee for access is also reasonable.

OMBUDSMAN – ROLE AND RESPONSIBILITIES

Manitoba Ombudsman is an independent office of the Legislative Assembly of Manitoba, reporting to the assembly through the Office of the Speaker. The responsibilities and authority of the ombudsman are set out in *The Ombudsman Act*, *The Freedom of Information and Protection of Privacy Act*, *The Personal Health Information Act*, and *The Public Interest Disclosure (Whistleblower Protection) Act*.

Under *The Ombudsman Act*, Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, and municipalities, and their officers and employees. Investigations may be undertaken on the basis of a written complaint from a member of the public, or upon the ombudsman's own initiative.

The actions and decision complained about are matters of administration arising from the interpretation and application of provincial legislation, being *The Municipal Assessment Act*, *The City of Winnipeg Charter*, and *The Freedom of Information and Protection of Privacy Act*.

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal by-law. On other occasions, it is written policy or established procedures implemented to give effect to legislative purpose. In cases concerning an impact on individual rights or benefits, we also examine the fairness of the action or decision. A complaint can raise questions of procedural fairness, substantive fairness or relational fairness. Procedural fairness relates to how decisions are reached; the steps followed before, during and after decisions are made. Substantive fairness relates to the fairness of the decision itself and relational fairness relates to how people are treated during the decision making process.

While our office has a mandate to investigate complaints, the investigative process we follow is non-adversarial. We carefully and independently consider the information provided by the complainant, the decision maker, and any witnesses we determine to be relevant to the case. Administrative investigations can involve an analysis of statute or by-law provisions, document reviews, interviews and site visits.

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. If a complaint is supported by a finding of maladministration, the ombudsman may make recommendations pursuant to section 36 of *The Ombudsman Act*.

Administrative investigations can also identify areas where improvements may be suggested to a government body without a finding of maladministration. Such suggestions are made to support and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can improve the relationship between government and the public, and reduce administrative complaints.

THE COMPLAINT

The complainant takes issue with the refusal of the "311" service operated by the City of Winnipeg to provide him with information identifying the legal owner of private property within Winnipeg in which he does not have a legal interest. This same information is available to the public via computer terminals at City Hall and at the city's Assessment and Taxation Department office (510 Main Street and 457 Main Street, respectively), which are there for that purpose. He characterizes the refusal of the city to give this information out over the phone as an "arbitrary, capricious, and petty" decision, given that the information is available at the city's computer terminals. He does not agree that he should be made to go to the terminals himself, as it would be a waste of his time. He has not expressed any impediment to his being able to do this.

He states that he was told by the 311 operator that he would have to travel to 510 or 457 Main Street, where the information can be obtained on the city's computers. He says that he was told that it is 311's policy not to give this information out over the phone, citing privacy concerns.

The complainant did not identify the subject property in his written complaint, or state what his interest in that property is. It is assumed that he has no legal interest in the property, otherwise other avenues would be available to him to get the information he requested.

The complainant also has concerns that the information that is available through the computer kiosks may not be up-to-date in terms of ownership.

KEY ISSUES/QUESTIONS

- Is it reasonable for the city to refuse to provide property ownership information to legally un-interested parties over the 311 service?
- Is the information provided by the city at its computer terminals up to date?

BACKGROUND INFORMATION

THE LEGISLATIVE FRAMEWORK

According to *The Municipal Assessment Act* (MAA), the City of Winnipeg is obligated to disclose to the public the contents of city's tax assessment rolls: (all underlining added)

Effect of delivery of assessment rolls

9(5) Upon delivery of assessment rolls to a municipality, the rolls

(a) become the assessment rolls of the municipality for purposes of preparing the municipal tax rolls of the municipality; and

(b) are open to inspection by a member of the general public during the regular business hours of the office of the municipal administrator.

According to *The City of Winnipeg Charter* the city is obligated to the following:

Form of rolls

338 Council may by by-law provide that the city's tax rolls be in any form, including an electronic form.

Content of tax roll

339(1) The tax rolls must show the following for each property or premises in respect of which taxes are imposed:

(a) the roll number;

(b) the name of the person whose property or premises is assessed on the corresponding assessment roll;

(c) the description of the property or premises and its assessed value;

(d) the amounts levied for every purpose, including those which are required by the law or by-law imposing them to be kept distinct and accounted for separately.

The City of Winnipeg Charter also provides:

Records available on request

112(1) *The city clerk must, within a reasonable time after the request of any person, provide access to, or direct the person to another employee who has custody of and who must provide access to, any of the following city records:*

(a) the assessment rolls of the city for the current year and for the two preceding years;

The city's tax roll must include the name of the owner of the property being taxed:

Content of tax roll

339 *The tax rolls must show the following for each property or premises in respect of which taxes are imposed:*

(a) the roll number;

(b) the name of the person whose property or premises is assessed on the corresponding assessment roll;

(c) the description of the property or premises and its assessed value;

(d) the amounts levied for every purpose, including those which are required by the law or by-law imposing them to be kept distinct and accounted for separately.

However, an individual may demand that the city remove their personal information from this mandatory disclosure:

Personal security protection

112(3) *Despite anything in this or any other Act,*

(a) the name and other personal information of or about an individual must be omitted or obscured from an assessment roll or tax roll produced under this section if the individual applies in writing to the clerk to have that information omitted or obscured to protect the individual's personal security; and

(b) information about an elector that, under subsection 36.1(1) (personal security protection on lists and records) of The Local Authorities Election Act, was omitted from, or obscured on, a list of electors or other record must not be made available for examination, inspection or copying.

The obligation to make public the tax roll, complete with the name of the legal owner of property, is clear. Equally clear is how that disclosure is to be made — by making the rolls available for inspection during office hours at the office of the municipal administrator.

The *Freedom of Information and Protection of Privacy Act* (FIPPA) defines "personal information" as:

"personal information" means recorded information about an identifiable individual, including

- (a) the individual's name,
- (b) the individual's home address, or home telephone, facsimile or e-mail number;

The information sought by the complainant is therefore personal information and any disclosure by the city is subject to the terms of FIPPA. Disclosure is governed by the following sections, which have been edited to contain only the relevant portions:

General duty of public bodies

42(1) A public body shall not use or disclose personal information except as authorized under this Division.

Limit on amount of information used or disclosed

42(2) Every use and disclosure by a public body of personal information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.

Disclosure of personal information

44(1) A public body may disclose personal information only

(a) for the purpose for which the information was collected or compiled under subsection 36(1) or for a use consistent with that purpose under section 45;

(e) in accordance with an enactment of Manitoba or Canada that authorizes or requires the disclosure;

Consistent purposes

45 For the purpose of clauses 43(a) and 44(1)(a), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure

(a) has a reasonable and direct connection to that purpose; and

(b) is necessary for performing the statutory duties of, or for delivering an authorized service or program or carrying out an activity of, the public body that uses or discloses the information.

Both clauses 45(a) and (b) must be met for a disclosure to be consistent with the purpose for which the information was collected.

Our office is assisted by the discussion of this provision in the *FIPPA Resource Manual*, page 5-79:

A 'reasonable' connection to the original purpose means a connection or link which is justifiable or logical. A 'direct' connection is one that is straightforward or unambiguous.

A disclosure has a 'reasonable and direct connection' to the original purpose of collection if there is a logical and clear link to the original purpose of collection, if the disclosure logically flows from the original purpose....

'Necessary' in this context means that the public body will be unable to properly or fully carry out its duties or activities or operate its programs without disclosing the personal information in the proposed manner.

There are no hard and fast rules as to what constitutes a disclosure for a consistent purpose'. One guideline to consider is whether a reasonable person would anticipate or expect the personal information to be disclosed in the proposed way, even if the disclosure were not spelled out at the time the personal information was collected.

POSITION OF COMPLAINANT

The complainant takes the position that the failure of the city to allow 311 to give out information about property ownership over the phone when this same information is publicly available at city-operated terminals is "arbitrary, capricious, and petty"; and that there is no principled distinction between releasing the information he seeks through a publicly accessible computer terminal and doing so over the phone. As such, the city is obligated to do so, instead of forcing persons to travel to the city's offices to do the search themselves.

POSITION OF RESPONDENT

The City of Winnipeg has indicated that its current practice is, in their opinion, in compliance with the terms of the MAA, the charter, and FIPPA, and that they are under no obligation to do as the complainant suggests.

There is no written policy at the city which addresses the release of ownership information over 311, although several city employees who were interviewed stated that it was an "unwritten" policy not to give out this information. The city and its employees have not been consistent in their reasoning for their position; some have said that the information is not given out due to privacy concerns, and others pointed to the terms of the MAA and charter as being justification for the practice.

SCOPE OF THE INVESTIGATION

In investigating this matter, the following steps were taken:

- A letter of inquiry was sent to the city assessor;
- Calls to the 311 services operated by various large cities in Canada were made;
- The online municipal assessment information tools operated by various large Canadian cities and provinces were tested for information content;
- Relevant legislation and policies from Manitoba, Ontario, British Columbia and Alberta were analyzed;
- Legislative policy analysts from other provinces were contacted;
- A trip to City Hall and to the Assessment and Taxation Department office was made, at which time the computer terminals were tested for information content and accessibility.

ANALYSIS OF ISSUES AND EVIDENCE

In order to assess the reasonableness of the refusal by the 311 service to provide ownership information over the phone, it must be understood why the city is obligated to disclose the information it does about real property assessment and ownership, and how it must balance the individual's right to privacy against that obligation.

WHY DOES THE CITY MAKE ASSESSMENT ROLLS PUBLIC?

The rationale for having information publicly available respecting the assessment and taxation of privately held land is to allow taxpayers to assess the fairness of their own taxation assessment against the assessment of similar properties in their jurisdiction. This is the position taken by the Manitoba government (Manitoba Tourism, Culture, Heritage, Sport and Consumer Protection). In their online document respecting FIPPA and its application to municipalities in Manitoba, it states:

The purpose of providing the assessment roll is to enable property owners to compare their assessments with those for similar or adjacent properties.¹

The department of Manitoba Municipal Government takes the same position in their online FAQ:

¹ http://www.gov.mb.ca/chc/fippa/public_bodies/faq2.html, at point 13

Property assessments are considered to be accurate and fair if similar properties within the municipality have similar assessments.

Property assessment information is provided on our website for property owners to review their assessment and confirm that it is comparable to similar properties in the municipality. Assessments and basic characteristics are available on the website for all properties. To get information about other properties, you will need to provide a civic address, roll number, certificate of title or legal description of the property.

If after comparing your property to similar properties you believe your assessment is not accurate and fair, contact an assessor.²

It must be noted that in determining if a property assessment is fair by doing a comparison analysis, the identity of the owner of property is not a factor in the vast majority of cases; that information is simply not relevant. This fact is key to the analysis of the application of FIPPA to the information sought by the complainant, as set out below.

In order to maintain a transparent assessment system, the city maintains a website (www.winnipeg.ca) which allows anyone to look up a property's assessment by reference to either a civic address or a tax roll number. No ownership information is given. This service is consistent with the practice of all of the other Canadian cities whose websites were visited in the course of this investigation. None provided any ownership information, nor was it possible to search for properties by using a name as a search term.

Further, the city, in partnership with the Law Society of Manitoba, operates the "LDRC" system. The Legal Data Resource (Manitoba) Corporation is a non-profit corporation established by the law society for the purpose of providing city database services to members of the legal profession and others approved by them, typically real estate agencies and financial institutions. This service, which requires a subscription and charges fees for searches, does provide users with ownership information. However, it is not searchable by owner name.

Lastly, the city provides information to the WinnipegRealtors Association upon request, including property legal information and a mailing address, but no ownership information. Notably, ownership information was historically included in the information provided to WinnipegRealtors, but upon the enactment of FIPPA, it was removed for privacy reasons.

It must be noted that property ownership information is accessible to the public at the Manitoba government's Land Titles Office. The entitlement of a citizen to access ownership information from that source is outside the scope of this investigation.

² <http://web5.gov.mb.ca/public/faqs.aspx>, at point 12

THE APPLICATION OF FIPPA TO TAX ASSESSMENT INFORMATION

According to the definitions in FIPPA, information identifying an owner of property is personal information and is protected by the owner's right to privacy. However, the MAA and the charter both specifically require the city to disclose this information in its tax rolls, meaning that the city is not in breach of FIPPA (see clause 44(1)(e) of FIPPA) when these are made public for viewing.

However, disclosure must still be in accordance with the two following requirements of FIPPA:

- It must be limited to the minimum amount necessary to accomplish the purpose for which it was collected (subsection 42(2)), and
- It may only be disclosed for a purpose that is consistent with the purpose for which the information was collected or compiled (clause 44(1)(a)).

In practical terms, this means that in order to provide taxpayers the opportunity to assess the fairness of their tax assessments, the city need only disclose information respecting other city properties as is necessary to make a comparison analysis. It does so through its website, where assessment values for any city property may be found. The identity of an owner does not have an impact in this analysis, and for that reason disclosure in this context would violate the principle of minimal impairment set out in subsection 42(2) of FIPPA. The information is simply not needed to fulfill the goal of the system. For the same reason, the ombudsman concludes that the disclosure of ownership information via 311 is not a use reasonably or directly related to the purpose for which it was collected, in breach of section 45 of FIPPA.

Further, the ombudsman takes the position that clause 44(1)(e) of FIPPA should be read in a narrow sense. If a law passed by the Manitoba government, such as the MAA and the charter, says that personal information is to be made public in a specific way, then it is only that specific method of disclosure that is permissible under FIPPA. In the present case, the city makes the private information available in accordance with the limited terms of the charter (by making it available at the Assessment and Taxation Department office), and therefore any disclosure over the phone is not permitted.

With respect to the LDRC, which does disclose ownership information (and is the only source of this information other than the city's computer terminals), this is acceptable given that this system discloses information only to those who are performing acceptably tax-related functions. A subscription is required, which is overseen by the Law Society of Manitoba, and fees are incurred for searches; these things discourage frivolous access to the system. The entities who use the information do so mainly in the context of the conveyancing and financing of property, without which the taxation system could not function. This minimal impairment of the individual's right to privacy is reasonable. The considerations that apply to LDRC subscribers do not apply to the complainant.

SUMMARY AND CONCLUSION RESPECTING THE LEGISLATIVE FRAMEWORK

The city is obligated by the terms of the MAA and the charter to disclose the content of the tax rolls, which must include information identifying the owner of assessed property. The way that it must do so is clear; by making the tax roll available for inspection during office hours at the municipal offices. The city is in compliance with these obligations by having accessible computer terminals.

The city must adhere to the provisions of FIPPA, which restrict the disclosure of personal information to that which is necessary for, and consistent with, the achievement of the objects of the legislation. In this case, the city makes all of the information necessary for a taxpayer to determine the fairness of their property assessment available through their online tool (but without ownership information) and through the computers at City Hall and at the Assessment and Taxation Department.

Anyone who has obtained the property information provided (without charge) by the city via their website cannot be requesting ownership information over the phone for a purpose that is consistent with the reason for which the information was collected and is maintained, or for a purpose that is reasonably and directly connected to the goals of the taxation regime. Put differently, their interest or purpose would be other than the use of the information for acceptable tax-related reasons. In this context, the disclosure of the information by the city would constitute a breach of sections 42, 44, and 45 of FIPPA.

THE ACCURACY OF THE INFORMATION PROVIDED BY THE CITY

The complainant has expressed a concern that the information given by the city's computer terminals is potentially out of date, in terms of the ownership information. He is concerned that when a transfer of ownership occurs, that transfer may not be updated within the city's computers fast enough and anyone looking up a property may be given incorrect information.

ANALYSIS AND CONCLUSION RE: INFORMATION ACCURACY

The information displayed by the city's computers consists mainly of two pieces of information, being copies of the most recent letters sent to property owners from the Assessment and Taxation Department: a preliminary Notice of Assessment, and the formal tax bill. These are typically sent out in February and June of a given year, respectively. It is by reading this letter that the identity of the owner of property can be learned, as well as the property's assessed value. The records are searchable by year, so that the evolution of the assessed value of a property can be seen, as well as changes in ownership.

It is true that if a change of ownership occurs after the date of the most recent correspondence found in the computer the system, the system will provide incorrect ownership information until such time as the next year's letters are updated into the system.

However, the fact remains that the system appears to be as current as it can be with respect to taxation assessment information. This means that the city's system is delivering to the public all the information that is needed to conduct an analysis of the fairness of the city's assessments, which is the reason the terminals exist. Whether or not the information is up-to-date with respect to ownership is irrelevant to this analysis. Consistent with the overall analysis set out above, the ombudsman is of the opinion that the city is meeting its legal and policy obligations and does not see any issue with the potential for incorrect information.

CONCLUSION AND SUGGESTED ADMINISTRATIVE IMPROVEMENT

The practice of 311 refusing to give out ownership information over the phone meets the legislated requirements of *The Municipal Assessment Act* and *The City of Winnipeg Charter*. It is compliant with FIPPA, and enables the city to provide its residents with a tool to evaluate the fairness of local property assessments. Disclosure in the way suggested by the complainant would be in breach of FIPPA because in that context the information sought is not sufficiently or reasonably related to the purpose for which it was collected.

In its dealings with the complainant, and with the ombudsman, the city was inconsistent in its expression of the reasons why it does not provide ownership information over the phone. This inconsistency contributed to the complainant feeling as though he was not being given adequate or accurate answers.

The development of a written policy at the city concerning this issue would assist city employees to better understand the issues and to convey them to callers.

In the course of this investigation, it was found that in other jurisdictions where ownership information is accessible to the public in the same fashion as in Winnipeg, their computer terminals displayed a Terms of Use document that set out the acceptable purposes for which ownership information may be used. The document puts the user "on notice" that their use of the terminal is subject to the conditions that assessment data is to be used solely for personal, non-commercial tax-related purposes, and not in order to harass or locate individuals, or for solicitation. Such a disclaimer could be used by the city to clarify accepted uses of the terminals and the information they provide. A precedent of this disclaimer is available by contacting the ombudsman.