

Manitoba mbudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASES 2013-0217, 2013-0218, 2013-0219, 2013-0220 (web version)

CITY OF WINNIPEG
WINNIPEG TRANSIT

COMPLAINTS: OTHER, FEE ESTIMATE, REFUSED ACCESS

PROVISIONS CONSIDERED:
SECTIONS 2 AND 3, SUBSECTIONS 7(1), 82(1), 82(2) OF FIPPA
SUBSECTIONS 4(1), 4(2), 4(3) AND CLAUSE 8(1)(a) OF
ACCESS AND PRIVACY REGULATION 64/98

REPORT ISSUED ON SEPTEMBER 19, 2013

SUMMARY: The complainant made four separate access requests to the City of Winnipeg (the city). Respecting two of the requests, the public body advised that access was provided in full. The public body issued a fee estimate relative to the complainant's third request and referred him to the city's 311 service in respect of the question contained in his fourth request. The complainant filed four complaints with our office: two were in regards to how the figures, listed in two of the responses granting full access, were generated; one disputed the fees as set out in the Estimate of Costs provided by the public body; one was with respect to the city's refusal of access. Our office found that none of the complaints were supported.

COMPLAINTS #1 AND #2 (2013-0217 and 2013-0218)

On March 25, 2013 the complainant made applications for the following information under *The Freedom of Information and Protection of Privacy Act* (FIPPA or the act):

- 1) What is the total saving to the tax payer by changing bus times five times a year?
(itemized and in detail please)
- 2) What is the total cost of changing bus times five times a year?
(itemized and in detail please)

Respecting the first request, the city responded on April 19, 2013 by providing the complainant with a table it had created in response to the complainant's question. The table listed the total

taxpayer savings (both through municipal and provincial taxes) and provided a breakdown of savings in each of the following categories:

- Salaries and Benefits (bus operators only)
- Motive Fuels and Lubricants
- Bus Parts
- Other Salaries and Benefits including Dispatchers, Inspectors, Severance Pay, Rehabilitation
- Maintenance Costs including Salaries and Small Parts
- Other Operating Supplies
- Maintenance Materials

Respecting the second request, the public body responded on April 19, 2013 by providing the complainant with a record created in response to the question he had posed. The record included descriptions and related costs, broken down as follows:

- Creating the “sign up” and having Operators come to Transit to “sign” for their work
 - Timekeepers’ Costs
 - Printed Materials
 - On-street relief for bus operators to come to Transit
- Schedulers’ salaries that could be eliminated if schedules were not changed for seasonal variations – estimated salaries
- Printed Schedules
 - Printing costs of schedules
 - Delivery of schedules
 - Posters and notice boards at bus stops
- Salaries for staff to prepare new schedules, update website, on bus next stop announcements, preparing notice boards and posters, testing information

Our office received two complaints on June 21, 2013 asking that we investigate how or from where the public body obtained the figures in respect of the two above-noted requests.

INVESTIGATION OF COMPLAINTS #1 AND #2

How were the Figures generated?

With regards to both of these requests, we note that the complainant did not request access to records and that the right of access under FIPPA is not intended to respond to questions. Records did not exist at the time the requests were received. However, in both cases, the public body created records in an effort to be transparent and provide answers to the questions posed by the complainant.

The April 19, 2013 responses to the complainant indicated that the public body was providing access in full to the records requests (within the free two-hour allotment of search and preparation services for each request). Respecting the first request, the public body broke down

the cost savings into seven categories. In regards to the second request, the public body provided a breakdown of costs into eight categories.

On June 28, 2013 we wrote the public body, indicating that while we were not auditing or authenticating the figures that were provided to the complainant, we were attempting to confirm how or from where the figures, included in the public body's responses to the complainant, were obtained.

The public body's responses to our office dated July 17, 2013 indicated that no records existed that specifically accounted for the savings/costs that were described in the requests. This was confirmed with its manager of Finance and Administration. However, the public body decided to compile the various costs incurred. Additionally, we were advised that the city spent well in excess of two hours in preparing each of the records for the complainant, but did not proceed with an Estimate of Costs for either request.

Regarding the figures that were provided in response to the question about savings for changing the schedules 5 times/year, the public body advised that consultations were held with its superintendent of schedules to determine the number of bus hours (and related pay hours) saved in respect of each service change. For example, if one particular schedule was revised downwards from 5000 hours/day to 4000 hours/day from one period of time to the next, then the public body could determine the hours saved in respect of that service change for that particular schedule. In this way, it determined the hours saved in regards to all service changes over the course of the year and then calculated the approximate savings in each of the seven categories by applying the formulas already established in its costing model. As a rough example, if 100 hours of bus operation translated into \$3,000.00 of costs for fuel and lubricants, then a reduction to 10 hours (1/10th of 100) would translate into \$300.00 (1/10th of \$3000.00) and represent a savings of \$2,700.00 on fuel and lubricants.

Respecting the figures that were generated in respect of the costs for changing the schedules, the public body advised that consultations were held with several of its staff members in Finance and Administration, Planning and Schedules and Operations, with specific involvement by its superintendent of schedules, its chief time keeper and its supervisor of information. To elaborate, the public body first estimated the time for specific staff to create service change sign-ups, bring in bus operators, etc. and then generated the figures by applying the salaries of the employees assigned to those tasks to the estimated time. Some of the other figures attached to the costs of changing bus schedules were extracted from its accounting system.

In our view, the city's approach to compiling this information was appropriate and reasonable, and its efforts to assist the complainant by producing the requested information were commendable.

COMPLAINT #3 (2013-0219)

On April 12, 2013 the complainant submitted an additional access request. The access request read as follows:

It's a well-known fact among Transit patrons, that starting and terminating rush hour specials mid-route, instead of downtown, is an inconvenience of significance, and has been for a considerable length of time. According to Customer Service, this is a cost-cutting measure.

Question: how much is this, surely outdated, practice actually saving?

Official, detailed documentation of individual routes required.

The public body responded to this request in a letter to the complainant dated May 10, 2013. The response advised that fees, in the amount of \$390.00, were payable for processing this request. The Estimate of Costs provided by the public body to the complainant included the following information:

Search and Preparation Fee:

Time in excess of two hours13.0 hours
 Estimated cost (at \$15.00 each half hour).....\$390.00

Total of estimated costs\$390.00

The complainant later disputed this fee estimate in his complaint to our office dated June 21, 2013.

INVESTIGATION

Is the time estimate for producing the records reasonable given the subject matter of the request and were the fees assessed by the City of Winnipeg Transit Department in the Estimate of Costs form prepared in accordance with the legislation?

Under FIPPA, a public body may require an applicant to pay fees for search, preparation, copying and delivery services as provided for in the *Access and Privacy Regulation* (the regulation). The public body must issue an Estimate of Costs when it considers that chargeable time in responding to a request will likely exceed two hours. The regulation outlines how fees are to be calculated.

The following provisions of FIPPA are relevant:

Fees

82(1) The head of a public body may require an applicant to pay to the public body fees for making an application, and for search, preparation, copying and delivery services as provided for in the regulations.

Estimate of fees

82(2) If an applicant is required to pay fees under subsection (1) other than an application fee, the head of a public body shall give the applicant an estimate of the total fee before providing the services.

The following provisions of the regulation set out the information relative to this matter with respect to search and preparation and the estimate of fees:

Search and preparation fee

4(1) An applicant shall pay a search and preparation fee to the public body whenever the public body estimates that search and preparation related to the application will take more than two hours.

4(2) The fee payable for search and preparation is \$15.00 for each half-hour in excess of two hours.

4(3) When calculating search and preparation time, a public body shall include time spent in severing any relevant record under section 7(2) of the Act, but shall not include time spent

- (a) in connection with transferring an application to another public body under section 16 of the Act;
- (b) preparing an estimate of fees under section 7;
- (c) reviewing any relevant record to determine whether any of the exceptions to disclosure apply, prior to any severing of the record;
- (d) copying a record supplied to the applicant; or
- (e) preparing an explanation of a record under subsection 14(2) of the Act.

Estimate of Fees

8(1) In accordance with subsection 82(2) of the Act, a public body shall give an applicant an estimate of fees in Form 2 of Schedule A when it reasonably considers that, in responding to the request,

- (a) search and preparation is likely to take longer than two hours

On July 17, 2013 the public body provided us with additional information in respect of the Estimate of Costs provided in its May 10, 2013 response to the complainant and advised that starting and terminating individual trips mid-route is a routine practice that is necessary in order to make efficient use of its fleet.

The city noted that the complainant's access request did not ask for access to records, but again asked for information by way of a question. The public body also advised that no records existed with respect to this request, yet decided that it was prepared to create a record in an effort to be transparent and provide an answer to the question posed by the complainant. In this regard, the public body determined that fees would apply and issued an Estimate of Costs. The search and preparation time estimated to respond to the complainant's request, in excess of two free hours, was thirteen hours. Preparing a record would involve a transit scheduler going through Winnipeg Transit's scheduling system, route by route, to manually identify all times of the day when buses started or ended mid-route instead of at the terminal. The Finance and Administration department would then need to determine/calculate all of the cost factors associated with each of the routes.

The public body explained that there are seventy-nine individual routes and it would take approximately 15-20 minutes/route to locate/analyze responsive information (about 19 – 26 hours). The public body's Estimate of Costs provided to the complainant totaled \$390.00, representing only 15.0 hours of search and preparation time at \$15.00/half hour, less 2 free hours that are provided by a public body in processing an application for access. In our opinion, examining the system and/or schedules to identify responsive information is an activity that is chargeable under FIPPA.

Our review determined that the estimate was reasonable and necessary in responding to the complainant's request. It properly and conservatively took into account search and preparation tasks and was calculated in accordance with FIPPA and the regulation.

COMPLAINT #4 (2013-0220)

On April 12, 2013 the complainant submitted a fourth access request:

It is now a proven fact that using the windows of buses does not, as the Transit director would have us believe, in itself, keep bus fares down. This misinformation was revealed quite some time ago, with the aid of the city clerk, FIPPA, Ombudsman's office, and, a most reluctant and delayed admission by a Transit spokesperson. (Note: our office assumed that "using the windows" was in relation to the windows being used for advertising purposes).

Question: Why, then, is this most disrespectful, liberty-taking behavior being allowed to continue without the Winnipeg public being informed and consulted? It is what is known as a public relations strategy.

In its May 10, 2013 response letter to the complainant, the public body advised that access to the information requested was refused. The complainant was referred to the city's 311 service. The response letter explained that sections 2, 3 and 7 of FIPPA set out the scope of the act and specify that the act provides the right of access to records (not information). Additionally, it indicated that FIPPA is not intended to replace existing procedures for access to information that may be accessed by contacting 311.

On June 21, 2013 our office received a complaint about the public body's refusal of access.

INVESTIGATION

Does Part 2 of the act – Access to Information - apply to the question asked?

In this matter, the public body did not refuse access to records. While subsection 7(1) would have permitted the complainant the right of access to any record in the custody or under the control of the public body (subject to the act's exceptions), the complainant had not requested access to particular records. He had asked for an answer to a question or opinion about the statement he had made.

The provisions cited by the public body in its May 10, 2013 response letter were as follows:

Purposes of this Act

2 The purposes of this Act are

- (a) to allow any person a right of access to records in the custody or under the control of public bodies, subject to the limited and specific exceptions set out in this Act;

Scope of this Act

3 This Act

- (a) is in addition to and does not replace existing procedures for access to records or information normally available to the public, including any requirement to pay fees;

Right of access

7(1) Subject to this Act, an applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

We found that Part 2 of the act – Access to Information – did not apply to the statement and question posed in the complainant's access request and that the public body was correct in its interpretation of clauses 2(a), 3(a) and subsection 7(1) of FIPPA.

CONCLUSION OF ALL COMPLAINTS

Based on our findings, these complaints are not supported.

September 19, 2013
Manitoba Ombudsman