

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2013-0244

CITY OF WINNIPEG COMMUNITY SERVICES DEPARTMENT

ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISION CONSIDERED: SECTION 26

REPORT ISSUED ON JUNE 13, 2014

SUMMARY: The complainant requested an electronic copy of the vacant buildings registry. The public body refused access to the registry pursuant to section 26 of *The Freedom of Information and Protection of Privacy Act*. Our office found that the exception claimed by the public body to withhold information in the registry applied.

THE COMPLAINT

The complainant requested access to information in the following records under *The Freedom of Information and Protection of Privacy Act* (FIPPA):

An electronic copy, preferably an Excel spreadsheet, of the vacant building registry maintained by the Fire Prevention Branch.

The complainant's request was received by the City of Winnipeg on May 28, 2013 and was re-directed to the City of Winnipeg's Community Services Department for a response on May 29, 2013 as the records requested did not exist in the Fire Prevention Branch of the Winnipeg Fire Paramedic Department.

The City of Winnipeg, Community Services Department (the public body) sent the complainant a response letter dated June 11, 2013, refusing access to the responsive records under section 26 of FIPPA.

A complaint about refused access was received by our office on July 19, 2013.

POSITION OF CITY OF WINNIPEG, COMMUNITY SERVICES DEPARTMENT

The public body refused access to the information in the records requested pursuant to section 26 of FIPPA which provides as follows:

Disclosure harmful to security of property

26 The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to harm or threaten the security of any property or system, including a building, a vehicle, an electronic information system or a communications system.

In its June 11, 2013 response to the applicant's request for access, the public body noted that the intent of the Vacant Buildings By-law No. 79/2000 is to reduce some of the public safety hazards associated with vacant properties and to protect the people who live in the communities where vacant buildings are located. The public body stated that "*releasing the Vacant Buildings Registry would identify the locations of these buildings subjecting these buildings to potential structural harm as the current security provisions would be compromised*".

The public body went on to explain that most vacant buildings are conventionally secured (protected by locked doors and windows that are in good repair) not boarded, and as such are not easily recognizable. The public body expressed concern that releasing the Vacant Buildings Registry would identify the locations of conventionally secured buildings and could subject them to potential structural harm from vandalism, theft, arson and/or illegal activities. The public body further indicated that releasing the Vacant Buildings Registry could put emergency response personnel (such as the Winnipeg Police Service and the Fire Paramedic Service) at increased risk if their services are required as a result of vandalism, theft, arson or illegal activities that could result if the location of vacant buildings is made known.

ANALYSIS OF ISSUES AND FINDINGS

Does the discretionary exception to disclosure in section 26 of FIPPA apply to the withheld information?

Section 26 of FIPPA provides the head of a public body with the discretion to refuse to disclose information which could reasonably be expected to harm or threaten the security of any property or system. The security of a building includes the safety of the occupants in addition to the integrity of the physical structure and the security of adjoining or connected structures.

During the course of our investigation the public body acknowledged that it had interpreted the complainant's request as a request for a list of vacant buildings by municipal address. The public body advised that the location of most vacant buildings is not well-known, especially those that are conventionally secured and not boarded. The public body went on to advise that conventionally secured buildings are not all filthy or dangerous and that they include those

buildings that are vacant due to the hospitalization or death of the owner as well as those that are undergoing rehabilitation or repair.

The public body acknowledged that the location and/or address of specific vacant buildings is sometimes disclosed in the agendas, minutes and dispositions of the public body which are posted online on its Decision Making Information System. The public body noted that this disclosure occurs as part of a public process to obtain Derelict Building Certificates in relation to specific vacant and derelict buildings or to appeal inspection or other fees imposed under by-laws in relation to specific vacant buildings.

The public body indicated that it was concerned that disclosing a list or registry containing information as to the location and/or municipal address of “all” vacant buildings, both boarded and conventionally secured, would result in increased risk to the security of the buildings. Finally, the public body advised that disclosing information as to the ownership of vacant buildings, despite not only being a possible violation of privacy, could also provide a link to the address of a vacant building and result in increased risk to its security.

Although the public body did not provide direct evidence to establish the likelihood of targeted attacks on vacant buildings using this address information, our office recognizes that the impact of even one such successful attack could be significant. In terms of the likelihood of harm, our office undertook a review of two administrative reports publicly available on the public body’s Decision Making Information System and noted that:

- according to the report titled *Arson Unit-Activity Review* prepared by the Winnipeg Police Service for the Standing Policy Committee on Protection and Community Services, the number of arsons in Winnipeg increased substantially over the six year period from 2007 (226 arsons) to 2012 (583 arsons) with the highest annual number of arson investigations occurring in District 3 or the North End of the city, and
- according to the report titled *Neighbourhood Liveability, Zoning, Vacant and Derelict Buildings By-Laws – Enforcement Performance Measurement and Strategy Report* prepared for the Executive Policy Committee, the highest number of vacant buildings are located in neighbourhoods in the North End of the city.

Finally, the public body advised our office that the property database is used by numerous City of Winnipeg staff from various departments to access and input information on a daily basis for operational purposes. The public body noted that the database is therefore dynamic in nature and that the information contained in it changes from day to day. Although the database might indicate that a particular property is “unoccupied” one day, the status could change to “occupied” by the next business day. Accordingly, the sharing of information about identifiable properties could also result in harm to occupants in the event of a change in the status of a property from one day to the next.

Based on our investigation, we are satisfied that the discretionary exception to disclosure in section 26 applied to the information withheld and that disclosing information as to the location of vacant buildings “*could reasonably be expected to harm or threaten the security of any property*” or “*the safety of the occupants*”. Additionally, our office found that the exercise of discretion by the public body to refuse access to the information requested was not unreasonable

in the circumstances. Providing information about the location or address of vacant buildings is analogous to an individual posting information on Facebook stating they are going to be “out of town” for a specified period of time, it is something everyone knows they should not do.

During the investigation of this complaint, the public body advised both our office and the complainant that information regarding the number of vacant buildings in Winnipeg, by neighbourhood, is publicly available by way of performance measurement reports approved by the city’s Executive Policy Committee. By correspondence dated December 16, 2013, the public body provided copies of these reports for 2012 and 2013 to the complainant. Upon receipt, the complainant expressed an interest in obtaining more detailed information about the vacant buildings in the “Other Neighbourhoods” category. In response, the public body provided the complainant with a list of the neighbourhoods that comprise the “Other Neighbourhoods” category (neighbourhoods with less than 4 vacant buildings) in the reports and the number of vacant buildings in each. Finally, the public body advised that it was not able to provide a list of vacant buildings by postal code or postal code prefix (FSA) as this information is not included in the public body’s property database.

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 complainant may file an appeal of the City of Winnipeg, Community Services Department’s decision to refuse access to the Court of Queen’s Bench within 30 days after receipt of this report.

June 13, 2014
Manitoba Ombudsman