

# Manitoba Ombudsman

## REPORT UNDER

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

CASE 2013-0256 (web version)

RURAL MUNICIPALITY OF ROSSER

ACCESS COMPLAINT: DUTY TO ASSIST

PROVISION CONSIDERED: 9

REPORT ISSUED ON OCTOBER 4, 2013

**SUMMARY:** The complainant requested access to records containing information about him from November 3, 2010 to the date of his request. The Rural Municipality of Rosser provided him with partial access to the records, severing some information under section 17 of FIPPA. The complainant believed that more records should exist responsive to his request. The public body explained the process it had undertaken in its search for records. We found that the public body had undertaken all reasonable efforts to respond accurately and completely and fulfilled its duty to assist the applicant. The complaint is not supported.

## THE COMPLAINT

On May 24, 2013, the complainant submitted a request to the Rural Municipality of Rosser (the RM or the public body) for access to the following records under *The Freedom of Information and Protection of Privacy Act* (FIPPA), as follows:

I have noted, and other parties as well the use of the networked computer system by members of council during open and public hearings and council meetings to share communications between members of council. This flies in the face of the intent of open and public meetings. I wish to now express my concern over the possible use of these communications to share information or directions of council without affording the opportunity for public scrutiny. In that regard, as I have never had an in-camera meeting with council since the 2010 election I am filing a FIPPA request for all electronic and email communications relating to me since November 3, 2010, this to include any and all references to me held within the network, mail servers and produced or brought forward by members of council.

The RM responded to the complainant on June 18, 2013, providing partial access to the records, severing some information considered to be personal information of third parties, the disclosure of which would be considered an unreasonable invasion of privacy.

The complainant lodged a complaint with our office on July 22, 2013, asking us to investigate whether the public body had met its duty to assist, in terms of responding completely to his request. Specifically, he believed that responsive records dated [date removed] should exist, alleging that members of council had appeared to exchange emails during his appeal hearing at the Board of Revision meeting held on that date.

## **INVESTIGATION**

### **Did the public body meet its duty to assist, in providing a complete response to the complainant?**

Public bodies are required to make reasonable efforts to respond to access requests in an accurate and complete manner, reflected in section 9 of FIPPA:

#### **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 contacted the public body on August 19, 2013, asking for information about how the public body had searched for records and how it had concluded that there were no additional records. The public body wrote to us on September 5, 2013 and provided the following explanation:

The public body had asked all Council members and office staff to search their email accounts to confirm whether they had any emails regarding the complainant. The process for locating these records involved logging into the email accounts and performing a search for all files including the complainant's name. Once all parties had completed their searches, they notified the Chief Administrative Officer (CAO) or the Administrative Assistant of their findings. The only records that came up were those that had been provided to the complainant.

The public body provided further information to our office in terms of records retention, a matter that warrants mention in this investigation. Specifically, the CAO deletes records, considered to be transitory, as follows:

- Emails/attachments that have been printed
- Requests for information or payments that have been received, and subsequently forwarded to and printed by another staff member
- Routine correspondence of no "value"
- Information from such sources as News Media Services, Province of Manitoba, Manitoba Municipal Administration Association, etc.
- "Junk" emails

The RM advised that it had also performed a search of its deleted emails which, except for the “junk” emails, are retained for two years; “junk” emails are removed immediately.

During the investigation, the RM indicated that each employee and each member of council was asked whether he/she utilizes the chat function of the All-Net program; all indicated that they do not: communication back and forth is via email. Additionally, the RM asked the council members and staff present at the Board of Revision meeting dated [date removed] to search their emails (active and deleted) for that date, to ascertain the existence of any responsive emails. None were found to exist. At our request, the members were also asked whether they recalled any communications via computer that day and advised that, to their recollection, the laptops were not used as a communication tool at the [date removed] meeting. Finally, the public body mentioned to our office that council members will occasionally utilize the Flash Earth program during meetings. This program enables members to explore satellite and aerial imagery of any property in question. The public body thought that this might have been what the complainant observed at the meeting that led him to believe that emails were exchanged.

Based on the RM’s explanation of its search for responsive records, we are satisfied that it met its duty to assist by making all reasonable efforts to locate the requested records and to respond accurately and completely to the complainant.

## **CONCLUSION**

As we found that the public body had made all reasonable efforts to locate the requested records and had fulfilled its duty to assist the applicant, the complaint is not supported.

October 4, 2013  
Manitoba Ombudsman