

# Manitoba mbudsman

## REPORT WITH RECOMMENDATIONS UNDER

## THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2013-0327

RURAL MUNICIPALITY OF SIGLUNES

ACCESS COMPLAINT: FAILURE TO RESPOND

PROVISIONS CONSIDERED: 9 and 11(1)

REPORT ISSUED ON MARCH 14, 2014

**SUMMARY:** The complainant applied for copies of municipal bank statements and the current balance of these accounts. The public body did not respond to his request for access within the time limit set out under the Freedom of Information and Protection of Privacy Act (FIPPA). Our investigation determined that the public body failed to respond within the time period provided for under FIPPA and has yet to respond to the request. Our office found that the complaint was supported. We also found that the public body failed in its duty to assist an applicant by not responding openly and without delay. This report contains recommendations to the public body.

### THE COMPLAINT

The complainant submitted an application for access pursuant to the Freedom of Information and Protection of Privacy Act (FIPPA) to the Rural Municipality of Siglunes requesting the following:

- I wish to obtain access to the following records*
- *copy of every page of every bank statement of every bank account held by the RM of Siglunes from May 1, 2013 to present (please certify each page as a true copy of the original)*
  - *current balance of every bank account held by the RM of Siglunes*

The complainant filed a complaint with our office on October 1, 2013 indicating that the public body had failed to respond to his request within the legislated time period.

## **POSITION OF THE RURAL MUNICIPALITY OF SIGLUNES**

As of today's date, the public body has not issued a response advising the complainant whether access to the requested records would be granted or refused.

### **ANALYSIS OF ISSUES AND FINDINGS**

#### **Did the Rural Municipality of Siglunes fail to respond to a request as set out in subsection 11(1) of FIPPA?**

FIPPA prescribes a time period within which a public body is required to respond to a request for access:

***Time limit for responding***

***11(1) The head of a public body shall make every reasonable effort to respond to a request in writing within 30 days after receiving it unless***

*(a) the time limit for responding is extended under section 15; or*

*(b) the request has been transferred under section 16 to another public body.*

The access request was received by the public body on or about August 19, 2013. FIPPA prescribes that the head of a public body shall make every reasonable effort to respond to a request within 30 days following receipt of such request, unless the time for responding is extended under section 15 or the request has been transferred under section 16. There is no indication to suggest that the public body had extended the time limit for responding or that it had transferred the request to another entity. Therefore, the expiration of the 30 day time limit for issuing a response to the request would have been September 20, 2013.

Our office received the complainant's no response complaint on October 1, 2013. We notified the public body in writing of the complaint on October 22, 2013 and requested that the public body provide its response to the complainant by November 5, 2013 together with a copy to our office. The public body did not issue a response nor did it provide our office with an explanation for its delay. We wrote to the public body on December 16, 2013 asking why we had not yet received a copy of its response and that its prompt attention to this matter would be appreciated. In addition, we emphasized the public body's obligation under section 9 of FIPPA to make every reasonable effort to assist an applicant.

The public body has failed to respond to the complainant, and has failed to provide any specific reasons for its delay. Accordingly, we found that the Rural Municipality of Siglunes failed to respond within the time period as prescribed in subsection 11(1) of FIPPA.

**Did the Rural Municipality of Siglunes fulfill its duty to assist an applicant as set out in section 9 of FIPPA?**

FIPPA imposes a duty on the head of a public body to make every reasonable effort to assist applicants, in terms of its responding openly, accurately, completely and without delay. Section 9 of FIPPA states as follows:

***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.***

Our office found that the Rural Municipality of Siglunes has failed in its duty to make every reasonable effort to assist an applicant and to respond openly and without delay.

**RECOMMENDATIONS**

The ombudsman has made the following recommendations, in consideration of the various attempts made by our office to resolve this matter.

1. The ombudsman recommends that the public body respond to the complainant and provide a decision on whether access will be granted, in accordance with section 12 of FIPPA.
2. The ombudsman recommends that the public body explain its delay to the complainant.
3. The ombudsman recommends that the public body provide our office with a copy of its correspondence to the complainant.

**HEAD'S RESPONSE TO THE RECOMMENDATIONS**

Under subsection 66(4), the Rural Municipality of Siglunes must respond to the ombudsman's report in writing within 15 days following receipt of this report. The head's response must contain the following information:

***Head's response to the report***

***66(4) If the report contains recommendations, the head of the public body shall, within 15 days after receiving the report, send the Ombudsman a written response indicating***

*(a) that the head accepts the recommendations and describing any action the head has taken or proposes to take to implement them; or*

*(b) the reasons why the head refuses to take action to implement the recommendations.*

**OMBUDSMAN TO NOTIFY THE COMPLAINANT OF THE HEAD'S RESPONSE**

When the ombudsman has received the Rural Municipality of Siglunes's response to his recommendations, he will notify the complainant about the head's response as required under subsection 66(5).

**HEAD'S COMPLIANCE WITH RECOMMENDATIONS**

If the head accepts the recommendations, subsection 66(6) then requires the head to comply with the recommendations within 15 days of acceptance of the recommendations or within an additional period if the ombudsman considers it to be reasonable. Accordingly, the head should provide written notice to the ombudsman and confirmation demonstrating that the public body has complied with the recommendations and did so within the specified time period.

Alternatively, if the head believes that an additional period of time is required in order to comply with the recommendations, then the head's response to the ombudsman under subsection 66(4) must include a request that the ombudsman consider an additional period of time for compliance with the recommendations. A request for additional time must include the number of days being requested and the reasons why the additional time is needed.

March 14, 2014  
Mel Holley  
Acting Manitoba Ombudsman