

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2014-0037

MANITOBA EDUCATION AND ADVANCED LEARNING

ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISIONS CONSIDERED: 21(1)(c), 23(1)(a)

REPORT ISSUED ON MAY 1, 2014

SUMMARY: The complainant requested access to records relating to the expenses of the president of Red River College since January 2013. Manitoba Education and Advanced Learning severed information from an advisory note (the record at issue) under clauses 21(1)(c) and 23(1)(a) of FIPPA. Further to discussions with our office, the public body disclosed to the complainant some information that had originally been severed from the record. The complaint is partly supported.

THE COMPLAINT

On December 19, 2013 the complainant requested access to the following records under *The Freedom of Information and Protection of Privacy Act* (FIPPA or the act):

Please provide all documentation since January 1, 2013 provided to, or produced by the Minister or Deputy Minister's office related to Red River College's President's expenses.

Manitoba Education and Advanced Learning (the public body) responded to the complainant on January 17, 2014, granting partial access and citing the following exceptions to disclosure in FIPPA in severing certain information from the records: 17(1), 17(3), 20(1)(c), 21(1)(c), and 23(1)(a).

Our office received the complaint about refused access on January 29, 2014. The complainant's letter accompanying his complaint advised that he was interested in our reviewing the provisions [clauses 21(1)(c) and 23(1)(a)] that were applied to sever information from a November 28, 2013 advisory note for the minister of Manitoba Education and Advanced Learning. This will be considered the information/record at issue for purposes of our investigation.

POSITION OF MANITOBA EDUCATION AND ADVANCED LEARNING

In its initial response to the complainant dated January 17, 2014, Manitoba Education and Advanced Learning cited clauses 21(1)(c) and 23(1)(a) of FIPPA to sever information from the advisory note but did not provide the complainant with reasons for relying on these provisions.

Disclosure harmful to relations between Manitoba and other governments

21(1) *The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to harm relations between the Government of Manitoba or a government agency and any of the following or their agencies:*

(c) a local public body

Advice to a public body

23(1) *The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal*

(a) advice, opinions, proposals, recommendations, analyses or policy options developed by or for the public body or a minister

During the course of our investigation, we asked the public body to provide the complainant with additional information to support its reliance on these provisions. On April 7, 2014, the public body advised the complainant that certain information was excepted from disclosure under clause 21(1)(c) of FIPPA, in that disclosing such information could harm the relationship between the public body and post-secondary institutions. Additionally, certain information was excepted from disclosure under clause 23(1)(a) of FIPPA, in an effort to maintain and encourage candor in the giving of advice/recommendations, necessary to a public body's decision of what courses of action or approaches to follow/take.

Does clause 21(1)(c) of FIPPA apply to the information severed under that provision?

Subsection 21(1) protects the relations between the Manitoba government or a government agency and another government listed in clauses 21(1)(a) to (f) of FIPPA. Clause 21(1)(c), relied on in this matter, relates to a local public body.

Under FIPPA, a "local public body" includes an educational body and an "educational body" is defined as:

(a) a school division or school district established under The Public Schools Act,

(b) The University of Manitoba,

(c) The University of Winnipeg,

(c.1) Brandon University,

(c.2) University College of the North,

(c.3) Université de Saint-Boniface,

(c.4) St. Paul's College,

(c.5) St. John's College,

(d) a college established under The Colleges Act, and

(e) any other body designated as an educational body in the regulations; (« organisme d'éducation »)

Bill 49 – *The Colleges and Consequential Amendments Act* (known as *The Colleges Act*) was passed by the Manitoba legislature on July 26, 1991. *The Colleges Act* empowered the government to establish a board of governors effective April 1, 1993 for each of the three Manitoba community colleges (Assiniboine Community College, Keewatin Community College and Red River Community College – now Red River College).

The exception contained in clause 21(1)(c) is discretionary in that Manitoba Education and Advanced Learning “may” refuse to disclose information if its disclosure could harm the public body’s relations with a local public body.

We reviewed the version of the advisory note that was provided to the complainant on January 17, 2014 and found that some of the information severed from the record was already in the public realm. We discussed our initial findings with the public body. Subsequently, the public body provided the complainant with a further disclosure of information on April 7, 2014. Upon further review, we found that some of the information now severed under clause 21(1)(c) [originally severed under clause 23(1)(a)] was information that could not reasonably be expected to harm relations between the public body and Red River College; it was public knowledge that the expenses of the president of Red River College would be approved by the college’s Board of Governors (in accordance with their policy manual) and that the president had repaid the described expenses out-of-pocket. We discussed our subsequent findings with the public body and on April 30, 2014, the public body decided to disclose this information to the complainant.

We found that the remainder of the information that continued to be severed from the advisory note was information that could harm relations between Manitoba Education and Advanced Learning and educational bodies. We also found that the exercise of discretion by the public body to sever that information from the records was reasonable in the circumstances. As such, we found that Manitoba Education and Advanced Learning had authority under clause 21(1)(c) of FIPPA to sever that information that continued to be severed from the record.

Does clause 23(1)(a) of FIPPA apply to the information withheld under that provision and, if so, did the public body exercise its discretion in a reasonable manner?

Manitoba Education and Advanced Learning refused access to certain information contained in the advisory note under clause 23(1)(a) of FIPPA.

The purpose of subsection 23(1) of FIPPA is to protect the free flow of advice and the deliberative process within a public body. Confidentiality is necessary with respect to various aspects of decision making within a public body. The confidential relationship between a minister or public body and their advisors is protected in our system of government in order to ensure that full and frank discussion of issues takes place among officials, employees and others advising ministers or a public body.

In considering this provision, the public body must first determine whether the information falls within the exception. Our office reviewed the particular information severed from the records pursuant to clause 23(1)(a) of FIPPA. Based on our review, we found that some of the information that had initially been severed from the record was information that was either factual information (such as requirements under *The Colleges Act*) and/or was information that was already in the public realm. We discussed our initial findings with Manitoba Education and Advanced Learning. Subsequently, on April 7, 2014, the public body disclosed this information to the complainant that had originally been severed under clause 23(1)(a).

We are satisfied that the information in the advisory note that continues to be severed under this provision is information that, if disclosed, could reveal advice, opinions, proposals, recommendations, analyses or policy options developed by or for the public body under clause 23(1)(a) of FIPPA. We also found that Manitoba Education and Advanced Learning, based on a review of the information and representations to our office, exercised its discretion in a reasonable fashion in applying this provision.

SUMMARY OF FINDINGS

We found that:

- Manitoba Education and Advanced Learning had authority under clause 21(1)(c) to sever the information that continued to be severed under that provision.
- Manitoba Education and Advanced Learning had authority under clause 23(1)(a) to sever the information that continued to be severed under that provision.
- The public body's exercise of discretion to sever the information was reasonable in the circumstances.

CONCLUSION

Based on our findings in this matter, the complaint is partly supported.

In accordance with subsection 67(3) of *The Freedom of Information and Protection of Privacy Act* (FIPPA), the complainant may appeal Manitoba Education and Advanced Learning's decision to refuse access to part of the information requested to the Court of Queen's Bench within 30 days after receipt of this report.

May 1, 2014
Manitoba Ombudsman