

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2014-0129

MANITOBA AGRICULTURE, FOOD AND RURAL DEVELOPMENT

ACCESS COMPLAINT: REFUSED ACCESS

PROVISIONS CONSIDERED: 17(1), 17(2)(b) and (c)

REPORT ISSUED ON MAY 8, 2014

SUMMARY: The applicant requested access to records documenting the investigation of a complaint made under *The Animal Care Act*. Access was provided to a copy of a report that was generated as a result of the investigation. However, access to information which would reveal the identity of a confidential informant was refused under subsection 17(1) in conjunction with 17(2)(b) and (c) of FIPPA. The ombudsman found that the withheld information was personal information and disclosure would result in an unreasonable invasion of the privacy of a third party.

THE COMPLAINT

On February 12, 2014 Manitoba Agriculture, Food and Rural Development (MAFRD or the public body) received a request for access to information under *The Freedom of Information and Protection of Privacy Act* (FIPPA or the act) as follows:

Our kennel/breeding facility [name of facility] was inspected on [date] by [name of Animal Protection Officer] accompanied by another officer...we request that:

- 1) *the name of the complainant [the MAFRD informant] be disclosed;*

- 2) *the exact reason for the complaint;*
- 3) *we receive a copy of the report by [name of Animal Protection Officer].*

MAFRD replied on March 14, 2014 and provided the applicant with access to the information requested in part. A copy of the Humane Inspection Report that was generated as a result of the inspection of the kennel/breeding facility on [date] was provided. The report stated the nature of the complaint that precipitated the inspection under MAFRD's Humane Inspection Program. Access to a record documenting the receipt of the complaint which would reveal the name of MAFRD's informant was, however, refused as the information was subject to the mandatory exception described under subsection 17(1) of FIPPA in conjunction with clauses 17(2)(b) and (c). A complaint of refused access was received in our office on March 25, 2014.

POSITION OF MANITOBA AGRICULTURE, FOOD AND RURAL DEVELOPMENT

In its decision letter to the complainant, MAFRD explained that complaints concerning animal welfare are provided in confidence for the purpose of administering *The Animal Care Act* (an enactment of Manitoba).

ANALYSIS OF ISSUES AND FINDINGS

Does the mandatory exception to disclosure provided by subsection 17(1) in conjunction with 17(2)(b) and (c) of FIPPA apply to the withheld information?

FIPPA defines "personal information" as "recorded information about an identifiable individual". This includes the individual's name as well as address, phone number and other contact information.

Subsection 17(1) of FIPPA is a mandatory exception to disclosure that protects the personal information of a third party if the disclosure would be an unreasonable invasion of the third party's privacy. Where the information in question is subject to this exception, a public body is prohibited by statute from disclosing the information. Subsection 17(1) of FIPPA states:

Disclosure harmful to a third party's privacy

17(1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's privacy.

Subsection 17(2) sets out circumstances where the disclosure of personal information is deemed to be an unreasonable invasion of the third party's privacy. The provisions cited by MAFRD read as follows:

Disclosures deemed to be an unreasonable invasion of privacy

17(2) A disclosure of personal information about a third party is deemed to be an unreasonable invasion of the third party's privacy if

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of a law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(c) disclosure could reasonably be expected to reveal the identity of a third party who has provided information in confidence to a public body for the purposes of law enforcement or the administration of an enactment;

With respect to the interpretation of clause 17(2)(b), our office consulted the *Manitoba FIPPA Resource Manual*¹. While our office is not bound by the information contained in the manual, we frequently consider it as it was created by the Manitoba government as a reference to assist public bodies in meeting the requirements of FIPPA. The manual explains that clause 17(2)(b) applies to personal information that, at some point, has been assembled or gathered together as part of an investigation into a possible violation of law and continues to apply once the investigation is completed. A violation of law includes an offence under a provincial statute such as *The Animal Care Act*.

MAFRD provided copies of the records responsive to the applicant's request to our office for review. Our office agrees with MAFRD's position that the withheld information was compiled and is identifiable as part of an investigation into a possible violation of law. Therefore MAFRD is statutorily required to refuse access to this information under subsection 17(1) of FIPPA.

With respect to the interpretation of clause 17(2)(c), the manual explains that this exception protects the identity of a confidential source who has provided information for the purposes of law enforcement, which would include enforcement of *The Animal Care Act*. For the exception allowed under clause 17(2)(c) to apply, four conditions must be met:

¹ *MANITOBA FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY RESOURCE MANUAL*, 2nd Edition (http://www.gov.mb.ca/chc/fippa/public_bodies/resource_manual/index.html). As stated on the Manitoba government web pages,

This Resource Manual will help officials of the Manitoba government and government agencies fulfill their responsibilities under [The Freedom of Information and Protection of Privacy Act](#) [called "FIPPA" or "the Act"]. It outlines the requirements of the Act and the regulations made under the Act, and recommends procedures and practices for compliance in a timely, effective, and consistent manner.

- 1) The information must have been provided to a public body by a third party;
- 2) The information must have been provided in confidence;
- 3) The information must have been provided for a purpose related to law enforcement or the administration of an enactment; and
- 4) Disclosure of the information could reasonably be expected to reveal the identity of the third party who provided it.

In the course of our investigation, our office reviewed the MAFRD web pages dealing with Animal Welfare and the Humane Inspection Program, specifically the page on the topic “How to Report a Concern”. This page explains how to report concerns about animal welfare by email or telephone and includes a section on “Confidentiality” which reads:

All reports are treated with utmost confidentiality. We do not release names of people who report animal welfare concerns. Your personal information is protected by The Freedom of Information and Protection of Privacy Act (FIPPA) and will remain confidential.

As part of our investigation, our office also asked MAFRD to explain how the expectation of confidentiality with regard to information received from informants is established in other ways. MAFRD provided a copy of its Animal Care Line poster which includes the same statement about confidentiality. MAFRD explained that the only exception to the confidentiality rule would be if an animal abuse matter moves forward to prosecution, in which case a witness to animal abuse may be asked to testify in court.

With regard to the interpretation of clause 17(2)(c), the manual defines law enforcement as any action taken for the purpose of enforcing an enactment (such as *The Animal Care Act*), including investigations or inspections that lead or could lead to a penalty or sanction being imposed, or that are otherwise conducted for the purpose of enforcing an enactment.

Following a review of the evidence provided to our office by MAFRD, our office is satisfied that the conditions for the application of clause 17(2)(c) have been met and disclosure of the withheld information would reveal the identity of a third party who provided information in confidence for the purpose of law enforcement. Therefore, the ombudsman has found that the release of the withheld information would be an unreasonable invasion of third party privacy under subsection 17(1) of FIPPA.

CONCLUSION

Based on our 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 Manitoba Agriculture, Food and Rural Development's decision to refuse access to the Court of Queen's Bench within 30 days following the receipt of this report.

May 8, 2014

Manitoba Ombudsman