

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2014-0159

CITY OF WINNIPEG COMMUNITY SERVICES DEPARTMENT

ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISION CONSIDERED: 27(1)(a)

REPORT ISSUED ON SEPTEMBER 24, 2014

SUMMARY: The complainant requested access to all email correspondence between a city official and members of the public body's legal services department over a specified period of time. The City of Winnipeg refused to grant access to these records as the information was excluded from disclosure pursuant to clause 27(1)(a) of FIPPA. The complainant disputed the public body's decision not to disclose the withheld information. Our office found that the cited exception to disclosure was applicable.

THE COMPLAINT

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

All email correspondence between [name of individual] [position], Community By-law Enforcement Services Division, Community Services Department & any and all members of the City's Legal Services Department, concerning the property located at [civic address], for the period November 2008 to the present.

The City of Winnipeg responded to the complainant's request on January 31, 2014, refusing access to the responsive records on the basis that the information was subject to solicitor-client privilege. The complainant considered the public body's response to be unreasonable and subsequently filed a complaint with our office.

POSITION OF CITY OF WINNIPEG - COMMUNITY SERVICES DEPARTMENT

The City of Winnipeg reviewed the records and refused disclosure on the basis that the information in these records fell within the following exception to disclosure:

Solicitor-client privilege

27(1) *The head of a public body may refuse to disclose to an applicant*

(a) information that is subject to solicitor-client privilege.

ANALYSIS OF ISSUES AND FINDINGS**Does the exception contained in clause 27(1)(a) apply to the withheld information?**

In accordance with clause 27(1)(a), the head of a public body has the discretion to refuse to disclose information to an applicant if the information is subject to solicitor-client privilege.

Communications between a solicitor and client are acknowledged by our common law system of justice to be privileged to the extent that they are safeguarded from disclosure in court. The solicitor-client relationship is founded on confidentiality and it is in the public interest that all persons have complete and ready access to legal advice and that complete and open communication occurs in such an exchange. The common law privilege and the exception in clause 27(1)(a) apply to legal counsel on staff of a public body.

In its response letter of January 31, 2014, the City of Winnipeg advised the complainant as follows:

Since [name of individual] became the [position] of the By-law Enforcement Service in February of 2010, the email correspondence related to the request and considered for response for this request is for the period of February 2010 to January 2, 2014.

Consequently, the records reviewed for the complainant's application by the public body were for the period February 2010 to January 2, 2014 and not November 2008 to present (January 2, 2014) as was his original request.

However, it should be noted that the complainant had submitted a previous access application on February 2, 2012, wherein he requested, amongst other things, access to all email correspondence between a city official and the public body's Legal Services Department for the period November 2008 to the present i.e., February 2, 2012. Our office concluded in this case (See report 2012-0085) that clause 27(1)(a) was applicable and therefore the complainant was not entitled to disclosure of the requested information. The complainant filed an appeal of the public body's decision to refuse access in the Court of Queen's Bench, but the case has yet to be heard. As our office had previously reviewed these records and determined that the city was authorized to withhold the aforementioned records, they were not at issue in the current investigation.

During the course of our investigation, we requested the City of Winnipeg to identify all of the responsive email correspondence for the period of February 2012 to January 2, 2014. The public body informed our office that there were only two related emails dated October 1, 2012 and

October 15, 2012 respectively and that these emails were the only email correspondence for the period February 2, 2012 to January 2, 2014.

Based on the information provided to us, we concluded that the October 1, 2012 email correspondence consisted of communications of a confidential nature between the City of Winnipeg and its legal advisor. The October 15, 2012 email correspondence involved a request between the public body and its legal advisor for legal advice.

Our consideration of the withheld information determined that it consisted of communications of a confidential nature between the public body and its legal advisor. The information had been prepared by a lawyer of the public body in relation to a legal matter. The email records involved advice with respect to legal options available to the public body. Therefore, we are satisfied that the responsive information was properly withheld as being subject to solicitor-client privilege under clause 27(1)(a). We found that the section 27 exception applied to the withheld information. In addition, we are satisfied that the City of Winnipeg's decision to exercise its discretion in refusing access to the information was not unreasonable.

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 the City of Winnipeg's decision to refuse access, to the Court of Queen's Bench within 30 days of receiving this report.

September 24, 2014
Manitoba Ombudsman