

Manitoba Ombudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE 2014-0252

LOCAL GOVERNMENT DISTRICT OF PINAWA

REPORT ISSUED ON April 27, 2015

CASE SUMMARY

A property owner complained that the Local Government District of Pinawa (LGD) unfairly denied her request to be reimbursed for a portion of the charges she incurred for multiple sewer line inspections and repairs. The complainant also questioned whether an increase in her property tax assessment was related to her disagreement with the LGD.

Based on our investigation, Manitoba Ombudsman found that the LGD followed applicable legislation, policies and procedures regarding the complainant's sewer line repairs. We also found that the 2014 property tax assessment increase was not affected by the complainant's sewer dispute with the LGD.

However, after reviewing the evidence, we identified two administrative changes that, if implemented, would improve the LGD's administrative practices regarding property owner requests for reimbursement.

First, we suggest that the LGD provide property owners with written confirmation of received requests for reimbursement and provide relevant information about the decision-making process. If the LGD plans to discuss the request during a public meeting that the property owner may attend, the LGD could include this information in the written confirmation and provide the date, time and location of the meeting.

Second, while the LGD provided the complainant in this case with clear and understandable written reasons for its decisions, it would be beneficial in the future if the LGD would also include reference to any applicable legislation, by-laws, policies, and or procedures relied upon to make its decision.

OMBUDSMAN JURISDICTION AND ROLE

Manitoba Ombudsman is an independent office of the Legislative Assembly of Manitoba, reporting to the assembly through the Office of the Speaker. The responsibilities and authority of the ombudsman are set out in *The Ombudsman Act*, *The Freedom of Information and Protection of Privacy Act*, *The Personal Health Information Act*, and *The Public Interest Disclosure (Whistleblower Protection) Act*.

Under *The Ombudsman Act (the Act)*, Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, municipalities, and their officers and employees. Investigations may be undertaken on the basis of a written complaint from a member of the public, or upon the ombudsman's own initiative.

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal by-law. On other occasions, it is written policy or established procedures implemented to give effect to legislative purpose. In cases concerning an impact on individual rights or benefits, we also examine the fairness of the action or decision. A complaint can raise questions of procedural fairness, substantive fairness or relational fairness. Procedural fairness relates to how decisions are reached; the steps followed before, during and after decisions are made. Substantive fairness relates to the fairness of the decision itself and relational fairness relates to how people are treated during the decision making process.

The actions and decisions complained about in this case are matters of an administrative nature arising from a decision reached by a municipal public works committee of council pursuant to the provisions of the LGD sewer and water services *By-Law 754-12* and the LGD *Video Inspection and Cleaning of Sewer Lines Policy*.

While our office has a mandate to investigate complaints, the investigative process we follow is non-adversarial. We carefully and independently consider the information provided by the complainant, the decision maker, and any witnesses we determine to be relevant to the case. Administrative investigations can involve an analysis of statute or by-law provisions, document reviews, interviews and site visits.

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. If a complaint is supported by a finding of maladministration, the ombudsman may make recommendations pursuant to section 36 of *The Ombudsman Act*.

Administrative investigations can also identify areas where improvements may be suggested to a government body without a finding of maladministration. Such suggestions are made to support and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can enhance the relationship between government and the public, and reduce administrative complaints.

THE COMPLAINT

On May 21, 2014, our office received a complaint regarding the Local Government District of Pinawa's refusal to reimburse the complainant for a portion of the charges she incurred for multiple inspections and repairs to her sewer line in Pinawa in early 2014. The complainant also questioned whether an increase in her 2014 property tax assessment was related to her dispute with the LGD.

KEY ISSUES

- 1. Did the Local Government District of Pinawa follow applicable legislation, by-laws, policies and procedures regarding the complainant's sewer line repairs, specifically *By-Law 754-12* regarding sewer and water, and the *Video Inspection and Cleaning of Sewer Lines Policy*?**
- 2. Was the LGD's decision-making process procedurally fair? Did the LGD provide the complainant with a meaningful opportunity to present her case, and did the LGD provide clear and understandable reasons for its decision?**
- 3. Was the complainant's 2014 property tax assessment increase affected by her request for reimbursement for her sewer repairs with the Local Government District of Pinawa?**

POSITION OF COMPLAINANT

The complainant believes that it was unfair of the LGD to deny her request to be reimbursed for a portion of the charges she incurred for multiple inspections and repairs to her sewer line in Pinawa. She explained that her sewer line was inspected and repaired a number of times between January and March 2014, and that the LGD was informed repeatedly that there were sewer problems. The LGD attended the site regarding the sewer problems but did not contribute to the payment of the sewer inspections, a video inspection, and two separate sewer pipe digs and repairs.

The complainant believes that she should not be responsible for the full cost of the numerous inspections and repairs since there was damage on a section of the sewer line that was the LGD's responsibility. Further, the complainant alleges that because the LGD did not contribute to the investigation of the sewer line and repair the collapsed pipe near the main line sooner, her expenses increased.

The complainant wrote two separate letters to the LGD asking to be reimbursed for a portion of the costs she incurred, and the LGD denied both requests. The complainant believes the LGD acted unfairly by not informing her that the public works committee would discuss and make a decision regarding her requests at their monthly meeting, and that public works committee meetings are open to the public.

In addition to her complaint regarding the LGD's denial to reimburse her for costs incurred, the complainant also questions whether an increase in her 2014 property tax assessment was related to her dispute with the LGD.

POSITION OF THE LOCAL GOVERNMENT DISTRICT OF PINAWA

The LGD acknowledges that the complainant incurred expenses for the service calls, the video inspection, and repairs to the sewer line. The LGD also acknowledges that one of the blockages in the complainant's sewer line occurred on a portion of the line that the LGD is responsible to maintain, and the public works department repaired the line at the LGD's cost.

The LGD indicates that its main sewer lines are regularly maintained by the public works department with inspections and flushes twice per year. The LGD states that when a property owner calls the LGD with a sewer line problem the public works department attends the site to check the main sewers. The LGD noted it will provide property owners with plumbing company contact information as requested, but the LGD does not make endorsements or recommendations. The LGD tries to help residents troubleshoot problems; however, the LGD does not perform plumbing services, nor is it equipped with plumbing equipment to detect the location of blockages in property owners' lateral sewer lines.

In this case, the LGD asserts that the public works department attended the site each time the department was alerted to problems with the complainant's sewer line and determined each time that the main sewer was open and operating properly, which indicated to the LGD that the blockages were located in the lateral pipe running from the private property to the main line. The LGD states that installation, maintenance and repair of the lateral pipe is the responsibility of the property owner and that the sewer main line in the street is the responsibility of the LGD. The LGD also states that "when the LGD became aware of the issue on our property and it was confirmed the repair was completed at our cost."

Further, after the complainant submitted a request for reimbursement, the public works committee discussed the request at its regular April 2014 meeting and then again at its regular May 2014 meeting. The LGD asserts that the property owner was informed that her request for reimbursement would be discussed at the regularly scheduled public works committee meeting held once per month and that these meetings are always open to the public. The committee determined that the inspections and repairs paid for by the property owner were not the responsibility of the LGD and therefore funds would not be provided to the property owner as requested. The LGD mailed the property owner two separate denial letters after each public works meeting, explaining the committee's decisions and their reasons.

SCOPE OF THE INVESTIGATION

Our office took the following steps in reviewing the concerns:

- Made inquiries with the LGD;
- Made inquiries with the Assessment Branch of Manitoba Municipal Government;
- Reviewed Property Assessment 2014 website information and brochures;
- Completed an analysis of the documentary evidence provided by the complainant including invoices from plumbing companies, chronology of events, video-camera footage, and correspondence with the LGD;
- Reviewed the relevant sections of *The Municipal Act*, the LGD procedures by-law (*By-Law 741-12*) and the LGD organizational by-law (*By-Law- 742-12*);
- Reviewed the relevant sections of the LGD sewer and water services by-law (*By-Law No. 754-12*);
- Reviewed the LGD “*Video Inspection and Cleaning of Sewer Lines Policy*”; and
- Reviewed other Manitoba jurisdictions’ policies and by-laws regarding sewer connections and maintenance.

ANALYSIS OF ISSUES AND EVIDENCE

1. Did the Local Government District of Pinawa follow applicable legislation, by-laws, policies and procedures regarding the complainant’s sewer line repairs, specifically *By-Law 754-12* regarding sewer and water, and the *Video Inspection and Cleaning of Sewer Lines Policy*?

Section 232(1)(l) of *The Municipal Act*, S.M. 1996, c.58, provides that,

Spheres of jurisdiction

A Council may pass by-laws for municipal purposes respecting the following matters:

(l) public utilities;

The LGD sewer and water services by-law indicates that the maintenance of sewer and water lines between buildings and the municipal line is the responsibility of the building owner or developer. The by-law states:

1. That all costs regarding the construction, alteration and maintenance of the sewer and water lines from the main line to the building itself will be the responsibility of the Developer or owner.

The LGD *Video Inspection and Cleaning of Sewer Lines Policy* further delineates the lines of responsibility concerning the video inspection, cleaning and repair of sewer lines located on private and public property:

Video Inspection of Sewer Lines

Video inspections of sewer lines connected to private residences will be done at the L.G.D. ’s expense only in the following instances:

1. *Where the location and nature of the blockage cannot be clearly defined by other means, and there is clear evidence that the use of this technique will result in cost savings to the L.G.D.*
2. *Where the location of the blockage is considered by the Public Works Manager to be on L.G.D. property and defining the nature of the blockage will contribute to more economic repair.*
3. *Where a written agreement is reached between the homeowner and the L.G.D. to share the cost of video inspection, subject to approval of the Public Works Committee.*

Cleaning of Sewer Lines

The purpose of this policy is to make clear the property owners' responsibilities concerning the sewer lines located on their property. A common cause of sewer surcharge is a blockage in the pipe that runs between a resident's home and the Town's main sanitary sewer pipe. Blockages in sewers can be caused by soil settlement, misaligned joints, root infiltration or pipe collapses. Sewer blockages can also be caused by items such as cooking grease, rags, or pieces of solid debris that have been flushed down a household drain or toilet.

The property owner is responsible for keeping the sewer line free from blockages between the structure being served and the sewer main. If a customer discovers a problem with the sewer lateral, the customer may contact the Public Works Manager and request assistance to troubleshoot the problem. Cleaning of sewer lines connected to private residences will be done at the homeowner's expense.

*If the blockage is caused by root infiltration from a tree located on the LGD of Pinawa property, the LGD of Pinawa will remove the tree. If the homeowner does not want the tree removed, the homeowner will be responsible for contacting a Sewer Cleaning Company and paying all associated costs.
[Emphasis added]*

According to the LGD of Pinawa, upon receiving a complaint from a property owner regarding a sewer backup, the LGD alerts the public works department; the public works manager then arranges a site visit for inspection of the sewer main line to ensure proper functioning. Public works inspects the main sewer line through manholes both upstream and downstream of the reported lateral sewer pipe to ensure correct flow and operation of the main line. If the municipal sewers are operating correctly, it indicates to the LGD that the sewer backup is being caused by a problem located on the sewer lateral, and is therefore likely to be the responsibility of the property owner.

The LGD states that the public works department will discuss the inspection with the property owner, and will provide contact information for local plumbing contractors if requested.

However, according to the LGD's video inspection policy, a property owner is responsible for the sewer line serving the property. The policy indicates that "the property owner is responsible for keeping the sewer line free from blockages between the structure being served and the sewer main." This responsibility includes arranging plumbing contractors to inspect the sewer lateral to determine the source of the sewer backup and to undertake any cleaning or repair required. As per the *Video Inspection Policy*, there are limited circumstances whereby the LGD would pay or contribute to the cost of a cleaning or video inspection, and none applied in this case.

The complainant asserted that her sewer line backed up in early January 2014. She hired a plumbing company on January 14 and 15 to unblock the sewer line but the plumber was unsuccessful. On January 16, the complainant hired a different company to clear the sewer line. An invoice from the company indicates that the plumber was unable to get the video inspection camera past 20 feet. The invoice states, "big shift at 20 ft," which indicated to the LGD that there was a blockage at 20 feet on the lateral sewer line.

On the same day, January 16, 2014, the LGD public works department attended the site and inspected the main sewer lines by checking the flow of the main sewer line through the manholes both upstream and downstream of the property owner's residence. The main municipal sewer was operating normally, which indicated to the LGD that the blockage was located in the lateral sewer line.

The property owner arranged for the repair of the lateral sewer line which included changing six feet of pipe on January 27, 2014, to repair the blockage found at 20 feet. However, even with the new section of pipe installed, the sewer still did not drain properly. Again, the LGD returned to the residence and inspected the main sewer line. The main sewer line was found to be operating normally.

On January 29, 2014, the sewer backed up. Again the property owner contacted a plumber to try to locate and remedy the problem, and the plumber returned approximately a week later. The LGD was again informed that the sewer line backed up into the home; public works returned to inspect the main line and reported that it was operating properly.

The property owner then arranged for a different plumbing company to attend the home on February 10, 2014, and the line was inspected and televised through video camera inspection. The invoice indicates that the cable was pushed out to 50 feet and slowly pulled back until the line finally cleared enough to televise the line. A piece of broken pipe was revealed at approximately 17 feet from the property and another piece of broken pipe was revealed closer to the main. The property owner was given a copy of the DVD video footage. In response to our question regarding the invoice, the public works department confirmed with our office that the sewer main line is located approximately 50 feet from the home.

On February 21, 2014, the property owner arranged for the replacement of a section of the lateral sewer pipe. The repair company dug the line to the main, which also identified a collapse at the tie in with the main sewer line. The public works manager attended the site the same day and confirmed that the sewer line required repair where it ties in with the main sewer line and he

requested a copy of the video inspection which also confirmed a blockage at the tie in with the main sewer line.

Upon confirming the blockage at the main tie in, the LGD made arrangements and paid for the repair of the section of the lateral pipe where it ties into the municipal sewer main line and the work was performed March 19, 2014.

The LGD sewer and water services by-law states that “all costs regarding the ... maintenance of the sewer and water lines from the main line to the building itself will be the responsibility of the ... owner.” The *Video Inspection and Cleaning of Sewer Lines Policy* states:

The property owner is responsible for keeping the sewer line free from blockages between the structure being served and the sewer main. If a customer discovers a problem with the sewer lateral, the customer may contact the Public Works Manager and request assistance to troubleshoot the problem. Cleaning of sewer lines connected to private residences will be done at the property owner's expense.

In this case, the LGD attended the property to inspect the main sewer line each time it was contacted regarding the sewer backups. The LGD performed inspections and confirmed that the municipal main sewer line was operating properly, which indicated to the LGD that the sewer problem was located in the sewer lateral.

The property owner arranged and paid for the sewer inspections, cleaning, and repair, as per the sewer and water services by-law.

The LGD arranged and paid for the sewer repair at the tie in with the main line, a section of the pipe that the LGD considers to be at the junction of the sewer main, and therefore the LGD's responsibility.

Based on the evidence we reviewed, the LGD followed applicable legislation, by-laws, policies and procedures regarding the sewer line repairs, specifically its sewer and water services by-law and the *Video Inspection and Cleaning of Sewer Lines Policy*.

2. Was the LGD's decision-making process procedurally fair? Did the LGD provide the complainant with a meaningful opportunity to present her case, and did the LGD provide clear and understandable reasons for its decision?

The complainant made two separate requests to the LGD for reimbursement of 50 per cent of the costs she incurred for the inspections and repairs to the lateral sewer line to her property, and the LGD denied both requests. The complainant believes the LGD acted unfairly by not informing her that her requests would be considered and decided by the public works committee during regularly-scheduled monthly meetings that are open to the public.

First request for reimbursement

In the complaint to our office, the property owner stated that she was not aware that she could have attended the public works committee meetings at which the public works committee of council discussed her requests for reimbursement. The LGD resident administrator, however, explained to our office:

When the request for half the costs was submitted in person, the complainant was advised it would be addressed by the Public Works Committee.... The complainant would have been advised the meeting was scheduled for the April date, but the time was probably not provided.... The agendas are public but are not published to the municipal website. If requested, a property owner would be able to obtain a copy of the agenda which would have indicated that the grievance was on the agenda.

The public works committee meetings are regularly-scheduled meetings that are open to the public. The date and time of the meetings appear on the LGD's website under "Council Calendar" which shows all the upcoming meetings for several years.

There is insufficient evidence upon which our office can conclude that the LGD did not inform the property owner that the decision regarding her initial request for reimbursement would be made by the public works committee during the April 2014 meeting.

Nevertheless, the complainant's request for reimbursement was given consideration by the public works committee and a decision was made. After the public works committee meeting of April 14, 2014, the public works manager mailed the property owner a letter dated April 24, 2014, informing her that the public works committee of council decided to deny her request for reimbursement. The letter states:

The issue of your sewer and your request for partial coverage of bills that were incurred repairing the sewer was brought forward at the April Public Works Committee meeting.

After discussion and careful consideration, the LGD does not feel that we are obligated to cover partial cost of these sewer repairs and call-outs for Roto-Rooter. Although the LGD does empathize with you and the burden this expense must place on you, the fact that during each of these repairs and call-outs there were meaningful repairs and damage to the sewer on your property indicates that the work would have been required no matter what.

The LGD has done its own repair on the sewer line where it joins the town main at the LGD's cost, which required a soft dig protocol and the added expense for this type of repair.

In the letter, the public works manager explains that the LGD paid for the repair it made to the sewer lateral where it joins the town main line. The letter also indicates that the LGD public works committee discussed the property owner's request and decided not to reimburse her because there were damages and repairs made to her sewer line. The letter does not directly refer

to the sewer and water services by-law or the video inspection policy, both of which clarify which portions of the sewer pipe infrastructure that property owners and the LGD respectively are responsible to maintain. While there is no legislative requirement for the LGD to have provided the by-law and policy relied upon to make its decision, providing this information would have helped clarify that the LGD's decision was consistent with a municipal by-law and related policy.

Second request for reimbursement

In response to her receipt of the letter informing her of the April public works committee decision, the complainant submitted a second request for reimbursement in writing to the LGD dated April 28, 2014, in which she supplied further information, including the video inspection footage and documentation associated with the sewer repairs made to the sewer lateral. She also submitted a written chronology of events, and a breakdown of all the costs associated with the sewer inspections and repairs.

The LGD public works committee allowed the complainant to resubmit her request a second time, providing the complainant with a meaningful opportunity to present her case. The complainant provided further information, and again the public works committee reviewed her request at the following regularly-scheduled public works committee meeting held on May 6, 2014.

The LGD public works manager then mailed the complainant a letter dated May 15, 2014, explaining that the public works committee discussed the matter at the meeting and made a decision to deny the second request for reimbursement:

The Council for Local Government District of Pinawa (LGD) reviewed the digital photo imaging footage and documentation associated with the sewer repair located at your property.... After significant dialogue and deliberation, it was confirmed that the costs that you have incurred are not the responsibility of the LGD. The proper sewer dig protocol was followed by the LGD and required funds have been allocated for the repairs to the LGD main sewer lines.

The LGD fully recognizes your situation, however, based on its thorough investigation additional financial support will not be allocated for the costs of this repair.

While the letter from the LGD provides the reason for the denial of the request for reimbursement – namely that the costs incurred are not the responsibility of the LGD – again there is no reference made to the sewer and water services by-law and video inspection policy.

Based on our investigation, the LGD's decision-making process was procedurally fair insofar as the complainant was provided with two separate opportunities to present her case to the decision-makers. The LGD did not deny her request for reconsideration, and after the first denial of her first request, the LGD allowed the complainant to provide further written documentation for

consideration. Following each decision, the LGD provided the complainant with clear and understandable written reasons for its decisions.

3. Was the complainant's 2014 property tax assessment increase affected by her request for reimbursement for her sewer repairs with the Local Government District of Pinawa?

The complainant questioned whether an increase in her property tax assessment was affected by her dispute with the LGD. The complainant provided our office with a "2014 Real Property Assessment Notice" and a "Notice of Amendment to the 2014 Assessment Roll" which indicates that the initial 2014 assessment had been amended and increased.

We made inquiries with the Assessment Services branch of the department of Manitoba Municipal Government. The branch explained that it is responsible for assessment roll administration for all of Manitoba except the City of Winnipeg.

The branch also explained that the "2014 Real Property Assessment Notice" regarding the complainant's property was mailed May 17, 2013. Subsequently the "Notice of Amendment to the 2014 Assessment Roll" was mailed August 6, 2013, after the property value was amended and increased.

The department explained that preliminary estimates of value are developed in the year preceding the reassessment year so that property owners are given time to review their assessments and make any inquiries or appeals.

From the evidence we reviewed, the complainant's 2014 property tax assessment amendment was not affected by her sewer complaint with the Local Government District of Pinawa. First, the LGD of Pinawa was not involved in the property tax assessment process. Second, the sewer repairs and the request for reimbursement occurred in 2014 while the assessment process occurred in 2013.

CONCLUSION

Our investigation found that the LGD followed applicable legislation, by-laws, policies and procedures regarding the sewer line repairs, specifically the sewer and water services by-law and the *Video Inspection and Cleaning of Sewer Lines Policy*. The LGD public works department attended the site of the sewer back-ups each time it was contacted and inspected the sewer main to determine if the blockage was on the sewer lateral or the sewer main. When a blockage was found at the tie in where the lateral sewer meets the sewer main, the LGD public works department made arrangements and paid for the repair.

The LGD also considered the complainant's requests for reimbursement of partial costs of inspections and repairs on two occasions, and provided her with written reasons for the decisions to deny the requests.

However, as a result of this investigation, we identified two administrative changes that, if implemented, would improve the LGD administrative practices regarding property owner requests for reimbursement.

First, we suggest that the LGD consider providing property owners with written confirmation of received requests for reimbursement and provide relevant information about the decision-making process. If the LGD plans to discuss the request during a public meeting that the property owner may attend, the LGD could include this information in the written confirmation and provide the date, time and location of the meeting. It would be beneficial if the LGD could also clarify the process or procedure; if the property owner may address the decision makers before they make their decision; if any further information is needed for the decision makers; and any other relevant information about the decision-making process.

Second, while the LGD provided the complainant in this case with clear and understandable written reasons for its decisions, in the future it would be beneficial if the LGD would also include reference to any applicable legislation, by-laws, policies, and or procedures relied upon to make its decision. Providing this information would help clarify if the LGD's decision is based on a municipal by-law and or related policy.

Finally, our investigation determined that the 2014 property tax assessment amendment was not affected by the complainant's request for reimbursement for sewer repairs with the LGD. The assessment procedure was completely unrelated and did not involve the LGD of Pinawa.

MANITOBA OMBUDSMAN