

Manitoba mbudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2014-0280

MANITOBA HOUSING

ACCESS COMPLAINT: REFUSED ACCESS

PROVISIONS CONSIDERED: 25(1)(a)

REPORT ISSUED ON AUGUST 19, 2014

SUMMARY: The complainant made an application to Manitoba Housing for access to a video record of a particular incident. Manitoba Housing determined that disclosure of the video record could reasonably be expected to harm a law enforcement matter pursuant to clause 25(1)(a) of *The Freedom of Information and Protection of Privacy Act* and refused access. The ombudsman found that the complaint was not supported.

THE COMPLAINT

On April 23, 2014 Manitoba Housing (the public body) received the complainant's application for access under *The Freedom of Information and Protection of Privacy Act* (FIPPA). The complainant requested the following records (the records) from the public body:

Re: Incident # [incident number]

[Date] Time: 8:40 am to 9:00 am

Require video clips of security camera of a woman [description removed] physically removing the table I sat at in the Manitoba Housing lounge. Evidence should show the table was moved to my extreme right. A verbal confrontation resulted. [Descriptions of two bystanders redacted] removed me from the premises.

On May 30, 2014 the public body refused access to the records requested pursuant to clause 25(1)(a) of FIPPA. On June 2, 2014 the complainant filed a complaint with the ombudsman alleging that he had been refused access to all of the records he had requested.

POSITION OF MANITOBA HOUSING

By correspondence dated April 24, 2014, the public body advised the complainant that it had received his application for access on April 23, 2014. The public body responded to the

complainant's application for access by correspondence dated May 30, 2014 refusing access to the records requested pursuant to clause 25(1)(a) of FIPPA.

The public body advised the complainant that it had provided the Winnipeg Police Service with a copy of the records requested and that the records were therefore part of an ongoing Winnipeg Police Service investigation. The public body further advised that it had determined that providing a copy of the video records to the complainant, before the police had completed their investigation into the incident referred to in the complainant's application for access, could reasonably be expected to harm a law enforcement matter.

The public body went on to explain that, in reaching its decision, it had considered the limits to the applicability of clause 25(1)(a) contained in subsection 25(3) and had determined that none applied, when exercising its discretion to withhold rather than release the records.

ANALYSIS OF ISSUES AND FINDINGS

Does clause 25(1)(a) of FIPPA apply to the withheld records?

Subsection 25(1) of FIPPA contains exceptions to disclosure for records relating to law enforcement which protect the law enforcement process. Several of these exceptions contain a reasonable expectation of harm test. The head of the public body must determine whether disclosure of the information could reasonably be expected to cause the harm described in the particular provision.

Clause 25(1)(a) of FIPPA permits the head of a public body to refuse to disclose information in records that could reasonably be expected to harm a law enforcement matter.

Disclosure harmful to law enforcement or legal proceedings

25(1) *The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to*

(a) harm a law enforcement matter;

Law enforcement is defined in FIPPA as follows:

...any action taken for the purpose of enforcing an enactment, including

(a) policing,

(b) 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, and

(c) proceedings that lead or could lead to a penalty or sanction being imposed, or that are otherwise conducted for the purpose of enforcing an enactment;

Clause 25(1)(a) is a discretionary exception to disclosure under FIPPA and the public body has the discretion to provide rather than refuse access to the requested information. Consequently, a public body must provide reasons for its decision to refuse access which demonstrate that it

exercised its discretion in a reasonable fashion. Limits to the exceptions contained in subsection 25(1) are set out in subsection 25(3) of FIPPA.

Our review revealed that the records in question had been provided to the Winnipeg Police Service by the public body pursuant to an ongoing Winnipeg Police Service investigation of the incident referred to in the complainant's application for access. The records were being reviewed by the Winnipeg Police Service as part of their investigation into the incident to determine if criminal charges should be laid.

The public body determined that premature disclosure of the requested records could reasonably be expected to harm the ongoing investigation of the incident by the Winnipeg Police Service. The public body advised our office that it was concerned that disclosure of the records could harm the Winnipeg Police Service's investigation by potentially influencing the complainant's responses to potential police inquiries.

Based upon our investigation we are satisfied that, at the time the public body issued its response to the within application for access, disclosure of the records requested could reasonably have been expected to harm a law enforcement matter and the public body correctly applied the exception in clause 25(1)(a) of FIPPA to the requested records. We are further satisfied that the public body's exercise of discretion to withhold the records was reasonable as the premature disclosure of the information contained in the records could potentially have had an adverse or harmful effect on the law enforcement activities being carried on by the Winnipeg Police Service. Finally, we are satisfied that none of the exceptions in subsection 25(3) of FIPPA applied to the withheld records.

SUMMARY OF FINDINGS

The ombudsman found that:

- i) clause 25(1)(a) applied to the withheld records;
- ii) the public body exercised its discretion in a reasonable manner; and
- iii) none of the exceptions in subsection 25(3) of FIPPA applied to the withheld records.

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 Housing's decision to refuse access to the Court of Queen's Bench within 30 days after receipt of this report.

August 19, 2014
Manitoba Ombudsman