

# Manitoba mbudsman

## REPORT UNDER

### *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

CASE 2014-0317

#### MANITOBA LABOUR AND IMMIGRATION

#### ACCESS COMPLAINT: REFUSED ACCESS

**PROVISIONS CONSIDERED: 17(1), 17(2)(g) and 17(4)**

**REPORT ISSUED ON DECEMBER 11, 2014**

**SUMMARY:** The complainant sought access to records related to an application made by her spouse under the Manitoba Provincial Nominee Program. The public body refused access to the records requested on the basis that disclosure of the records would result in an unreasonable invasion of the spouse's privacy. The ombudsman found that the complaint was not supported.

#### THE COMPLAINT

On April 10, 2014 Manitoba Labour and Immigration received an application for access from the complainant under Part 2 of *The Freedom of Information and Protection of Privacy Act* (FIPPA). The complainant sought access to the following records:

*From the Provincial Nominee Program file, in which I was a dependent spouse and the principal applicant was my spouse, [name of spouse], I require a copy of all proof of savings and other assets, as well as IMM 0004 Schedule 4.*

Manitoba Labour and Immigration, a department of the government of Manitoba, is a public body subject to the application of FIPPA.

The public body responded to the request by letter dated May 9, 2014. The public body refused access to the records requested pursuant to subsection 17(1) and clauses 17(2)(g) and 17(4)(a) of FIPPA.

Our office received a complaint about refused access on July 10, 2014. The complainant took issue with the public body's decision to refuse access to the records requested. The complainant was of the view that she was a co-applicant and was entitled to access the information.

## **POSITION OF MANITOBA LABOUR AND IMMIGRATION**

In its May 9, 2014 response to the complainant, the public body advised that “to disclose to you the documents included in your spouse’s application to the Provincial Nominee Program would reveal your spouse’s financial circumstances without your spouse’s consent and therefore would be an unreasonable invasion of your spouse’s privacy”. In refusing access, the public body advised that it was relying on subsection 17(1) and clause 17(2)(g) of FIPPA which provide as follows:

***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.***

***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***

***(g) the personal information describes the third party's source of income or financial circumstances, activities or history;***

The public body further indicated that since there was no indication that the third party had consented to the disclosure clause 17(4)(a) of FIPPA, which provides as follows, did not permit same:

***When disclosure not unreasonable***

***17(4) Despite subsection (2), disclosure of personal information is not an unreasonable invasion of a third party's privacy if***

***(a) the third party has consented to or requested the disclosure;***

During our investigation the public body provided our office with copies of the following for our review:

- i) the spouse’s Manitoba Provincial Nominee Program (MPNP) application;
- ii) his schedule 4 (IMM 0008); and
- iii) the documentation he submitted to the MPNP to support the financial aspects of his application.

The public body advised that it had considered whether the dependent spouse (the complainant) had any right to access the principal applicant’s financial documents that were part of his application to the MPNP. The public body indicated that, in the circumstances of this case, it had concluded that disclosure of the information requested by the complainant would reveal the financial circumstances of a third party (the principal applicant) and that pursuant to clause 17(2)(g) of FIPPA such a disclosure would be an unreasonable invasion of privacy. The public body went on to advise our office that it had considered the limits to the exception found in subsection 17(4) of FIPPA and had determined that none applied. Finally, given that the

information requested by the complainant was about a third party (the principal applicant), the public body felt that the onus was on her to demonstrate that release of the information requested would not be an unreasonable invasion of privacy. In this regard, the public body noted that the complainant had not demonstrated that she had obtained the principal applicant's consent to disclosure of the information.

Having carefully reviewed the documentation provided to our office, we asked the public body to consider whether the information provided by the principal applicant (the spouse) about "your assets" on page two of the MPNP application form might also be considered to be the financial information of the complainant. In this regard, we noted that both the principal applicant and the complainant had signed page 6 of the MPNP application form that contains the following clauses:

*I consent to the[sic] Manitoba Labour and Immigration (the department) collecting any personal and other information, including information about **our** address, telephone number, social insurance numbers, marital status, employment, income, **assets**, liabilities, benefits received under other government programs or any other relevant personal information, required to verify any information provided about my involvement in the Manitoba Provincial Nominee Program (the Program) and to locate and contact me about evaluating the program and my participation in it.*

...  
*I declare that the information I have given in this application is truthful, complete and correct. (emphasis added)*

The public body responded by advising that the clause referred to was a standard form clause that was used on the former paper-based application and provided our office with access to the new online application that is currently in use. In reviewing the information provided with respect to the new online application, we note that the consent form at page 11 of the application contains a clause with similar wording as follows:

*...including information pertaining to **our** address, telephone number, birthdates, Social Insurance Number, country specific Personal Identification Numbers or Codes, marital status, education, employment, income, **assets**, liabilities, benefits received... (emphasis added)*

The public body went on to advise our office that it had sought to obtain information about the assets owned by the husband, by the wife or by them both so that it could obtain a complete financial picture. The public body stated that it did not think it was reasonable to conclude that the "our... assets" referred to in the consent form (either paper-based or online) meant that the assets are or were jointly owned. The public body noted that the reference to "our... address" or "our... telephone" number would be the same for a cohabiting couple and would be the personal information of each of them. On the other hand, the reference to "our... social insurance numbers" would be a reference to numbers which are not the same. The wife's social insurance number would be her personal information and the husband's would be his. Neither of the numbers would be joint personal information.

The public body advised that based on the foregoing, it looked to the documentation that the principal applicant had submitted with his application to support the “assets”. The public body advised that a review of the supporting documentation revealed that the assets were all in the name of the principal applicant and that the complainant’s name did not appear on any of the supporting documents. The public body therefore concluded that the assets referenced on page two of the MPNP application form in question were those of the principal applicant and that it could not disclose this information to the complainant without the consent of the principal applicant.

## **ANALYSIS OF ISSUES AND FINDINGS**

### **Does the personal information requested fall under the mandatory exceptions to disclosure in section 17 of FIPPA?**

Subsection 17(1) of FIPPA is a mandatory exception to disclosure that protects the personal information of a third party. The exception applies when an applicant makes a request under FIPPA for access to personal information about someone else (a third party). Where the information in question is subject to this exception, a public body is prohibited by statute from disclosing the information. In order for this exception to apply, disclosure of the personal information must be expected to be an unreasonable invasion of a third party's privacy.

FIPPA defines "personal information" as "recorded information about an identifiable individual". Subsection 17(2) of FIPPA sets out circumstances where the disclosure of personal information about a third party is deemed to be an unreasonable invasion of privacy. Personal information listed in subsection 17(2) may not be disclosed to an applicant unless a circumstance in subsection 17(4) applies.

In circumstances where the information requested is found to fall under one of the exceptions listed in subsection 17(2), disclosure is *deemed* to be an unreasonable invasion of the third party's privacy and must not be disclosed. Accordingly, there would be no consideration of the circumstances listed in subsection 17(3).

The disclosure of information that describes a third party's *source of income or financial circumstances, activities or history* is deemed to be an unreasonable invasion of the privacy of the individual the information is about. The *Manitoba FIPPA Resource Manual* indicates that "financial circumstances" refers to the monetary resources and/or creditworthiness of an individual and that "financial activities and history" refers to information about an individual's current and past financial activities. 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.

We reviewed the records identified by the public body as responsive to the complainant's request for access and determined that they contained personal information with respect to both the complainant and the principal applicant. With respect to the complainant’s request for “*a copy of all proof of savings and other assets, as well as IMM 0004 Schedule 4*”, our office found that the

information about “assets” on page two and on Schedule 4 of the application, as well as the financial documents submitted to the program in support of the application, that was responsive to the request described the principal applicant’s financial circumstances and/or monetary resources and was his personal information alone. The public body was therefore prohibited from disclosing the information pursuant to subsection 17(1) and clause 17(2)(g) of FIPPA as doing so would be an unreasonable invasion of the principal applicant’s privacy. Our office also found that none of the exceptions to the exception contained in subsection 17(4) applied to the information withheld.

## **CONCLUSION**

The ombudsman found that the complaint was 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 Labour and Immigration’s decision to refuse access to the Court of Queen’s Bench within 30 days following the receipt of this report.

December 11, 2014  
Manitoba Ombudsman