

# Manitoba Ombudsman

## REPORT UNDER

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

CASE 2014-0400

#### CITY OF WINNIPEG - WINNIPEG POLICE SERVICE

#### ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISIONS CONSIDERED: 7(2), 17(1), 17(2)(b)

REPORT ISSUED ON NOVEMBER 19, 2014

**SUMMARY:** The complainant contacted the City of Winnipeg - Winnipeg Police Service (WPS) to make an application for access to copies of three police reports relating to police visits to a building that the complainant owns. The WPS refused access on the basis that the complainant was not a party to the incidents that precipitated these records and referenced subsection 17(1) and clause 17(2)(b) of *The Freedom of Information and Protection of Privacy Act* (FIPPA). A complaint was made to our office relating to this refusal of access. The ombudsman found that the refusal of access was authorized under FIPPA and that the complaint was not supported.

#### THE COMPLAINT

On August 11, 2014, the complainant made a request under *The Freedom of Information and Protection of Privacy Act* (FIPPA) to the Winnipeg Police Service (WPS) for access to three police reports. The complainant indicated that the police reports were about incidents that had been alleged to have occurred at a property that the complainant owns and allegedly involved one of the complainant's renters.

On August 22, 2014, the WPS refused the complainant access to the requested records. It is the position of the complainant that access should be granted to the records in question. Under subsection 59(1) of FIPPA an individual may make a complaint to the ombudsman about any decision, act or failure to act in response to his or her request for access.

On August 27, 2014, our office received an access complaint under FIPPA. The complainant asked our office to investigate a refusal of access by the City of Winnipeg - Winnipeg Police Service (WPS) which the complainant alleged was not authorized under FIPPA. The City of Winnipeg is a local government body subject to the application of FIPPA.

## POSITION OF THE CITY OF WINNIPEG - WINNIPEG POLICE SERVICE

On August 22, 2014, the WPS responded to the complainant's application for access and refused access as follows:

*The requested records were reviewed and show no involvement by you, therefore access to the records must be refused pursuant to subsections 17(1) and 17(2)(b) of The Freedom of Information and Protection of Privacy Act which 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.*

### ***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;*

On September 3, 2014, our office sent a letter to the WPS, notifying it of the complaint and inviting it to make representations concerning the refusal of access. On September 23, 2014, the WPS responded to our invitation as follows:

*The applicant requested access to records from three occurrences at [third party's address]. [The complainant's] application made it clear that he was the owner of [third party's address] and this was taken into consideration when reviewing the reports. All records were reviewed and there was no involvement by [the complainant], nor was there any information in the reports specific to property owned by [the complainant] (i.e. damage to the building at [third party's address]).*

*Access was refused to [the complainant] in accordance with S. 17(1) of The Act, the general, mandatory provision designed to protect third party privacy. We defined a 'third party' as anyone other than [the complainant] and members of the Winnipeg Police Service. We used S. 17(1) in conjunction with s. 17(2)(b), referring to the personal information of others gathered in relation to police investigations. We determined that disclosure was not necessary at that time to further investigate or prosecute and access was refused.*

Enclosed with the WPS's letter was a CD which contained copies of the police reports in question for our office to review.

## **ANALYSIS OF THE ISSUES AND FINDINGS**

### **Do the mandatory exceptions to disclosure provided for under subsection 17(1) and clause 17(2)(b) of FIPPA apply to the records withheld by the WPS?**

Subsection 17(1) of FIPPA sets out a mandatory exception to disclosure of records held by a public body, so that if the disclosure of the information contained in the records would constitute an unreasonable invasion of a third party's personal privacy, then access to the records must be refused. Subsection 17(2) of FIPPA lists the specific types of information that if disclosed are deemed to be an unreasonable invasion of privacy. Therefore, if the information contained in a record is of the type found under subsection 17(2) of FIPPA, then the public body has no choice but to refuse access to the record in question.

Clause 17(2)(b) of FIPPA indicates that it is a deemed unreasonable invasion of privacy if the record contains personal information of a third party that was collected in the course of a criminal investigation, unless the information is disclosed for the purposes of prosecuting an offence or continuing the investigation.

Our office was provided with copies of the three police records requested by the complainant. The records requested contained the personal information of several different third parties, which was collected by the WPS when investigating calls for service. No charges were laid against anyone, nor was a prosecution initiated and the investigations were all closed. Therefore, the information contained in these records is clearly covered by clause 17(2)(b) of FIPPA.

Our office found that the WPS appropriately refused access to the records under subsection 17(1) and clause 17(2)(b) of FIPPA.

### **Could the responsive records have been severed under subsection 7(2) of FIPPA?**

Subsection 7(2) of FIPPA provides for the reasonable severing of a record to allow for access in part and indicates as follows:

#### ***Severing information***

*7(2) The right of access to a record does not extend to information that is excepted from disclosure under Division 3 or 4 of this Part, but if that information can reasonably be severed from the record, an applicant has a right of access to the remainder of the record.*

Our office reviewed the records provided by the WPS in order to determine whether the records could reasonably be severed to allow for partial access to the police reports. If the records were severed then all of the relevant information, such as the names of witnesses, details about what did or did not occur, dates etcetera would be severed from the records as they would disclose personal information. As this would leave only disconnected snippets of information, we concluded that the records could not reasonably be severed, and that the records were required to be withheld in full.

## **CONCLUSION**

Based on the ombudsman's findings in this matter, 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 decision by the City of Winnipeg – Winnipeg Police Service to refuse access to the Court of Queen's Bench within 30 days of receipt of this report.

November 19, 2014  
Manitoba Ombudsman