

# Manitoba mbudsman

## REPORT UNDER

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

CASE 2014-0409

#### CONSERVATION AND WATER STEWARDSHIP

ACCESS COMPLAINT: OTHER

PROVISIONS CONSIDERED: s. 9

REPORT ISSUED ON FEBRUARY 10, 2015

**SUMMARY:** The complainant requested access to financial estimates and statements for each provincial park district for the years 1999/2000 through 2014/2015. The public body responded to the complainant, granting access to some of the information requested and advising that other information was either not available in the format requested or at all. The complainant alleged that the public body was required to prepare and maintain the information pursuant to *The Provincial Parks Act* and that the information should therefore be available, regardless of format. The ombudsman found that the complaint was partly supported.

#### THE COMPLAINT

On March 13, 2014, the complainant made sixteen separate applications to Manitoba Conservation and Water Stewardship for access to the following records under *The Freedom of Information and Protection of Privacy Act* (FIPPA):

1. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 1999-2000.*
2. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2000-2001.*
3. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2001-2002.*
4. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2002-2003.*

5. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2003-2004.*
6. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2004-2005.*
7. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2005-2006.*
8. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2006-2007.*
9. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2007-2008.*
10. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2008-2009.*
11. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2009-2010.*
12. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2010-2011.*
13. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2011-2012.*
14. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2012-2013.*
15. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2013-2014.*
16. *Please provide a copy of each Parks Districts operating financial estimates and statements for fiscal year 2014-2015.”*

Manitoba Conservation and Water Stewardship, a department of the government of Manitoba, is a public body subject to the application of FIPPA.

The public body acknowledged all sixteen applications for access by correspondence dated March 19, 2014 wherein it advised that it had received the applications and would make every reasonable effort to respond within 30 days. The public body did not respond to the applications for access until July 7, 2014 wherein it advised that access was being granted to some of the information that other information was either not available in the format requested or at all.

A complaint was received by our office on August 29, 2014.

## POSITION OF CONSERVATION AND WATER STEWARDSHIP

The public body issued a decision letter to the complainant on July 7, 2014 which stated that “access is being granted to the information” and attached two tables which it advised summarized the costs associated with providing services to cottagers in provincial parks for the fiscal years 2011/12 and 2012/13. The tables listed the costs by park district and by expense as follows: Operating and Maintenance (road maintenance, garbage, sewer, water, other), Minor Improvement, Capital Expenditures and Administration.

In its decision letter to the complainant, the public body also included a table it had created in response to the application that summarized the “*Total costs (all shares)*”, “*Total costs (excluding conservation’s share)*” and “*Cottager only costs*” for all parks districts combined for the years 2008-09 through 2013-14 and provided the following explanation:

*Below please find costs for park Districts for all users, Commercial, Special Consideration Organizations, Cottagers and Conservation. These amounts do not include capital and minor capital, nor do they include Head Quarter’s administration costs.*

*For the years of 1999/2000 to 2010/11, the amounts were not tracked in the same method as 2011-12 and 2012-13. Capital, minor capital, and HQ administration costs were not attributed, meaning cost amounts are understated from their actual total amounts. Again, it should be emphasized based on how the numbers are reported today, these are understated amounts, due to capital, minor capital, and HQ administration costs were not tracked and attributed.*

...  
*From 2001 to 2007, the government was transitioning accounting systems and as such, numbers are not available in the format being requested.*

*Actual costs for fiscal year 2013/14 have not been finalized, but will be available on the website when finalized later this year. For further information please check out our website at <http://www.gov.mb.ca/conservation/parks/index.html>.*

## POSITION OF THE COMPLAINANT

The complainant took issue with the public body’s response to the application. The complainant was of the view that the public body was required to prepare and to maintain certain minimum information regarding each park district pursuant to subsection 18(3) and section 20 of *The Provincial Parks Act* which provide as follows:

### ***Park district costs***

***18(3) Each year the minister shall prepare an estimate of the costs, whether direct or indirect, that will be incurred in the next fiscal year in respect of each park district, which shall include, but need not be limited to,***

***(a) amounts required to operate and maintain services including utilities, water supply, sewage disposal, garbage removal, emergency services, highways and***

*streets, street-lighting, sidewalks, and other similar services, works and improvements;*  
*(b) amounts required for capital expenditures that fall due during the year relating to matters referred to in clause (a); and*  
*(c) amounts required to defray the costs of administrative and other services provided to the park district or to defray the administrative costs of the park district.*

***Financial statements***

***20 Financial statements of the operations of each park district shall be maintained for the review of any owner or occupier of land in the park district.***

The complainant was of the view that the minimum amount of information set out in *The Provincial Parks Act* should therefore be available in records as the public body was required (“shall”) by law to prepare and maintain it. The complainant advised our office that his concern was more about whether the information was available, than about its format.

**ANALYSIS AND FINDING**

**Did the public body meet its duty to assist the complainant as required by section 9 of FIPPA?**

FIPPA allows any person a right of access to records in the custody or under the control of public bodies, subject to limited and specific exceptions set out in the act. “Record” is defined in FIPPA as *“information in any form, and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records.”*

In responding to an application for access to information in records under FIPPA, the head of a public body is required to make every reasonable effort to assist an applicant and to respond without delay, openly, accurately and completely. Responding *openly* requires the public body to be transparent and can be fulfilled by communicating with the requester to explain the access decision or by creating a record. Responding *accurately* requires the public body to obtain sufficient information upon which to base its decision by conducting an adequate search for responsive records. If adequate searches have not been conducted, all relevant records may not be identified and the resulting response may be inaccurate or incomplete. Responding *completely* requires the public body to respond in relation to all of the records requested and, where records do not exist or cannot be located, to clearly indicate same as required by clause 12(1)(c)(i) of FIPPA.

We note that the public body received the complainant’s application on March 18, 2014 and did not respond until July 7, 2014. A complaint was made to our office about the delay and was ultimately supported (see case file 2014-0245).

In its July 7, 2014 response to the applicant, the public body advised that access was granted to “*the information*” and attached two tables to its response that summarized the costs associated with providing services to cottagers in provincial parks for the fiscal years 2011/12 and 2012/13. The tables would appear to be partly responsive to applications #13 and #14 in that the information appears to be a statement of actual costs for the years in question. The public body also created a table on page 2 of its July 7, 2014 response letter wherein it provided some information as to total costs for all park districts combined for the years 2008/2009 to 2012/2013. The information would appear to be partly responsive to applications #10 through #14.

The public body further advised that not all of the information requested was available either in the format suggested by sections 18 and 20 of *The Provincial Parks Act* or at all. The public body explained the same information was not available for applications #1 through #12 because it had “not tracked in the same method” and because “*from 2001 to 2007, the government was transitioning accounting systems and as such, numbers are not available in the format being requested*”.

We made inquiries about the search for records that had been conducted by the public body during our investigation of this complaint. In response to our inquiries the public body advised that it had undertaken a search for responsive records, both paper and electronic, and had discovered that estimates of costs and financial statements simply did not exist for each park district for the years at issue. The public body advised that it had attempted to respond as *openly* and *accurately* as possible in the circumstances and to provide the complainant with as much information as possible.

During the investigation of this complaint the public body discovered that when it had transitioned accounting systems some records had been printed and placed into binders for a particular purpose. The public body initially advised that it had located three binders that contained some limited information about estimates for 3 park districts. The public body further advised that it had also located some old electronic files on discs but was unable to access the information in the files due to software compatibility issues. Although the public body obtained conversion software and tried to open the old electronic files, the information in them was full of errors and was unreadable.

The public body subsequently advised our office that it had come across additional paper records dating back to 1999 which records were interspersed with information related to estimates for each park district. The public body advised that the information was not set out in the format suggested by s. 18 of *The Provincial Parks Act* and that it would therefore take several weeks for it to extract the information related to each park district and to summarize it for the complainant. The public body has agreed to create additional record(s) containing the information that the complainant requested but has advised that it will take several weeks to do so and that the information will likely not be available until the end of February 2015.

Finally, the public body advised our office that it was not able to locate financial statements setting out the actual costs for each park district as contemplated by s. 20 of *The Provincial Parks Act* for each year requested. The public body advised that information as to the actual amounts spent would be available in the SAP financial system of the government for each year

but that producing a record setting out the amount expended by park district for each year would require the review of more than 2500 lines of information per year as well as retrieving actual invoices for each expense to determine what each charge was for and which park district it was for. The public body indicated that it is not able to undertake this effort as doing so would unreasonably interfere with the day-to-day operations of the public body, specifically the Parks and Protected Areas Branch and Finance. The public body advised that the SAP records would also likely not be available farther back than 2008, as financial expense invoicing is usually destroyed after 6 years in accordance with Records Authority Schedule C-0005.

The public body has indicated that going forward it will ensure that it complies with section 20 of *The Provincial Parks Act* on an ongoing basis by making the information available online or as part of its annual report. As for section 18 of *The Provincial Parks Act*, the public body advised that the information for 2014/2015 will be posted on the department's website in February 2015.

We found that the public body attempted to respond to the complainant's application *openly* and *accurately* and are satisfied with the additional efforts undertaken by the public body to search for responsive records during the course of this investigation. We further found that the public body could have initially responded to the complainant more *openly* and *completely* by providing the complainant with more information about the records management processes in place within the department, the searches that it had conducted and the efforts that it had made to locate responsive records for the years at issue. Finally, we found that the public body could have also responded more *openly* and *completely* by clearly stating that, pursuant to clause 12(1)(c)(i) of FIPPA, certain requested records either did not exist or could not be located.

## CONCLUSION

Based upon our review of this matter, the ombudsman found that the public body did not fulfill all elements of its duty to assist when initially responding to the complainant. The complaint is therefore partly supported.

February 10, 2015  
Manitoba Ombudsman