

# Manitoba mbudsman

## REPORT UNDER

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

CASE 2014-0431

CITY OF BRANDON

ACCESS COMPLAINT: REFUSAL OF ACCESS

**PROVISIONS CONSIDERED: 10(1), 17(1), 17(2)(c), 17(3)(d)(e)(f), definition of personal information**

**REPORT ISSUED ON NOVEMBER 24, 2014**

**SUMMARY:** The complainant requested access to maps of mosquito fogging buffer zones within the City of Brandon. The city refused access claiming that such a disclosure would release personal information provided by registrants to the city in relation to the administration of the buffer zone program, and cited the following provisions of FIPPA: 17(1), 17(2)(c), and 17(3)(d)(e)(f). Our office determined that the requested maps contained personal information protected under clause 17(2)(c) and that releasing the information would be an unreasonable invasion of privacy contrary to subsection 17(1). The complaint is not supported.

## THE COMPLAINT

On July 24, 2014 the City of Brandon received a request for access to information under *The Freedom of Information and Protection of Privacy Act* (FIPPA or the act) as follows:

*Please provide me with maps showing the buffer zones applied for and utilized for the mosquito fogging which occurred in the City of Brandon overnight between July 23<sup>rd</sup> and 24<sup>th</sup>, 2014.*

*I am not requesting the names or addresses of the individuals who sought buffer zones, only copies of the maps showing the location of the buffer zones which ought not to include any 3<sup>rd</sup> party information protected under FIPPA,*

The city replied on August 22, 2014 refusing access to the records in full, citing subsection 17(1), together with clause 17(2)(c) and clauses 17(3)(d)(e)(f) of FIPPA.

Our office received a complaint about the refusal of access on September 16, 2014.

## **POSITION OF THE CITY OF BRANDON**

In its decision letter to the complainant, the city explained that it would not be possible to generate maps of buffer zones without revealing the addresses of the individuals who had applied for those buffer zones. The city advised that a request for a buffer zone is an expression of a citizen's desire not to have their property sprayed during mosquito adulticiding, and therefore constitutes the citizen's views or opinions which fall within the definition of personal information under FIPPA.

The city also advised that it would be withholding the requested records in accordance with the mandatory exceptions to disclosure under subsection 17(1) and clause 17(2)(c) of FIPPA which read 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*

- (c) disclosure could reasonably be expected to reveal the identity of a third party who has provided information in confidence to a public body for the purposes of law enforcement or the administration of an enactment;*

Additionally, the city advised the complainant that there is a significant division between proponents and opponents of mosquito adulticiding in Brandon and the disclosure of buffer zone addresses could invade a registrant's privacy on the basis that the personal information collected is highly sensitive and could result in the registrant being the subject of harm. To support this decision the city also relied on clauses 17(3) (d)(e)(f) of FIPPA, which read as follows:

***Determining unreasonable invasion of privacy***

*17(3) In determining under subsection (1) whether a disclosure of personal information not described in subsection (2) would unreasonably invade a third party's privacy, the head of a public body shall consider all the relevant circumstances including, but not limited to, whether*

- (d) the disclosure may unfairly expose the third party to harm;*
- (e) the personal information has been provided, explicitly or implicitly, in confidence;*
- (f) the personal information is highly sensitive;*

Upon receiving the complaint of refused access, our office contacted the city to request further explanation of its reasoning for refusing access in relation to the cited provisions of FIPPA. We also asked the city to clarify the basis for the expectation of confidentiality on the part of the buffer zone registrants, in relation to its application of clauses 17(2)(c) and 17(3)(e).

In responding to our office, the city explained it relied on clause 17(2)(c) because registrants to the mosquito fogging buffer zone program provide their information in confidence for the purpose of allowing the Community Services Department to administer the Pesticide Use Permit issued to the City of Brandon under Manitoba Regulation 94/88R of *The Environment Act*. The Pesticide Use Permit requires that a list of residents who object to mosquito adulticiding must be compiled. Adulticiding equipment must be turned off a distance of 90 metres around the property of the registrants, thus creating the buffer zones.

Along with its representations the city included a copy of a press release issued on July 22, 2014. The press release informed residents wanting to enquire if their residence was located in a buffer zone that they could contact the city's Community Services Office, but that they would receive a "yes" or "no" answer only. The press release indicated that additional information, such as the address or location of a buffer zone, would not be disclosed.

The city also advised our office that it has fielded a number of phone calls from residents upset about the adulticiding program, in which both proponents and opponents to the implementation of buffer zones expressed extreme statements. Given that many individuals are quite passionate about the issue and the volatility of attitudes expressed, disclosure of the addresses of buffer zones seemed likely to expose some registrants to harm. The city advised that harm, in this sense, would manifest itself in pitting neighbour against neighbour where residents disagree about adulticiding.

## **ANALYSIS OF ISSUES AND FINDINGS**

### **Was the information sought by the applicant available in the format requested?**

The complainant requested access to "copies of maps showing the location of the buffer zones". We note that the complainant specifically stated in the request form submitted to the city that he was not requesting access to the addresses or names of individuals who sought buffer zones or any third party information protected under FIPPA.

In conversation with the complainant, he informed our office that he was seeking access to the maps used by the operators of the mosquito fogging equipment which he believed were physical (paper) copies of a map of the city with a line drawn in highlighter-marker along the streets where the buffer zones were in place. In conversation with the city's records and information manager, our office was advised that the city only maintains such copies in electronic format and mosquito fogging equipment operators utilize these electronic maps.

The definition of "record" in subsection 1(1) and the provisions of subsection 10(1) of FIPPA make it clear that records in electronic form are subject to FIPPA. If information requested by an access applicant is in electronic form, the public body must produce a record of the information

if the requirements in both clauses 10(1)(a) and (b) apply. Clauses 10(1)(a) and (b) read as follows:

***Access to records in electronic form***

*10(1) If information requested is in an electronic form in the custody or under the control of a public body, the head of the public body shall produce a record for the applicant if*

- (a) it can be produced using the normal computer hardware and software and technical expertise of the public body; and*
- (b) producing it would not interfere unreasonably with the operations of the public body.*

The city provided our office with electronic copies of the maps used during mosquito fogging operations. The maps were provided to our office in the form of several individual electronic files, each containing a map of a different section of the city.

These files were provided in a common format for electronic documents, and could easily be reproduced for an access request without causing any undue interference. Our office was able to print copies of these maps using commonly available office software. It would not be an unreasonable interference with the normal operations of the public body for it to provide either an electronic or printed copy of the maps in question.

Our office reviewed the content of these maps. Each map displays a certain section of the city as a street map with all fogging buffer zones for that area displayed as coloured-in circles. Each buffer zone is centred over the property of the buffer zone registrant, with the property lines of the registered property indicated in the middle of the coloured-in circle. The property of each registrant is clearly displayed and the address of each registrant can be easily identified.

Based on our review, the records can be produced in the map or pictorial form requested. However, these records would still be subject to severing of any information that may be subject to an exception to access under FIPPA.

**Is the information provided by buffer zone registrants considered personal information as defined under FIPPA?**

As noted above, the city advised the complainant that a request for a buffer zone is an expression of a citizen's desire not to have their property sprayed during mosquito adulticiding, which the city believed came within the definition of personal information under FIPPA. In particular, the city referred to clause (1) of the definition, which reads as follows:

*(1) the individual's own personal views or opinions, except if they are about another person*

We note that clause 1(1)(b) of FIPPA would also appear to be a relevant consideration:

*(b) the individual's home address, or home telephone, facsimile or e-mail number*

The requested records are essentially street maps that include the addresses of buildings on each street. The presence of a buffer zone is clearly indicated and can easily be linked to the address of the property to which it is registered, which can also easily be linked to the identity of the resident of the address. Those who have registered for a buffer zone can easily be distinguished from those who have not. The combination of information on these maps is such that the release of these records would reveal not only the addresses of those who registered for a buffer zone, it would also disclose their views or opinions as they relate to the city's adulticiding program. The release of these records would disclose personal information as defined under FIPPA.

**Does the mandatory exception to disclosure provided by subsection 17(1) in conjunction with clause 17(2)(c) of FIPPA apply to the withheld information?**

The scope of the exception set out in subsection 17(1) provides that the head of a public body is required to refuse to disclose to an applicant requesting access to a record under Part 2 of FIPPA personal information about a third party if the disclosure would be an "unreasonable invasion" of the third party's privacy.

With respect to the interpretation of clause 17(2)(c), this exception protects the identity of a third party source who has provided information in confidence for the purposes of administering an enactment, which would include *The Environment Act*, under which the Pesticide Use Permit was issued. For the exception allowed under clause 17(2)(c) to apply, four conditions must be met:

- The information must have been provided to a public body by a third party;
- The information must have been provided in confidence;
- The information must have been provided for a purpose related to law enforcement or the administration of an enactment; and
- Disclosure of the information could reasonably be expected to reveal the identity of the third party who provided it.

In the course of our investigation our office reviewed the city's web pages which deal with the mosquito fogging program, specifically the pages that enable residents to register for fogging buffer zones. These pages explain how to register for a buffer zone and one includes a "Notification Statement" which reads:

*The collection of personal information is for the purpose of administering buffer zone applications and is authorized by clause 36(1)(b) of the Freedom of Information and Protection of Privacy Act (FIPPA). The collection, use and disclosure of this information is protected by FIPPA.*

As part of our investigation, our office also asked the city to explain how the expectation of confidentiality with regard to information received from registrants is established in other ways.

The city provided a copy of its registration form for buffer zones which includes the above statement about confidentiality. The city explained that it has historically declined to release

information relating to buffer zone locations and there has been no reason for the public to anticipate this would change. The city also advised that public service announcements regarding mosquito fogging have contributed to the expectation that a registrant's information would be held in confidence, and it provided our office with a copy of the press release from July 22, 2014 which informs residents that information collected in relation to buffer zones will be maintained in confidence.

As such, we concluded that the city had established that the registrants had provided their personal information in confidence for the purpose of administering an enactment and subsection 17(1) and clause 17(2)(c) applied to this information as disclosure could reasonably be expected to identify these individuals.

**Would allowing access to the information related to the buffer zones constitute an unreasonable invasion of privacy as provided by clauses 17(3)(d)(e)(f)?**

Although it was not necessary for us to review the city's reliance on subsection 17(3) as we found that a provision of subsection 17(2) applied, we nonetheless considered the applicability of this provision of FIPPA.

In its representation, the city advised our office that clauses 17(3)(d)(f) of FIPPA were relied upon as the city was concerned about the potential impacts of publicly disclosing the addresses of buffer zone registrants. The city also relied on clause 17(3)(e), which provides a mandatory exception to disclosure of personal information that has been provided, explicitly or implicitly, in confidence. This consideration favours protection of the third party's privacy. The cited clauses favour withholding information if:

- (d) the disclosure may unfairly expose the third party to harm;*
- (e) the personal information has been provided, explicitly or implicitly, in confidence;*
- (f) the personal information is highly sensitive;*

As noted above, the issue of mosquito fogging buffer zones is a potentially volatile issue due to the passionate opinions held by many proponents and opponents of buffer zones. Harm, in this sense, means hurt or damage and can include being subject to harassment.

In order for personal information to be considered "highly sensitive", it must be established that its release would cause serious personal distress to the individual affected. It is not sufficient that release might cause minor embarrassment.

Personal information may be considered "highly sensitive" if it is intended to be used to make physical contact with the individual concerned. Personal information is sensitive if its disclosure could threaten an individual's security – for example, an individual's personal security could be violated if personal information, such as an address, is released.

Due to the passionate opinions expressed to the city by a number of individuals related to the mosquito fogging program, including numerous specific threats of harm, the city had reason to

believe that the disclosure of information that reveals the addresses of buffer zones would likely result in exposing some registrants to harm.

We concluded that due to the passionate opinions and stated threats received by the city from those who were strongly opposed to the implementation of mosquito fogging buffer zones, there existed a reasonable potential for registrants to be subject to harm if their information was made available to the general public. Disclosing such information could unfairly expose buffer zone registrants to harm. Further, based on the likelihood of harm, we found the personal information submitted by buffer zone registrants is appropriately considered as “highly sensitive” information. Based on our review, refusing to disclose such information was in accordance with the application of clauses 17(3)(d) and (f) of FIPPA.

Through our review of the application of clause 17(3)(e) we concluded that the city provided sufficient evidence to justify the expectation that information submitted in relation to the buffer zone registration was being received in confidence. As noted above, the city provided our office with a copy of the buffer zone registration form, as well as copies of a press release and public service announcements pertaining to the mosquito fogging buffer zone program, all of which included statements that would lead registrants to the expectation that their information was being submitted in confidence.

As such, we concluded that the City of Brandon appropriately withheld information in accordance with subsection 17(1) and clauses 17(2)(c) and 17(3)(d)(e)(f) of FIPPA, the disclosure of which would have constituted an unreasonable invasion of privacy.

## **CONCLUSION**

Based on the findings of the ombudsman 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 City of Brandon’s decision to refuse access to the Court of Queen’s Bench within 30 days receiving this report.

November 24, 2014  
Manitoba Ombudsman