

Manitoba mbudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2014-0560

PEMBINA TRAILS SCHOOL DIVISION

ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISION CONSIDERED: 8(2), 9, 10(2)

REPORT ISSUED ON FEBRUARY 13, 2015

SUMMARY: In response to an access request under FIPPA, the complainant received a financial statement created by the Pembina Trails School Division specifically to respond to this request. The complainant was not satisfied with the document provided and, believing that there was more information responsive to her request, filed a complaint of refusal of access with our office. Our review determined that the public body had complied with her request and provided the relevant information. The complaint was not supported.

THE COMPLAINT

On October 1, 2014, Pembina Trails School Division (the division or the public body) received a request for access to records under *The Freedom of Information and Protection of Privacy Act* (FIPPA) which read as follows:

“[School], [team] accounting records for the 2012/2013 and the 2013/2014 academic years.”

The public body responded on November 12, 2014, providing access to a financial statement that displayed the revenue and expenses of the team for both the years specified in the request.

The complainant was of the opinion that the record provided did not adequately represent the information that she was seeking. The complainant submitted an email to the access and privacy coordinator for the division on December 21, 2014, expressing her dissatisfaction with the response provided and indicating that she would be filing a complaint under FIPPA. The access and privacy coordinator referred her to our office for the purpose of filing her complaint.

A complaint of refusal of access was received by our office on December 22, 2014.

POSITION OF PEMBINA TRAILS SCHOOL DIVISION

In its decision letter dated November 12, 2014, the division indicated that it was providing access to the responsive information contained in a financial statement that was prepared solely in response to this access request. The division stated that [school] does not typically prepare such statements from its accounting records.

The division advised that a FIPPA request would normally generate a response containing copies of existing records, but that it seemed more practical to prepare a single record in the format of a financial statement. In attempting to respond to the access request, the access and privacy coordinator had created a financial statement in the format that he believed would satisfy the access request.

In the representations received by our office on January 9, 2015, the division stated that it had determined that a request for “accounting records” could have referred to a variety of documents such as statements, general ledgers, individual invoices, receipts, notes, or other records. For this reason, the access and privacy coordinator felt that clarification as to the intent of this request was necessary.

The division advised that the access and privacy coordinator had spoken with the complainant via telephone on or about November 1, 2014. It was during this phone conversation that the division clarified the access request with the complainant. The division advised that it understood the intent of the access request was referring to financial statements for the team and not copies of all accounting records such as receipts, invoices, etc.

The division acknowledged that in responding to this request it had taken longer than the 30 day limit required under FIPPA.

ANALYSIS OF ISSUES AND FINDINGS

Although the complaint was described as a refusal of access, it became evident that there had not been a decision to refuse access. Instead, the complainant was not satisfied with the information that she received.

In order to respond to an access request, the public body must first understand what information the applicant is seeking. Requesting clarification is a common step in responding to FIPPA applications since public bodies need to know what information the applicant is attempting to access in order to be able to respond. Subsection 8(2) is relevant in this regard:

Prescribed form

8(2) A request must be in the prescribed form and must provide enough detail to enable an experienced officer or employee of the public body to identify the record.

If the request is unclear, provides insufficient information, or is overly broad, the access and privacy coordinator should contact the applicant as quickly as possible to clarify their information needs. This is in accordance with the requirement of section 9 of FIPPA, which reads as follows:

Duty to assist applicant

9 The head of a public body shall make every reasonable effort to assist an applicant and to respond without delay, openly, accurately and completely.

In this case, the division contacted the complainant to clarify the sought after information in what it viewed as a potentially ambiguous access request. Through its discussion with the complainant the public body interpreted that the intent of the access request was to access a general overview of the team's financials, as opposed to a collection of numerous pieces of information related to individual players and individual expenses that would only provide this general overview when compiled together. Rather than providing a copy of every record that would potentially be responsive to this request, the division attempted to compile the responsive information into a single document which was provided to the complainant.

FIPPA does not require a public body to create a record that does not exist in the requested format in response to an access request. The right of access is to a record that is in the custody or under the control of a public body. A public body may create a record in response to an access request if it believes such an approach would be more practical or efficient. Subsection 10(2), which enables a public body to create a record in an alternate format, reads as follows:

Creating a record in the form requested

10(2) If a record exists but is not in the form requested by the applicant, the head of the public body may create a record in the form requested if the head is of the opinion that it would be simpler or less costly for the public body to do so.

Subsection 10(2) is a discretionary provision. If a record exists but it is not in the form requested by the applicant, the public body may, but is not required to, create a record in the form requested by the applicant, but only if the public body is of the opinion that to create the record in the form requested would be simpler or less costly. In the alternative, the public body could make an access decision about the records, in their existing format.

During the November 1, 2014, phone call between the complainant and the access and privacy coordinator, the complainant agreed to refine her request from "accounting records" to "financial statements." By clarifying the request in this way, the division determined that it would be more efficient, for both itself and recipient, for the requested information to be compiled into a single document.

The financial statement provided included information for both years subject to the access request, and was prepared from the general ledger entries maintained by the school. This document contained the information responsive to the request and in the format requested by the complainant, as understood by the division.

The complainant filed a complaint with our office because on seeing the information provided she determined that it was not sufficient for her intended purpose. She wanted to receive a more precise and detailed summary. Her concern stemmed from perceived discrepancies in the financial statement, which she believed would become clear if she had access to additional information (i.e. the collection records upon which financial statement was based). In our view, the information provided was reasonable considering the understanding between the complainant and the public body, as the complainant initially indicated that she was not seeking a collection of individual records and invoices.

Our office found that the Pembina Trails School Division complied with the requirements of FIPPA and created and provided a record containing the information that it understood that the complainant was requesting.

CONCLUSION

Based on the findings of the ombudsman the complaint is not supported.

February 13, 2015
Manitoba Ombudsman