

# Manitoba mbudsman

## REPORT UNDER

## THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2015-0200

## MANITOBA JOBS AND THE ECONOMY – EMPLOYMENT AND INCOME ASSISTANCE

### ACCESS COMPLAINT: ADEQUACY OF SEARCH FOR RECORDS

PROVISION CONSIDERED: 9

REPORT ISSUED ON JUNE 13, 2016

**SUMMARY:** An application was made under the Freedom of Information and Protection of Privacy Act (FIPPA) to Manitoba Jobs and the Economy (JEC) for access to the complainant's entire Employment and Income Assistance (EIA) file. JEC responded to the request and provided access to 898 pages of records. However, the complainant maintained that the records provided did not adequately address the request and more records should exist. Our office found that, although a minor amount of information was severed from a small number of records, the public body provided the complainant with a copy of every record in his EIA file. As such, the complaint is not supported.

### THE COMPLAINT

On April 14, 2015, the complainant requested access under the Freedom of Information and Protection of Privacy Act (FIPPA) to the following records from Manitoba Jobs and the Economy<sup>1</sup> – Employment and Income Assistance<sup>2</sup> (JEC or the public body):

*I wish to request my complete file (EIA). This is the third request since Jan 30/15. This to [sic.] include samin notes and samin generated letters.*

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<sup>1</sup> We note that the department was renamed Growth, Enterprise and Trade on May 3, 2016. However, as our review of this complaint occurred while the department was still named Jobs and the Economy, we refer to it by its previous name throughout this report.

<sup>2</sup> We note that Employment and Income Assistance is a program that has been transferred to a different government department and is now administered by Manitoba Families.

We note that the Social Assistance Management Information Network (SAMIN) is the name of the client and records management system used by the public body to facilitate its administration of benefits to participants of the Employment and Income Assistance (EIA) program.

On May 14, 2015, JEC responded to the request advising that access had been granted in part, withholding portions of information in some of the records. The public body advised that access was being refused to some of the responsive information in accordance with provisions of sections 17, 24, and 26 of FIPPA.

A complaint regarding the decision to refuse access was received by our office on July 13, 2015. However, during the course of our investigation it became clear that the complainant's primary concern was that there were additional records responsive to his access request which he believed the public body had not provided. As such, the remainder our investigation focused on the adequacy of search for records conducted by the public body.

### **PRELIMINARY MATTERS**

We note that during the course of our review it appeared that the complainant was describing records subject to a review that took place under the Social Services Appeal Board (SSAB) when he alleged that certain records had not been provided by JEC in response to his FIPPA application. This may have been the cause of some confusion. We advised the complainant on several occasions that our office does not review decisions made by the SSAB. However, it seemed that the complainant continued to refer to certain records that were not considered by the SSAB, a decision which he contested, to be the same records as those which he alleged were not provided by JEC in response to his FIPPA application.

### **INVESTIGATION**

On August 10, 2015, our office contacted JEC to request clarification in regards to the provisions of FIPPA upon which the public body was relying to refuse access. Specifically, we asked the public body to provide further explanation with regard to how the cited provisions applied to the information that was withheld.

JEC responded to our office in a letter dated September 21, 2015, and provided copies of each of the responsive documents in which any amount of information was withheld as well as an explanation of the how the exceptions to disclosure it relied upon applied to the withheld information.

Our office contacted the public body on September 25, 2015, to request further clarification regarding its access decision. JEC advised that it had provided access to all the records contained in the complainant's file. The public body confirmed that no pages of the complainant's file had been withheld and access was provided to all records including those which were subject to partial severing. Our office also discussed the method of severing used by JEC, and how the cited provisions applied to the redacted information.

On September 30, 2015, our office contacted the complainant. The complainant indicated that the primary focus of his complaint was not about the portions of information that had been severed, but instead, he insisted that certain records were not provided in response to his access request. The complainant stated that the public body was withholding access to letters which relate to medical information and stated that these records were letters of correspondence between himself and his EIA caseworker. The complainant identified the letters as being between December 2014 and January 2015.

The complainant also advised that he had submitted three separate FIPPA requests to the public body, each of which resulted in a different number of responsive records. The complainant advised that a FIPPA request he submitted to the public body in January 2015 resulted in approximately 300 pages of records, a second request he submitted in March 2015 resulted in approximately 700 pages of records, and a third request submitted in April 2015 (the subject of this complaint) resulted in approximately 900 pages of records. The inconsistency between the responses caused the complainant to feel that the responses were not thorough.

Although the two previous requests are not the subject of this review, we note that both earlier requests were limited to certain dates. The request submitted by the complainant in January 2015 that resulted in approximately 300 pages of documents was seeking access to records from between May 1, 2014, to February 1, 2015. The second request submitted in March 2015 resulted in approximately 700 pages of documents was seeking access to records from between February 01, 2014, to March 15, 2015. The third access request, which resulted in nearly 900 pages of responsive records, was seeking access to the complainant's entire EIA file and was not limited to certain dates.

On October 1, 2015, our office contacted JEC to discuss the information withheld by the public body. JEC stated that of the nearly 900 pages that were provided to the complainant, approximately 30 pages contained information that was subject to some severing. The public body confirmed that none of the provisions that it relied on were used to withhold any record in full.

During a phone conversation on November 16, 2015, the complainant again expressed concern about the public body's inconsistent responses to his FIPPA applications, indicating that each of the three requests he had made in 2015 resulted in vastly different collections of records. The complainant reiterated that letters between himself and his caseworkers as well as medical documentation were missing from the most recent collection of records provided, and revised the estimated date range of this missing correspondence to cover from September to December, 2014. The complainant also disputed the claim made by the public body that it had provided all the records that it had on file.

We attended the offices of the public body on November 24, 2015, and reviewed the entire file maintained by the public body regarding the complainant. Within the EIA file, we were able to locate a number of records that appeared to match the complainant's description of records which were allegedly not provided in response to his access request. We note that these records were part of the package of 898 pages that JEC provided to the complainant on May 14, 2015, in

response to his FIPPA application and that none of these records were withheld nor was any information severed from these records.

As the complainant was in the process of transitioning between residences and our office had not been provided with updated contact information, we were unable to contact the complainant to seek clarification regarding his complaint for some time.

Our office next spoke with the complainant on May 25, 2016. We identified 35 different records that matched the description and date range the complainant had provided previously and noted that it appeared that all of these records had been provided by the public body in response to the complainant's FIPPA request. The complainant confirmed that he had received these records in response to this FIPPA application. The complainant also identified additional records which he indicated were now a cause of concern. Specifically, the complainant identified three referral letters and a medical diagnostic document dated February 14, 2011, which appeared to be a two-page document that was missing the second page.

Our office subsequently contacted JEC on May 25, 2016, to request clarification regarding the public body's access decision regarding these four documents. The public body confirmed that the three referral letters were included in the complainant's EIA file and were provided to him in response to his FIPPA request. The public body also agreed that it appeared the second page of the two-page medical diagnostic document did not appear to be included in the complainant's EIA file.

On May 27, 2016, the public body contacted our office and advised that it had conducted a further search of its records and confirmed that the second page of the medical diagnostic document was not located in the collection of records provided to the complainant, nor was it maintained in the EIA caseworker's files. JEC was unable to provide clarification regarding why it did not possess the second page of this document, and advised that any records received by the public body that related to the complainant's EIA file would be maintained by the caseworker.

## **ANALYSIS OF ISSUES AND FINDINGS**

As the complainant indicated the basis of his complaint was about what he believed to be additional records not provided by the public body, and was not disputing the specific exceptions to disclosure relied upon by JEC, our review focused on the adequacy of search for responsive records undertaken by the public body.

### **Did the public body conduct a reasonable search for and identify all records responsive to the complainant's request for access to information?**

Our office considered whether the public body fulfilled its duty to assist the applicant as outlined in section 9 of the Act. This provision 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.***

Section 9 of FIPPA requires that a public body shall make every reasonable effort to assist an applicant and to respond without delay, openly, accurately, and completely. The duty to respond openly and accurately requires conducting an adequate search for responsive records and describing them accurately for the access applicant.

In investigating the complainant's allegation that more records existed in addition to those provided in response to the complainant's access request, our office reviewed how JEC identified records which it considered to be responsive to the complainant's request. The public body provided 898 pages of records that it determined to be responsive to the access request.

JEC advised our office that these records were the complainant's complete EIA file, as maintained by the EIA caseworker, and that all the records had been included in its response to the complainant.

Our office attended the offices of the public body on November 24, 2015, and reviewed the complainant's entire EIA file. We note that the file was 898 pages, and that the complainant confirmed that he had received 898 pages of records from JEC.

Of the records from September 2014 through January 2015 that the complainant had indicated were not included in response to his FIPPA application, our office identified 35 records matching this description that JEC stated it had provided to the complainant. The complainant confirmed receipt of these records, and did not identify any additional records from this time frame that were still outstanding.

Although the complainant subsequently took issue with the alleged absence of three letters of referral, indicating that they had not been provided in response to his FIPPA application, our office confirmed that these records had in fact been provided to the complainant.

The complainant also identified a two page medical diagnostic record dated February 14, 2011, and advised that the second page of this record had not been included with the records provided to him by JEC. The public body confirmed that the second page of this record was not present in the 898 pages provided to the complainant and, after conducting an additional search upon the request of our office, advised that the second page of this record was also not present in the complainant's file maintained by the EIA caseworker.

Based on our review, we are satisfied that the public body conducted a reasonable search for responsive records. Although a small amount of information was withheld from certain records, we found that no records were withheld in their entirety and JEC provided a copy of each of the 898 pages that comprised the entirety of the complainant's EIA file, including those records that the complainant had initially identified as being omitted in the response to his access request.

## **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 Manitoba Jobs and the Economy's decision to refuse access to the Court of Queen's Bench within 30 days following receipt of this report.

June 13, 2016  
Manitoba Ombudsman