

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2015-0349

MANITOBA INFRASTRUCTURE AND TRANSPORTATION*

ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISIONS CONSIDERED: 12(1)(c)(i)

REPORT ISSUED ON AUGUST 11, 2016

SUMMARY: The complainant requested copies of maps associated with the lower Assiniboine River dykes. The public body refused access to the requested information on the basis that such records did not exist. Our office found that the public body conducted a reasonable search for the responsive records and that it was authorized to refuse access after determining the records did not exist or could not be found.

THE COMPLAINT

On October 15, 2015, the complainant requested access to the following records under the Freedom of Information and Protection of Privacy Act (FIPPA):

Please provide the maps associated with the lower Assiniboine River dykes that were transferred from the federal Government to the Provincial Government under the PFRA agreement.

The complainant received a response from Manitoba Infrastructure and Transportation (MIT) dated November 20, 2015. A complaint was then filed with our office on December 2, 2015. The complainant alleged that she was wrongfully denied access to the requested records.

POSITION OF MANITOBA INFRASTRUCTURE AND TRANSPORTATION

By letter dated November 2, 2015, MIT advised that it did not have custody or control of any maps associated with the transfer of lower Assiniboine River dykes from the federal

*Note this department was renamed as Manitoba Infrastructure on May 3, 2016. Our review of the current complaint was initiated at the time the department was known as Manitoba Infrastructure and Transportation. Accordingly, reference to the department throughout this report will be to its previous designation.

government to the provincial government under a Prairie Farm Rehabilitation Administration (PFRA) agreement and further confirmed to the complainant that it was unable to fulfill her request as the records did not exist. In support of its position, the public body relied on the following provision of FIPPA:

Contents of response

12(1) *In a response under section 11, the head of the public body shall inform the applicant*

(c) if access to the record or part of the record is refused

(i) in the case of a record that does not exist or cannot be located, that the record does not exist or cannot be located.

ANALYSIS OF ISSUE AND FINDINGS

Was the public body's decision to refuse access compliant with the Act?

Clause 12(1)(c)(i) requires the head of a public body to inform a complainant in its response letter that access to the records is being refused as the records do not exist and/or cannot be located. It is simply not sufficient to recite the provision itself, but rather, a brief explanation should be provided of how and where a search for these records was conducted and/or why the records do not exist. Initially, Manitoba Infrastructure and Transportation simply informed the complainant on November 20, 2015 that the requested records did not exist.

As part of our investigation, we requested MIT to carry out a fuller and more complete search and outline in greater detail the scope of its search for the responsive records. On February 5, 2016, the public body advised our office that a more thorough search of its records had been undertaken. The search revealed that the records in its custody and control, which had been transferred under the PFRA agreement, were textual in nature and did not include maps. This determination was confirmed by department staff, who were currently involved with the Assiniboine River dykes.

MIT also notified our office of its other various search efforts:

- The request for responsive information was sent to the following MIT employees: executive director of hydrologic forecasting and water management (HFWM); director of water management, planning & standards; regional operations manager, operations and maintenance; manager of policy development and issue support. All parties reported that they had never seen the PFRA maps of the Assiniboine River dykes and that the only records within MIT's custody were textual.
- A search of the Keystone Database (Archives of Manitoba) failed to identify any maps, only textual records.
- Enquiries were made of Manitoba Conservation and Water Stewardship as well as Manitoba Agriculture, Food and Rural Development to ascertain whether the maps might

have been transferred to either of these departments in 1996. Both departments advised that no Assiniboine River dyke maps had been transferred to their respective departments.

On June 24, 2016, MIT informed our office that it had continued to search for the Prairie Farm Rehabilitation Administration maps requested by the complainant with little success. According to MIT, no records transferred from PFRA to the Manitoba government in 1996 have been destroyed. However, departmental staff have searched fifty boxes of materials from PFRA without finding any maps of the Assiniboine River dykes. In addition, MIT advised that there is another set of PFRA plans and reports in existence, which have not as yet been transferred to it from the federal government. Regrettably, MIT cannot access these records inasmuch as the amending agreement between Canada and Manitoba regarding these plans has not yet been executed by the parties. Consequently, MIT cannot state with certainty that the PFRA maps may or may not be included as part of this set of PFRA plans and reports, nor can MIT project when these records may be made accessible.

Based on our investigation, we are satisfied that Manitoba Infrastructure and Transportation had conducted a reasonable search for the responsive records. Accordingly, we found that the public body's conclusion that the foregoing records could not be located, fell within the interpretation of clause 12(1)(c)(i).

CONCLUSION

Based on our findings, 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 Infrastructure and Transportation's decision to refuse access to the Court of Queen's Bench within 30 days following receipt of this report.

August 11, 2016
Manitoba Ombudsman