

Manitoba mbudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2016-0168

RURAL MUNICIPALITY OF DE SALABERRY

ACCESS COMPLAINT: REFUSAL OF ACCESS

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

REPORT ISSUED ON AUGUST 8, 2016

SUMMARY: The complainant requested access under the Freedom of Information and Protection of Privacy Act to financial information regarding three years of financial disbursements related to Manitoba Hydro Bipole III funding. The Rural Municipality of De Salaberry (the RM) provided access to the records it had on file but refused access in part, indicating that it did not possess the records for the two most recent years requested. The ombudsman found that the RM was not in possession of these records as it had not submitted any filings to Manitoba Hydro for the two most recent years, and thus these records did not exist. As such, the complaint is not supported.

THE COMPLAINT

On March 17, 2016, the complainant submitted an application for access under the Freedom of Information and Protection of Privacy Act (FIPPA) to the Rural Municipality of De Salaberry (the RM or the public body) seeking access to the following records:

[...] Please forward me copies of disbursement and accounting to organizations for the past 3 years using the \$88,000 /year Hydro Bipole III funding, allotted to the RM of DeSalaberry.

Please make available as well the copies of the 3 yearly reports of accounting sent from the RM of DeSalaberry to Manitoba Hydro [...]

The public body responded to the application in a letter dated April 29, 2016. The RM advised that it was providing access to excerpts from the RM's General Ledger for 2014 showing transactions contained in the annual report, as well as a copy of one record titled Schedule B: Community Development Initiative (CDI) Community Annual Report – as completed for the year ended March 31, 2014.

The RM also advised that it was refusing access to records for any other years as the records do not exist and no additional reports have been prepared or filed with Manitoba Hydro to date. The public body referred to sub-clause 12(1)(c)(i) of FIPPA to support this decision.

A complaint disputing the public body's access decision was received by our office on May 18, 2016.

POSITION OF THE RURAL MUNICIPALITY OF DE SALABERRY

In its access decision the RM advised that it was granting access to the records that it had on file. The RM provided access to two records which it believed were responsive to the access request, but advised that, as it had not submitted filings to Manitoba Hydro for two of the three years identified in the access request, there were no additional records with which to respond.

Our office contacted the RM on May 26, 2016, to notify it of the complaint and to request clarification regarding its access decision. During a phone conversation the RM advised our office that it had provided all the responsive records in its possession and reiterated the position that it had only submitted filings to Manitoba Hydro for the fiscal year 2013, and had not done so for years 2014 and 2015. The RM advised that Schedule B: Community Development Initiative (CDI) Community Annual Report was dated March 31, 2014, as it was completed at the end of the 2013-14 fiscal year.

In a written response received by our office on July 14, 2016, the RM outlined the search activities undertaken to retrieve the responsive records. The public body advised that it had conducted a search of relevant paper files as well as past emails. The RM provided our office with a copy of an email it received from Manitoba Hydro on April 21, 2016, related to the Bipole III Community Development Initiative. In this email, Manitoba Hydro advises the RM that it is required to submit an annual report for 2014 and 2015 (the second and third years, respectively) in order to be eligible to receive additional financial disbursements under the Community Development Initiative.

ANALYSIS OF ISSUES AND FINDINGS

Was the public body authorized to refuse access in accordance with sub-clause 12(1)(c)(i) of FIPPA?

In responding to the complainant's access request, the public body advised that it did not possess records regarding disbursements for the second and third years of the three year Community Development Initiative program. The RM advised that, as these records do not exist, it was refusing access in accordance with sub-clause 12(1)(c)(i) of the act.

Clause 12(1)(a) together with sub-clause 12(1)(c)(i) require the head of the public body to inform an applicant in its response letter that access to the records is being refused as the records do not exist. These provisions read as follows:

Contents of response

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

(a) whether access to the record or part of the record is granted or refused;

(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

In this case, the RM advised that it did not create records related to the second and third years of potential funding under the Community Development Initiative, did not submit the required documentation to Manitoba Hydro, and as such had no additional records with which to respond.

Our office reviewed the search activities conducted by the RM and the correspondence with Manitoba Hydro which explicitly states that it has not received the required records from the RM. We determined that the RM does not possess records responsive to the complainant's access request, other than those which it provided in its access decision.

Based on our review, we were satisfied that it was reasonable for the public body to conclude that this record does not exist.

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 refusal of access decision by the Rural Municipality of De Salaberry to the Court of Queen's Bench within 30 days after receipt of this report.

August 8, 2016
Manitoba Ombudsman