

# Manitoba Ombudsman

## REPORT UNDER

## THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2016-0180

### RURAL MUNICIPALITY OF RIDING MOUNTAIN WEST

### ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISIONS CONSIDERED: 17(1), 17(2)(e)(g), 17(4)(c) and (e)(i)

REPORT ISSUED ON FEBRUARY 3, 2017

**SUMMARY:** The complainant submitted an application for access to the Rural Municipality of Riding Mountain West (the RM) under the Freedom of Information and Protection of Privacy Act, seeking information detailing the compensation received by municipal employees and members of council. The RM responded by granting partial access and releasing the aggregate amount of compensation received by all individuals during each payroll cycle, while refusing access to information detailing the specific amounts received by each individual. During our investigation we identified additional information which the RM was not authorized to withhold, and to which the RM subsequently provided access. Our office determined that the RM was required to refuse access to the specific payment amount made to each individual. As such, the complaint is partly supported.

### THE COMPLAINT

On March 7, 2016, the Rural Municipality of Riding Mountain West (the RM or the public body) received the following application for access under the Freedom of Information and Protection of Privacy Act (FIPPA or the act):

*Financial statements detailing the payments made to employees of the municipality and council members for the period of January 1, 2015 through to December 1, 2015 inclusive.*

*Please include any payments made from accounts for the former municipalities of Shellmouth-Boulton and for Silver Creek.*

The RM provided its access decision on March 15, 2016, advising that access to the requested information had been granted in part.

The RM refused access to financial statements detailing the payments made to employees of the municipality and council members, stating that disclosing specific details for each is deemed to be an invasion of third party privacy. In support of this decision, the public body referred to subsection 17(1) and clauses 17(2)(e)(g) of FIPPA.

A complaint of refused access was received by our office on May 31, 2016. Accompanying the complaint form was a letter in which the complainant outlined his reasons for disputing the public body's decision to refuse access. In the letter the complainant stated that he disputed the public body's reliance on clause 17(2)(e) as he stated he was not seeking access to information regarding a third party's employment, occupational, or educational history. The complainant also contended that clause 17(2)(g) did not apply as the source of the third party's income was a non-issue, as it was obviously from the RM, and a description of the amount of payments made by the public body to the municipal employees and councillors would not reveal their financial circumstances, activities, or history.

### **POSITION OF THE PUBLIC BODY**

In its access decision, the RM advised the complainant that it had previously provided a number of records that are responsive to this request. The RM referred to a List of Accounts for Approval which it provided to the complainant on an earlier occasion, and specifically indicated that cheque numbers 38, 39, 45, and 46 included responsive information. The public body advised that these cheques were issued by the RM in accordance with Resolution No. 30, a copy of which was provided to the complainant along with the access decision.

The public body also referred to three by-laws which it stated had been provided to the complainant previously. The RM advised that By-Law 2015-01 states which council members attend specific committees; By-Law 2015-03 describes the rate and method of indemnity for members of council, for attendance at meetings, mileage, and the option to participate in the Blue Cross benefit program; and By-Law 2015-09 details the job classification and salary or hourly wage range for municipal employees. The public body also provided a list of 23 additional resolutions approved by the RM council which relate to payroll. The public body stated that the responsive by-laws and resolutions are all publicly available on the RM's website.

The public body advised that it was refusing access to financial statements detailing the breakdown of payments made to employees of the municipality and council members, as it deemed such specific detail to be an invasion of a third party's privacy. The RM relied on clauses 17(2)(e) and (g) to support its access decision. These provisions read as follows:

***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***

***(e) the personal information relates to the third party's employment, occupational or educational history;***

***(g) the personal information describes the third party's source of income or financial circumstances, activities or history;***

The RM also advised the complainant that subsection 2(1) of the Public Sector Compensation Disclosure Act requires municipalities to disclose the amount paid to any member of council or employee whose total compensation exceeds \$50,000. The public body advised that these amounts are stated in the Auditor's Notes to the Consolidated Financial Statements, however the 2015 Consolidated Financial Statements had not yet been completed.

Our office contacted the RM on June 3, 2016, to provide notification of the complaint and to request clarification with regard to the public body's access decision.

On June 21, 2016, our office received the public body's response. The RM reiterated its position that the complainant would be able to discern the requested information from reviewing the publicly available by-laws (2015-01, 2015-03, and 2015-09), which detail the rates of compensation for members of council and employees of the RM. The public body clarified that this information could be combined with each of the Lists of Accounts for Approval to enable the complainant to compile the 2015 combined payroll total for both council members and municipal employees.

The RM body advised that a List of Accounts for Approval is presented at each meeting of council and is accepted by resolution. The public body explained that the resolutions state the cheque numbers and the aggregate total amount of payroll payments and are included in the minutes for each meeting.

We contacted the RM on August 23, 2016, to request further clarification regarding the information at issue. We asked the RM for clarification regarding the List of Accounts for Approval. The RM advised that it was in possession of these records for the months requested by the complainant, but that it had refused access to them. The RM further explained that as these records are prepared on a bi-weekly basis disclosing these records would directly reveal the exact bi-weekly salary received by each employee of the RM, and that it believed this to be an unreasonable invasion of privacy. The RM also advised that this was the method by which members of council received their reimbursements, in that they are contained within the List of Accounts for Approval despite being calculated on a monthly basis.

Our office contacted the public body on September 1, 2016. The RM advised that all compensation received by councillors is recorded in the List of Accounts for Approval. We discussed whether this information would be of the type contemplated by the mandatory exception to disclosure under 17(2)(g), which requires a public body to refuse access to personal financial information of a third party and, if it was, whether this information was captured under sub-clauses 17(4)(e)(i) and (iii), which refers to the type of information that a public body is not authorized to withhold. The RM agreed to provide our office with copies of these records, which we received on September 2, 2016.

Based on our review of these records, we note that the List of Accounts Payable includes the compensation that each councillor received to attend council meetings, "per diems", and mileage. As well, these records also track deductions made for payments to income tax, Canada Pension Plan, and a Blue Cross benefits plan.

On September 29, 2016, our office contacted the RM to discuss the information contained within the List of Accounts Payable records. We advised that it appeared that the records contained both information that the RM was required to withhold and other information that the RM was obliged to release. We advised that the information which would reveal the bi-weekly salary of an individual or the amounts of Canadian Pension Plan contributions, Income tax payments, or Blue Cross payments would be of the type that the RM was required to withhold under FIPPA. We stated that the information in the records which related to travel expenses, such as the amounts of mileage, per diems, and indemnities, would be the type of information that the RM was not authorized to withhold under FIPPA.

The RM acknowledged the position outlined by our office and requested time to consult with council members regarding the release of this information. Specifically, the RM advised that it would like to raise this issue with council members at the next council meeting which was scheduled to take place on October 12, 2016. Our office agreed to this request.

Our office contacted the RM on October 27, 2016. We were advised that a resolution was passed at the council meeting which would provide access to the information in the records which we had identified that the RM was obliged to release. The RM provided our office with a copy of the resolution, which we received on October 27, 2016.

On November 24, 2016, the complainant contacted our office and indicated that he still had not yet received the records pertaining to the travel expenses of council members. Our office contacted the RM on November 25, 2016, to verify whether or not it had released this information. After consulting their records, the RM advised that, due to an oversight, these records had not been provided to the complainant but it confirmed that the records would be released that day.

On November 28, 2016, our office received confirmation from the RM that a revised access decision letter addressed to the complainant dated November 25, 2016, as well as the records regarding the travel expenses of council members, had been provided to the complainant.

## **ANALYSIS OF ISSUES AND FINDINGS**

### **1. Do the mandatory exceptions to disclosure under section 17 apply to the information in question?**

Subsection 17(1) of FIPPA is a mandatory exception to disclosure that protects the personal information of a third party. Where the information in question is subject to this exception, a public body is prohibited under FIPPA from disclosing the information. Subsection 17(1) of FIPPA reads 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.***

Subsection 17(2) of FIPPA sets out circumstances in which disclosure of personal information is deemed to be an unreasonable invasion of privacy under subsection 17(1). The public body withheld information based on clauses 17(2)(e) and (g) of FIPPA, which read as follows:

***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***

*(e) the personal information relates to the third party's employment, occupational or educational history.*

*(g) the personal information describes the third party's source of income or financial circumstances, activities or history*

In considering the meaning of the term “employment history”, we referred to the Manitoba government’s FIPPA Resource Manual, which is the reference prepared by government to assist public bodies in complying with the act. While our office is not bound by the resource manual, we found the following information relevant and helpful in our investigation. The resource manual defines the term “employment history” as information about an individual’s work record, including the names of employers, length of employment, positions held, employment duties, salary, evaluations of job performance, reasons for leaving employment, etc.

Similarly, we also referred to the resource manual in considering the term "financial activities and history." The resource manual indicates that "financial activities and history" refers to information about an individual's current and past financial activities.

The public body provided access to the aggregate bi-weekly and monthly totals that the RM spends on payroll, expense payments made to members of council, and the rates of compensation for members of council and municipal employees. The total amount for all individuals is indicated as a single dollar amount included on a resolution passed by the RM council, and a new resolution is passed to approve each payroll cycle. In addition, the RM advised that, in accordance with the Public Sector Compensation Disclosure Act, the total amount of annual compensation for each employee and council member receiving in excess of \$50,000 would be made publicly available once those documents were completed.

The RM refused access to records that would detail the specific amounts of compensation that each employee received on a bi-weekly basis and the amount each member of council received per month.

Our review of the records confirmed that the personal information contained in the records related to the employment and financial activities of third parties. We found that disclosing the specific bi-weekly or the monthly pay that an individual receives would reveal their salary, information that is subject to clause 17(2)(e), as well as current and past financial activities, which is information subject to clause 17(2)(g).

Based on our review, we determined that the records contained personal information that, if disclosed, would amount to an unreasonable invasion of a third party's privacy contrary to subsection 17(1) and clause 17(2)(e) and (g).

Accordingly, we found that the cited provisions of section 17 were applicable.

**2. Do any limits to the exception, as described under subsection 17(4), apply to the information in question?**

We next contemplated whether a limitation to the exception under subsection 17(4) would apply. Subsection 17(4) sets out several circumstances in which disclosure of personal information described in subsection 17(2) would not be considered an unreasonable invasion of a third party's privacy. We considered each of the limitations, giving particular attention to the following provisions, which appeared relevant to the circumstances of this case:

***When disclosure not unreasonable***

***17(4) Despite subsection(2), disclosure of personal information is not an unreasonable invasion of a third party's privacy if***

*(c) an enactment of Manitoba or Canada expressly authorizes or requires the disclosure;*

*(e) the information is about the third party's job classification, salary range, benefits, employment responsibilities or travel expenses*

*(i) as an officer or employee of a public body*

*(i) the record requested by the applicant is publicly available.*

Following are our considerations with respect to the applicability of relevant provisions of subsection 17(4).

***Does clause 17(4)(c) apply to the payment information in this case?***

Clause 17(4)(c) of FIPPA provides that it is not an unreasonable invasion of privacy to disclose personal information of a third party if another enactment of Manitoba or Canada expressly authorizes or requires the disclosure.

The third parties in this case are employed by or elected officials of the Rural Municipality of Riding Mountain West, which is subject to the requirements of the Public Sector Compensation Disclosure Act, to disclose the total annual compensation for each employee or official whose compensation exceeds \$50,000. Some individuals employed by the RM would receive compensation that exceeds \$50,000 and would therefore generally be required to be disclosed, however, the disclosure would be limited to the total annual compensation figure together with the employee's name and job classification.

The required disclosure under the Public Sector Compensation Disclosure Act does not reflect the specific details of compensation that is requested in the FIPPA application. Specifically, it does not reveal the bi-weekly or monthly salary payments received by any individual. Our office was not able to identify another enactment that expressly authorized or required disclosure of specific information about the employee's compensation. Therefore we concluded that clause 17(4)(c) does not apply to the information about the severance payment.

***Do sub-clauses 17(4)(e)(i) or 17(4)(e)(iii) apply to payment information in this case?***

Clause 17(4)(e) is an indication that disclosure of certain types of information about officers, employees, and elected and appointed officials of public bodies is in the public interest, as these individuals are paid out of public funds.

***When disclosure not unreasonable***

***17(4)*** *Despite subsection(2), disclosure of personal information is not an unreasonable invasion of a third party's privacy if*

*(e) the information is about the third party's job classification, salary range, benefits, employment responsibilities or travel expenses*

*(i) as an officer or employee of a public body*

*(iii) as an elected or appointed member of the governing council or body of a local public body or as a member of the staff of such a council or body;*

Clause 17(4)(e) authorizes disclosure of “salary range,” not of the specific salaries of employees, officers and elected or appointed officials of public bodies. However, specific salary information may be available under other legislation, such as the Public Sector Compensation Disclosure Act, or may be available through the Public Accounts of the Province of Manitoba.

We note that *salary range*, as indicated in clause 17(4)(e), is distinct from *salary* which we found is captured within the scope of clauses 17(2)(e) and (g), as stated earlier in this report. Some of the responsive records, to which the RM refused access, include detailed pay information of employees of the RM. While FIPPA permits the release of an individual’s *salary range*, it would be an unreasonable invasion of privacy for a public body to disclose an individual’s specific salary or the specific amount an individual receives from their bi-weekly or monthly compensation. As such, we found that the RM was required to withhold the records which detailed the bi-weekly pay information of municipal employees.

We also considered the records which detail the compensation received by members of council. Included in these records is information which identifies the indemnities, per diems, and mileage received by members of council for attending council business.

In considering the term “travel expenses,” as stated in clause 17(4)(e) of FIPPA, we again referred to the FIPPA Resource Manual, which states that “travel expenses” incurred as an employee, officer or elected or appointed official of a public body specifically fall under clause 17(4)(e). This implies that disclosure of such information is not an unreasonable invasion of privacy under FIPPA.

We found that the indemnities, per diems, and mileage received by members of council fell within the scope of “travel expenses” included under clause 17(4)(e) of FIPPA, which indicates that disclosing this information is not considered to be an unreasonable invasion of privacy.

Although there was some information in these records which the RM was required to release, we note that these records also included some information detailing the amount of deductions for income tax, the Canada Pension Plan, and Blue Cross Benefits Plan from some members of

council. We found that this information constituted personal information of a financial nature and was thus within the scope of 17(2)(g) of FIPPA. As this information is not the type that is described in sub-clause 17(4)(e)(i), the RM was not authorized to release this information and was required to redact it from the records prior to their release.

The RM initially withheld the records pertaining to members of council in full. In discussions with our office, we advised the RM that there was certain information (which identified the amounts of indemnities, per diems, and mileage received by members of council) which we found the RM was not authorized to withhold. We note that the RM released this information to the complainant on November 25, 2016.

***Does clause 17(4)(i) apply to the information about the payment information in this case?***

Clause 17(4)(i) provides that disclosure of personal information is not an unreasonable invasion of a third party's privacy if "*the record requested by the applicant is publicly available.*"

There is no question that certain personal information about the employees of the RM is publicly available. The RM includes the rates of compensation for many of its employees in By-Law No. 2015-09, and the rates of compensation for members of council in By-Law No. 2015-03. Both of these by-laws are publicly available on the RM's website.<sup>1</sup>

For some of the municipal employees By-Law No. 2015-09 lists the hourly rate of compensation, while the total annual salary for other employees is listed, but in each instance the employee's name and job title is listed. Whether indicated as an hour rate or annual total, the rate of compensation for each of these employees is publicly available. In addition, we note that the rate of compensation for members of council is set by the RM in By-Law No. 2015-03, which specifically identifies the amount of indemnities, per diems, and mileage that a member of council is eligible to receive.

However, the fact that certain information is publicly available is not enough to conclude that 17(4)(i) applies, as the limit to the exception requires that the actual record (not just information from the record) requested by the applicant is publicly available. The financial statements requested by the complainant are separate records from the by-law which lists the rates of employee compensation. Further, the records at issue detail the actual bi-weekly or monthly payments made to employees and members of council, which is different information from the general rate of compensation received by those individuals.

Despite the fact that some information about employees' compensation is publicly available, the records requested by the applicant are not publicly available. As such, we concluded that clause 17(4)(i) does not apply.

***Conclusion as to the application of provisions of section 17***

As none of the other limits under subsection 17(4) apply, we find that the RM had authority under clauses 17(2)(e)(g) to withhold the particular information as described earlier in this

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<sup>1</sup> The RM's by-laws can be found at: <http://www.rmwest.ca/by-laws>

report, as disclosure would be considered an unreasonable invasion of privacy of a third party under these provisions. Specifically, we found that the RM was authorized to withhold the information detailing the bi-weekly or monthly compensation received by municipal employees and members of council, with the only exception being the amounts of indemnities, per diems, and mileage received by members of council.

We found that the RM did not have the authority to withhold the information pertaining to indemnities, per diems, and mileage received by members of council and, as such, this portion of the complaint was supported.

## **CONCLUSION**

Based on the findings of the ombudsman the complaint is partly 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 Riding Mountain West to the Court of Queen's Bench within 30 days after receipt of this report.

February 3, 2017  
Manitoba Ombudsman