

Manitoba Ombudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE FILE NUMBER 2017-0078

MUNICIPALITY OF SWAN VALLEY WEST

REPORT ISSUED ON NOVEMBER 3, 2017

CASE SUMMARY

Our office received a complaint from a resident of the Municipality of Swan Valley West alleging that the municipality was violating sections of the Municipal Council Conflict of Interest Act (MCCIA). The concerns related to the tendering and purchasing of goods, the declaration of conflicts, the annual statements councillors are required to provide with respect to assets, and the management and production of records by the municipality.

Our investigation found that the municipality followed its tendering and purchasing processes but did breach the MCCIA with respect to the declaration of conflicts. The evidence suggests, however, that the breach was an oversight on the part of the municipality that has now been corrected. With respect to the filing of the annual statements of assets, it appears the breach was related to the challenges of the amalgamation of the municipalities in 2015. We did not find that the municipality was in breach with respect to the production of records.

OMBUDSMAN JURISDICTION AND ROLE

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal by-law. On other occasions, it is written policy or established procedures implemented to give effect to legislative purpose.

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. Administrative suggestions may be made to support and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can enhance the relationship between government and the public, and reduce administrative complaints.

THE COMPLAINT

Manitoba Ombudsman received a complaint on January 23, 2017, from an individual alleging that the municipality, and specifically members of council, have breached the MCCIA in several instances. Most notably, it is alleged that a council member approved the purchase of tires for the local garbage truck from a business in which they have a primary interest. Over the year, there have been other purchases from the same business.

In another instance, the complainant states that this same councillor has breached the act by not filing their Annual Statement of Assets and Interests¹ within the required timeframe.

Finally, the complainant believes that the municipality breached the act when they were unable to produce the Central Records of Disclosure² for 2015 and, when requested, the record of disclosures for the January 26, 2016 council meeting. The complainant states he was also initially refused access to view the Statements of Assets and Interests of council members as entitled under the MCCIA.

RESPONDENT'S POSITION

The municipality states that the purchases in question were made in accordance with the tendering and procurement policy. Further, they state that the purchase of the tires for the municipal garbage truck was needed on an urgent basis.

The municipality is of the opinion that, although there have been challenges in providing some of the records requested by the complainant, the municipality is making every effort to comply with legislation and in providing requested information to the public.

The municipality acknowledges that there have been some issues with the amalgamation of the Village of Benito and the RM of Swan River and some processes have not been as strong as they could be; however, the violations that the complainant has put forward were not intentional and the new municipality is, and has been, making changes to prevent further issues.

BACKGROUND INFORMATION

The Municipality of Swan Valley West was incorporated when the Rural Municipality of Swan River and the Village of Benito were amalgamated on January 1, 2015. The amalgamation occurred as a result of the Municipal Amalgamations Act that was proclaimed by the Manitoba

¹ The Annual Statement of Assets and Interests is required under section 9(1) of the MCCIA. Each councillor must, on an annual basis, declare and assets and interests they own or in which they have an interest (i.e. a business or an investment in a business), property etc.

² The Central Record of Disclosure is required under section 6(2) of the MCCIA. It is a running record maintained by the municipality (managed by the CAO) that records every time during a council meeting that a council member declares a conflict of interest, the reason for the conflict and their recusal from the meeting during discussion of the agenda item. The record is a continuing record for each calendar year.

government on September 13, 2013. The act required municipalities with populations of less than 1,000 to amalgamate by January 1, 2015. The intent of the amalgamations was to make communities more sustainable into the future. The population of the new municipality is approximately 2,800.

For the newly amalgamated municipalities, new councils would be elected during the November 2014 municipal elections for the amalgamation on January 1, 2015. The new Municipality of Swan Valley West was to have six councillors and a reeve.

The amalgamation of Benito and the Rural Municipality of Swan River has had its challenges. There has been turnover in council members since the amalgamation, with two of the elected councillors leaving before the January 1, 2015 date. Since amalgamation, a councillor resigned in February 2017 and the reeve of the municipality resigned in late April 2017.

Shortly after amalgamation, the chief administrative officer (CAO) left and an interim CAO was appointed, becoming permanent in November 2015.

The new municipality has been working on preparing new by-laws and, to date, has created or revised 65 of the by-laws inherited from the previous entities. In addition to revising by-laws, the council has had to review the policies and procedures, updating them or rewriting them as required. To complicate the amalgamation process further, there are records that are incomplete or missing, which challenges the consolidation of the records going forward.

KEY ISSUES

In response to the complaint, the ombudsman determined that an investigation would be conducted into the following administrative issues pursuant to section 15 of the Ombudsman Act:

- 1. Did the municipality follow its tendering and procurement policy when it purchased tires for its garbage truck and made other purchases from a local business?**
- 2. Was there a conflict of interest with respect to the purchase of the tires and/or the other purchases at the business? Was there a breach of the MCCIA on the part of a councillor and/or the municipality?**
- 3. Did the municipality comply with legislation with respect to the filing of the Annual Statements of Assets and Interests?**
- 4. Did the municipality comply with legislation with respect to requests to view records of the municipality, specifically the Central Record of Disclosures and the Annual Statements of Assets and Interests?**

SCOPE OF THE INVESTIGATION

Our investigation of this complaint included the following:

- Review of the relevant legislation; the Municipal Council Conflict of Interest Act, the Municipal Act (specifically sections 84, 251.1 and 263(1)).
- Review of specific policies, procedures and bylaws related to tendering and purchasing, including the municipal purchasing policy, the council code of conduct bylaw, and the municipality's organizational bylaw.
- Examination of specific documents related to the purchase and payment of tires for the garbage truck, minutes of council meetings, certificates of disclosure, and a history of payments to businesses where a council member has a financial interest.
- Review of the Statements of Assets and Interests for the years 2013 to 2016 both pre and post-merger.
- Review of the Central Records of Disclosure for the years 2015, 2016 and 2017.

ANALYSIS OF EVIDENCE

1. Did the municipality follow its tendering and procurement policy when it purchased tires for its garbage truck and made other purchases from a local business?

Before examining the details of the purchases in question, it is necessary to understand all of the legislative and policy background related to purchasing.

The Municipal Act

Section 251.1 of the Municipal Act requires municipalities to establish a tendering and procurement policy that will guide the municipality in the purchase of goods and services to ensure the citizens that the municipality is getting the best value for money and to ensure an equitable, fair and appropriate use of municipal resources.

Municipal Tendering and Procurement Policy

The Municipality of Swan Valley West developed a tendering and procurement policy under resolution number 26, dated April 4, 2016, which is a revision of an earlier policy. These amendments changed a reference from "foreman" to "superintendent" and increased some of the purchase limit amounts; however, the intent of the policy remained the same. The components of the policy relevant to this investigation are as follows:

- For goods and services under \$1,000: verbal quotations are acceptable based on principles of best service, best price.
- For purchases of \$1,000 to \$3,000: two written quotations are required, except in cases of insufficient time or emergency or where the purchases are standardized supplies, then verbal quotes are satisfactory.

- For purchases of \$3,000 to \$5,000: three written quotes (unless insufficient time or when standardized supplies or there are less than three local suppliers) funds must be preauthorized and identified in the financial statements.
- Purchases more than \$5,000 but less than \$70,000: three detailed written quotes, except in state of emergency.
- More than \$70,000: formal bidding process to be used.

Buy Local Policy

Prior to amalgamation, the Village of Benito had a buy local policy which stated that, wherever possible, for smaller purchases, the village was to purchase from local suppliers in Benito first, then Swan River, Swan Valley and finally outside of the local area. Although not yet a policy approved by the Municipality of Swan Valley West, the municipality is adhering to the policy. The intent is to support local businesses and owners that pay taxes in the municipality. Generally, when mileage and time are added into the cost of a purchase, buying local is more economical.

Purchase of Tires

November 9, 2015 was a regularly scheduled garbage pick-up day. However, that morning, it was discovered that all six of the tires on the garbage truck had been slashed. In order for garbage pick-ups to be completed as scheduled, the tires needed to be replaced. The CAO, in discussions with Public Works, agreed it was an emergency situation. With this in mind, only verbal quotes were required by the tendering and procurement policy.

The municipality had limited options. There are three suppliers in the area, one that was able to provide the tires immediately and two that did not have the tires in stock and could not give a date as to when they might receive them. The two local businesses that could not provide the tires have provided statements confirming that they were contacted and could not provide the tires. Alternatively, the garbage truck could have been put on a flat bed and transported to Swan River to have the tires replaced. Aside from the time delay, there was little price difference between the local suppliers. The costs would have been higher for the Swan River option when transportation was included.

The CAO authorized purchase of the tires from the local supplier. An invoice was prepared by the supplier and signed by the CAO and the assistant public works foreman and the tires were replaced. The total cost of the tires was \$1,979.76, including taxes. This amount was within the limit specified for administrative approval in the tendering and procurement policy. Prior to actual payment of the invoice, all payments must be approved by council. Once approved a cheque will be issued to the supplier. The cheque will require two authorized signatures, one of two approved administrative staff and one of two approved council members.

The decision to purchase from this supplier was made by the CAO and Public Works and was not discussed with any council member prior to the purchase being made. Council members would be informed of this purchase when reviewing the item on the approval of payments list prepared for a later council meeting.

We are of the view that the actual purchase of the tires for the garbage truck followed the tendering and purchasing policy of the municipality in that quotes were obtained, a consideration of the options was made with respect to reasonableness of costs to be expended, and the purchase appropriately approved by authorized administrative staff.

Other purchases

There were a number of other purchases from the garage where the aforementioned tires were bought and a local hardware store. The CAO advises that, prior to the amalgamation, it had been common practice for the Village of Benito to purchase from these businesses and has been doing so for several years.

Our office only reviewed the detail of purchases for the 2015 and 2016 fiscal years. With the exception of the tires, the individual purchases from the business for the 2015 and 2016 fiscal years were small, ranging from \$10 to \$400 and were made for general supplies. It is our view that similar to the tires, the individual purchases noted above were appropriately approved by authorized administrators and followed the tendering and procurement policy.

2. Was there a conflict of interest with respect to the purchase of the tires and/or the other purchases at the business? Was there a breach of the MCCIA on the part of a councillor and/or the municipality?

The tires and other purchases were made from two businesses (a garage and hardware store) in which one of the council members has a financial interest. The municipality makes purchases from both businesses, with the majority of the purchases from the garage. The council member in question has been declaring their partnership interest in the two businesses annually in their Annual Statement of Assets and Interests (to be discussed in more detail later in this report).

Organizational By-Law number 005-15-January 13, 2015

The Organizational By-law, among other things, establishes the legislative and finance committee, which is council as the whole. The by-law sets out the roles and responsibilities of the committee which is in part:

- To supervise all contracts, orders, reports, recommendations and proceedings involving the expenditure of municipal funds.
- To supervise all accounts, expenditures and outlays and all sums payable under contract before any monies are paid; and no account, claim, or demand not expressly authorized to be paid by a statute, by-law, or resolution of council, shall be paid by the CAO until same has been authorized by the legislative and finance committee and approved by council.

The Municipal Council Conflict of Interest Act (MCCIA)

In section 5, the MCCIA sets out the requirements that a councillor shall, during a meeting in which a matter arises where the councillor or their dependents has a direct or indirect pecuniary interest, disclose the nature of the interest, withdraw from the meeting without voting or participating in the discussion, and refrain at all times from attempting to influence other council members on this matter.

Swan Valley West approval of payment process

As noted earlier, the purchase of the tires for the garbage truck and the other purchases reviewed did follow the municipal tendering and procurement policy and were properly approved by municipal administration. However, in order for payments to be issued, the municipality must follow the procedures of the Organizational By-Law noted above. To do so, the municipality of Swan Valley West administration prepares a list of payments to be approved by council. The list provides the details of the payments to be made, a summary of the items purchased and the general ledger account being charged.

If there is more than one invoice to be paid to a supplier on the list, the invoices will be listed separately and a total payment amount will be shown. The cheques for the payment list are prepared a few days ahead of the scheduled council meeting and the lists are provided to the council members ahead of the meeting for their review.

In preparation for the meeting, the cheques are written and then signed by a council member with signing authority (two signatures are required for a cheque to be valid). At the council meeting, a vote will be held to approve the listed payments. A resolution will be passed, recording who moved the “approval to pay” motion, who seconded the motion, those in favour, those opposed, and those abstaining. If passed, the resolution will be signed as carried, usually by the reeve. Once the payments are approved by council, the CAO will co-sign the cheques.

The approval for the payment of the tires went to council on the December 8, 2015 agenda. Minutes related to item 30 on the agenda, approval of payments shows the following:

Resolved that the Council for the Municipality of Swan Valley West does hereby approve the following payments:

General Cheques # 11893 to #11967 for a total of \$275,240.43

Payroll Cheques #472 to #512 for a total of \$54, 436.24

Council/Committee cheques #513 to # 522 for a total of \$12,923.74

For a grand total of \$342,600.41. All in Favour 6, Motion Carried.

Included in the list of 75 items making up the general cheques amount was the payment for the tires to the business in which a council member has a financial interest.

The minutes of December 8, 2015 do not show the council member recusing themselves from the meeting during the approval of this motion and voting on the approval of the payment. Nor does

the Central Record of Disclosure for 2015 note a declaration of conflict of interest by the councillor with respect to the approval of these payments.

Cheque number 11949 dated December 4, 2015 as payment for the invoice is signed by the council member in question and the CAO.

According to By-law # 40-16, the signing authorities for the municipality are either one of the reeve or deputy reeve and one of the CAO and finance officer. A signature from one of both sets of signing officers is necessary on the cheque.

The failure of the council member to declare the conflict is in breach of section 5(1) of the MCCIA which states:

5(1) Where during any meeting there arises

(a) a matter in which a councillor or any of his dependants has a direct or indirect pecuniary interest; or

(b) a matter involving the direct or indirect pecuniary interest of any person, corporation, subsidiary of a corporation, partnership, or organization to whom or which a councillor or any of his dependants has a direct or indirect pecuniary liability;
the councillor shall

(c) disclose the general nature of the direct or indirect pecuniary interest or liability;

(d) withdraw from the meeting without voting or participating in the discussion; and

(e) refrain at all times from attempting to influence the matter.

However it should be noted that, the municipalities in their past and current structures have been making purchases from the businesses in question for several years while the person was a council member. During that time, there has never been a disclosure made for the payment of purchases from the businesses and municipal administration had followed the tendering and procurement policy.

It should also be noted that the Central Records of Disclosure for 2015, 2016 and to March 31, 2017, show council members, including the council member in question, disclosing potential conflicts of interest on a variety of issues and recusing themselves from the portion of the council meeting dealing with the issue on which they may be conflicted. Therefore, it is clear council members are aware of the process to follow with respect to actual or potential conflicts of interest.

The MCCIA in section 4(5)(c) suggests that there is no need to declare a conflict of interest if the value of the asset or transaction is under \$500.00. The record of purchases from the businesses in question for 2016, show that the individual purchases are under \$500.00; however, the overall purchases were approximately \$1,700 and in one instance the cheque, when purchases were combined for payment exceeded \$500.00.

To be prudent, any policy with respect to declarations of indirect or direct pecuniary interest, should require the conflicted council member to declare on all payments when the overall annual payments will exceed the limits under section 4(5)(c). While it may be difficult to determine

whether overall purchases would exceed the \$500.00 limit, the municipality will likely have enough purchase history to be able to make an informed assessment. It would be very possible in smaller municipalities, with limited local suppliers, that someone who owns a local business would also be a member of council.

While the evidence suggests that section 5(1) of the MCCIA has been breached with respect to the purchases of the tires from the businesses, there is no suggestion that the breach was intentional. While there was no declaration made at the time that payments were being approved, the councillor in question was not involved in the actual purchase decisions, which, as already noted earlier, did follow the tendering and procurement processes and the council member has disclosed their interest in the businesses in the Annual Statement of Assets and Interests (discussed below) at least since 2013, the period for which the records were reviewed.

The failure to declare these conflicts suggests that the council and the municipality staff could use further training on conflict of interest as it relates to the MCCIA and the general principles of fairness including the perception of conflict.

Municipal change in payment approval process

We note that once the complainant took issue with the processes related to the purchase of the garbage truck tires, the municipality did change the procedure for approval of payments in October 2016 to isolate payments to businesses or suppliers where a council member is in a conflict of interest situation.

The process that is now in place requires that when the municipal administrators are made aware of purchases from a business in which a council member has an interest (at the time of our investigation only one council member was in that situation), then those payments are moved to a separate payment list for approval. Before this separate payment list comes before council for discussion, the council member is to declare the conflict and recuse themselves from the discussion and vote on approval for payment.

Since October 2016, the Central Record of Disclosure shows the council member recusing themselves from votes on payment five times. If payments are being made to a business where a signing authority is in conflict, then those cheques are removed from the other cheques and are signed by a non-conflicted signing authority. The CAO advises that this change in procedure is not yet established in policy.

Principles of Fairness

It is important to note that the MCCIA deals with conflicts arising from a narrow pecuniary (financial) interest. Traditionally, ombudsmen have taken a broader approach to conflict of interest. In our 2013 publication *Understanding Fairness, A Handbook on Fairness for Manitoba Municipal Leaders*, a conflict of interest is defined as when one's personal interest conflicts with the public's interest, or with one's duty as a public official. Further, it states, "The appearance or perception of conflict can be as harmful to public confidence as actual conflict."

Once a conflict between a public official's personal interests and a public decision is identified, it can be difficult to demonstrate that the decision was fair and not influenced by other factors.

This fact is recognized in section 84.1 of the Municipal Act, which requires each council to establish a code of conduct "to set guidelines that define the standards and values that the council expects members to meet in their dealings with each other, employees of the municipality and the public." Manitoba court decisions have also spoken to the reality that ethical behavior cannot be completely defined or limited by statute.

The Municipality of Swan Valley West Council Members' Code of Conduct supports the importance of achieving public trust by governing in a fair manner as follows:

Preamble: Public confidence and public trust are essential to good governance. To promote public confidence and public trust, members of the Municipality of Swan Valley West strive to govern in a fair, objective and transparent manner and in the best interests of the Municipality at all times.

Section 2.2 Principles: In carrying out their duties, members of the Council of the Municipality of Swan Valley West are expected to conduct themselves in such a way as to promote public trust and public confidence in the Council and in the Municipality.

The avoidance of conflicts of interest is one element of procedural fairness. All decision-making bodies, such as municipal councils, have an obligation to follow a fair and proper procedure when making decisions that may negatively affect individuals. While decisions of council are often the focus of this requirement, it also applies to other processes as well.

Our office encourages elected municipal officials to consider how participation in a particular decision may appear, as the appearance of bias in a decision can be as harmful to public confidence as actual bias. If there is a connection between a council member's personal interests and the decision, it can be difficult to demonstrate that the decision was not inappropriately influenced by personal interest.

The Municipal Council Conflict of Interest Act is not a complete ethical guide; as such, municipal council members would benefit from a broader more encompassing policy to assist in matters where there is an appearance of bias or personal interest.

Accordingly, Manitoba Ombudsman suggests that the municipality consider implementing a policy or expanding an existing policy to provide direction as to how council should proceed in matters in which a council member is perceived to have a personal interest.

3. Did the municipality comply with legislation with respect to the filing of the Annual Statements of Assets and Interests?

As noted earlier, the Annual Statement of Assets and Interests is a declaration that is made by each councillor that identifies their personal or direct family interests in property, businesses, memberships and investments.

Section 9(1) of the MCCIA requires the following:

Not later than the last day of November of each year...., every councillor shall file with the clerk of the municipality a statement disclosing assets and interests in accordance with section 10.

Section 9(2) goes on to say:

Where a councillor fails to comply forthwith with subsection (1), the clerk of the municipality shall forthwith notify the councillor in writing of the failure to comply, and the councillor shall, within 30 days of receiving the notification, file the statement referred to in subsection (1).

The complaint is specific to one council member failing to file their 2015 Statement of Assets and Interests by the end of November or after the 30-day notice provided by the CAO. The complainant suggests that the formal written notice was provided to all of the council members on the council agenda for December 22, 2015, item 9.3 CAO “Council Disclosure of Interest/Council Photo.” The complainant states that the specific council member did not file their statement until January 29, 2016, outside of the 30-day notice period, in violation of section 9(2) of the MCCIA.

The CAO confirms, given the ongoing issues with the amalgamation and some difficult decisions being addressed by council, the requirement to file the 2015 Statement of Assets and Interests forms was overlooked.

The CAO advises that it was their intention to remind council members of the requirement at the December 22, 2015 council meeting as noted above. The CAO further advised that the December 22, 2015 meeting went very long (12:45 a.m. according to the minutes) and many items were not covered, again as demonstrated in the minutes, including the need to file the statements, therefore there was no formal notice made to the council members on that date.

The CAO advises that the requirements were not discussed with council members again until after the January 12, 2016 council meeting, at which the council member in question and another council member were absent because of vacations.

The records for the 2015 declarations show that the majority of the council members filed their annual statements on January 12, 2015, with the two council members absent at the January 12 council meeting filing on January 29, 2016 (the council member of concern to the complainant) and February 2, 2016 (the other absent council member) shortly after their returns from vacation.

A review of the Annual Statements of Assets and Interests filed for 2013 through to 2016 shows that, with the exception of 2015, all documents for all council members were filed before the legislated November 30th deadline. The 2015 filings appears to be an anomaly. While there may be a violation of the act, given the consistency with which the municipality and the council members filed the required statements in other years, it does not seem reasonable to assume the council members wilfully violated the requirements of the legislation in 2015 and although late, the statements were filed.

4. Did the municipality comply with legislation with respect to requests to view records of the municipality, specifically the Central Record of Disclosures and the Annual Statements of Assets and Interests?

The complainant raised issues related to the access to the above noted records.

Section 6(5) of the MCCIA states:

The clerk of every municipality shall make the central record referred to in this section available for inspection by any person without charge during normal business hours.

Section 13(1) of the act states:

*The clerk of the municipality shall make every statement filed under Section 9 (Statement of Assets and Interests, **note added**) available for inspection by any person without charge during normal business hours.*

The Municipal Act also provides direction to municipalities on access to records, and although the act does not specifically mention the above noted records, it does provide direction on response times for other records.

Municipal records to be provided on request

263(1) *A chief administrative officer must, on the request of a person and within a reasonable time, provide access to any of the following municipal records that the municipality is required by regulation to keep at the municipal office:*

The complainant advises that they attended the municipal office to view the Annual Statements of Assets and Interests but was initially refused access to the records. He was later provided access to view the records; however he was not allowed to photocopy or take photographs of any of the statements.

The municipality advises that, as they do not have a specific date as to when the complainant requested access or to whom the complainant requested access, it is difficult to respond to this complaint.

The municipality does confirm that, when access was provided, the complainant was allowed to view the records, and make notes, but not take copies of the records. The information provided on the Annual Statement of Assets and Interests is personal in nature, including where the

council members bank. The municipality has taken the position that, as much as possible, they wish to protect that personal information and while recognizing that the information must be made available will only allow those requesting access to the statements to view the records.

With respect to the Central Record of Disclosure, the complainant advises:

- There was a request made for a copy of the 2015 Central Record of Disclosure, however access was refused. Sometime later the complainant was provided with a copy of the record for the entire 2015 year, dated January 18, 2016.
- On January 27 2016, the complainant attended at the municipal offices requesting a copy of the Central Record of Disclosure for the council meeting for the previous night (January 26 2016). The CAO advised that the records had not yet been prepared, but the document would be provided when completed. The complainant is of the opinion that Central Record of Disclosure should be made available immediately upon request.

The CAO acknowledges that in both instances, the complainant was not given immediate access to the records requested.

As noted earlier, 2015 was the amalgamation year. During the early part of the year, a new CAO was hired. When the request was made for the Central Record of Disclosure for 2015, the CAO noted that there were no notations for the first four months of the year and they had to go back over council minutes to recreate the record. As a result, the Central Record of Disclosure was not provided until sometime after the request. The CAO advises that on examining the minutes for the early part of the year there were no disclosures made. The first disclosure made in 2015 was in September.

With respect to the January 27, 2016 request, the CAO advised the complainant that, at the time of his request, the minutes had not been prepared. It usually takes a few days for staff to go through the meeting notes and prepare the draft minutes.

The municipality advised that they try to have draft minutes of the council meeting on their website within four to five working days after the meeting. Included in those draft minutes would be any declarations of conflict made by a councillor during the meeting. The minute notes are reviewed the day after the meeting and corrections made, resolutions are noted and, if necessary, tasks are assigned to municipal staff. The notes are then typed, reviewed and then put up on the municipality website as draft minutes. The minutes of record would be posted on the site after the council has approved them, generally at the next council meeting.

While the complainant is of the opinion that the Central Record of Disclosure should have been available immediately (the morning of the day after the council meeting) and that failing to provide the document at their request is a breach of the MCCIA, the act is silent on when access should be made available. However the Municipal Act, section 263(1) states that the documents referenced in that act should be made available within a reasonable time. It is not reasonable to expect documents that need to be prepared on the morning after the meeting be immediately available. The municipality's practice of preparing the minutes and having them available within four to five days of the actual meeting date is a reasonable effort.

FINDINGS AND SUGGESTIONS FOR ADMINISTRATIVE IMPROVEMENT

From discussions with the municipality, from the review of records, and noting the turnover in council members, it is evident that the amalgamation of the RM of Swan River and the Village of Benito has been challenging.

The complainant raised concerns about the municipality not being in compliance with sections of the Municipal Council Conflict of Interest Act, specifically related to council member requirements to declare conflicts, filing of required reports within legislated timeframes and providing access to records.

Our review of the evidence indicates that the municipality did follow the tendering and purchasing processes with respect to the purchase of the tires for the garbage truck and other purchases from the same business. However, the evidence indicates that a council member was in breach of the MCCIA with respect to the declaration of conflict of interest and two councillors were in breach for the filing of the Annual Statements of Assets and Interests. The evidence suggests that the breach with respect to the conflict of interest declarations was an oversight on the part of the municipality, as the municipality had been making purchases from the businesses in which the council member had a financial interest for several years and had never considered that there may be a conflict in the situation, even though the councillor in question had been declaring their interest in the business every year on the Statement of Assets and Interests. The municipal administration, once they became aware that the process for making payments was an issue took steps to strengthen the integrity of their payment process in respect to these issues. The breach with respect to the filing of the Annual Statement of Assets and Interests can be attributed to the stresses of the amalgamation as the 2015 filing is an anomaly when considered against the typical practice of the municipality.

Finally, the complainant's concern about access to records can also be partially related to the challenges of amalgamation. The 2015 Central Record of Disclosure was not complete when the complainant made their request, which required the municipality to reconstruct part of the record. As for the request for the January 2016 meeting minutes, the demand to review the draft minutes the morning after the council meeting was not reasonable as the municipality requires some administrative time to prepare the documents. Providing access to these records within a few days of a council meeting would seem more reasonable.

This said, it is clear that some of the issues raised by the complainant suggest that municipal staff and council members need more training on the requirements under the MCCIA, particularly related to the maintenance of the Central Record of Disclosure, citizen access to records, and the process for declaring conflicts and recusal. It may also be beneficial for staff and council members to take further training on the broader issues related to conflict of interest. In that regard, we have attached a copy of the previously mentioned ombudsman 2013 publication, *Understanding Fairness, A Handbook on Fairness for Manitoba Municipal Leaders*.

As a result of this investigation, our office makes the following suggestions for administrative improvements:

That all council members and senior administrative staff undertake training on conflicts of interest and the requirements of the MCCIA with regard to the declaration of a conflict of interest, the creation and maintenance of records, and citizen access to these records.

That the municipality create and endorse a written policy on how payments to businesses where a council member has a financial interest are handled.

Although the municipality has introduced a process to address the potential for conflict of interest with payment approval, it would be beneficial to have a written policy for staff and council members to follow in the likely event that there will continue be elected council members with an interest in a business in the municipality.

The policy should provide reasons for the requirement and the necessary actions for staff and for council members, including how to create the payment lists, how cheques will be signed and the expectations of council members that are in this type of conflict situation.

This concludes our investigation into these complaints.

MANITOBA OMBUDSMAN