

Manitoba Ombudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE 2017-0313

CITY OF WINNIPEG PARKING AUTHORITY

REPORT ISSUED ON APRIL 25, 2018

SUMMARY

A citizen whose licence plates were stolen complained to our office after receiving a parking ticket issued to a vehicle bearing the stolen plates. The complainant tried to appeal the ticket but missed the deadline for doing so even though she followed instructions provided to her by the City of Winnipeg 311 service. She was subsequently advised by the Winnipeg Parking Authority (the WPA) that it could not reconsider the parking violation and that the \$100 fine must be paid.

Our office found that the WPA followed the relevant legislation with respect to the issuing of the parking ticket and the associated time limitations for appeal. However, we are of the opinion that because the 311 service did not provide complete information on how to address the parking violation, there is an issue of administrative fairness to be considered. As a result, our office makes the following recommendations:

- That the WPA take steps to clearly communicate the requirement to request a review within the 30-day time limit, especially when there are unusual circumstances, as in the case of a reported theft of licence plates or a vehicle.
- That if the WPA continue to use the City of Winnipeg 311 service to provide information about its review process, it takes steps to ensure operators provide the complete information to citizens.
- That, in order to protect the privacy of citizens, the WPA and the Winnipeg Police Service formalize an agreement to exchange information related to police reports when citizens are contesting a parking ticket as a result of stolen licence plates or a stolen vehicle.
- That collection action taken against the complainant be withdrawn and the payment of the ticket not be pursued.

In response, the WPA has advised our office that it accepts the recommendations, including not enforcing the \$100 fine.

OMBUDSMAN ROLE AND JURISDICTION

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal bylaw. 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. Recommendations and administrative suggestions may be made to support and help public 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

The complainant believes she has been unfairly denied the opportunity to contest a \$100 parking fine. She indicated she followed instructions as provided to her by the City of Winnipeg but was never told that the 30-day deadline to formally file her appeal is fixed in legislation and cannot be exceeded.

BACKGROUND

The Winnipeg Parking Authority (the WPA) was designated as a Special Operating Agency of the City of Winnipeg in 2005 and is responsible for managing on-street metered parking, parking lots, and related assets owned and previously operated directly by the City of Winnipeg. The WPA is also responsible for enforcement with respect to parking-related offences, including the issuing of violation notices, and the collection of fines.

The Municipal By-law Enforcement Act (the MBEA) gives municipalities, including the City of Winnipeg, the authority to process and resolve parking violations and other contraventions of their bylaws using an administrative penalty scheme that does not involve court proceedings.

The administrative scheme includes the ability for a person who has received a penalty notice to voluntarily pay the penalty associated with the contravention or to request a review with a screening officer who has the authority to uphold, reduce or cancel a penalty notice, within the limits set by the MBEA.

The initial penalty notice with respect to a parking offence (commonly called a parking ticket) is generally left on the windshield of the vehicle. The penalty notice includes the date of the offence, details of the parking violation, the penalty amount, the licence plate number and a brief description of the vehicle.

According to the MBEA, the registered owner of the vehicle is responsible for the penalty regardless of who was driving at the time of the infraction. The registered owner will be

determined through the licence plate as shown on the penalty notice. For parking tickets, there is generally a discount available to the registered owner, if they pay the ticket within 15 days of the offence, otherwise the full amount becomes due. The registered owner has the option to pay or challenge the ticket within 30 days of receiving the parking ticket. If the registered owner does not pay or challenge the ticket, the MBEA requires the municipality to issue a final notice.

A final notice will provide the same information as the original parking violation, including the option to pay the penalty or request a review of the penalty notice by a screening officer. The final notice also advises the registered owner that, if they do not either pay the ticket or schedule a review within 30 days of the date of receiving the notice, they will be responsible for the full amount of the penalty and any costs incurred by the WPA to enforce payment of the ticket.¹

With respect to this matter, the complainant had the licence plates stolen from her vehicle on December 14, 2016. That same day she reported the theft to the Winnipeg Police Services (WPS) and was given a police report number.

On February 24, 2017 she received a final notice from the WPA with respect to a parking violation that occurred on December 23, 2016 for a vehicle bearing her stolen licence plates. The final notice stated that she had until March 29, 2017 to either pay the ticket or schedule a review with the screening officer.

That same day she received the final notice (February 24, 2017), the complainant contacted the City of Winnipeg's 311 service line. The 311 service is an online and telephone service provided by the City of Winnipeg to assist citizens in obtaining information on a variety of city services and programs. The final notice advises citizens that they can contact the 311 operator to obtain information on how to contest a parking violation offence.

In this instance, the 311 operator provided the complainant with information on how to contest the parking violation and she was advised that, in order to prove that the licence plates were stolen and that she had reported it to the police, the WPA screening officer would require a copy of the police report she made for the stolen plates.

To obtain a copy of the report, the Winnipeg Police Service required her to submit a completed Freedom of Information and Protection of Privacy Act (FIPPA) request. The operator did not inform the complainant that, despite the need to obtain a copy of the police report, the 30-day time limit still applied and that she should contact the WPA to set a review date as soon as possible to be within the time restrictions. Given the instructions from the 311 operator, it would not be unreasonable for someone to believe that the process to review the parking violation was underway.

As instructed, the complainant filed a FIPPA request, which was received by the WPS on March 2, 2017. The complainant subsequently received the police report on March 27, 2017; however, the complainant was out of the country until April 5, 2017. On her return she submitted the police report and her information to the WPA on April 13, 2017.

¹ A copy of a final notice from the WPA is attached as Appendix 1.

On May 16, 2017, the WPA advised her that the 30-day time limitation on the final notice (March 29, 2017) had passed and therefore the matter could not be reviewed. She was informed she would be responsible for the \$100 parking fine.

SCOPE OF THE INVESTIGATION

Our investigation of this complaint included the following:

- Interviews with the complainant
- Documentation received from the complainant
- Documentation received from the WPA
- Relevant legislation and bylaws
- Review of WPA website

ANALYSIS OF ISSUES AND EVIDENCE

1. Did WPA comply with applicable legislation, policies and practices with respect to its enforcement actions concerning this parking violation?

The WPA administers the screening process for reviewing parking penalties issued in accordance with the provisions of the Municipal By-law Enforcement Act. It is authorized to collect the administrative penalty for parking violations in accordance with section 22 of the MBEA which states the following:

Responding to a final notice

22(3) *A person to whom a final notice is delivered under subsection (1) may, within 30 days after delivery,*

- (a) pay the administrative penalty set out in the final notice; or*
- (b) request a review by a screening officer.*

If no action taken on final notice

22(5) *If the person to whom a final notice is delivered does not take any action under subsection (3) within the 30-day period, the administrative penalty is immediately due and payable to the municipality.*

The WPA asserts that after final notice of penalty is delivered, unless it is challenged within the time allowed in the notice and the legislation (that being 30 days), the legislation does not provide it with any discretion or option to extend the time for review. If no other action is taken within this period, the full penalty will come due.

In addition, the WPA is of the opinion that the complainant had sufficient time to contact the WPA with respect to the parking violation. It noted that between August 2016 and November 2017, there were 173 penalty notices submitted for review with the screening officer related to

stolen plates or stolen vehicles (including unauthorized use). The WPA advised that for all of those penalty notices, the requests for review were submitted within the legislated time period. The WPA also noted that of those penalty notices, 163 were cancelled, seven were reduced to a warning and three had the penalty reduced. The only one that was dismissed was the review request filed by the complainant.

Given the provisions of the MBEA, we are of the view that the WPA acted in accordance with the applicable legislation. It clearly has the authority to issue a final notice of parking penalties and, in the event that the person does not either make a voluntary payment or contest the ticket within the legislated timeline of 30 days from the notice date, to collect outstanding penalties in accordance with the provisions of the MBEA.

We also note that there were no other instances related to stolen licence plates/vehicles in which a review was granted to a citizen who missed the deadline for making such a request. In this context the complainant was not treated differently than anyone else.

2. Did the WPA adequately and accurately communicate to the complainant the necessity to request a review within the prescribed legislative time limit?

The final notice for an outstanding parking ticket states:

You have 30 days from the mailing date of this notice to:

- a) pay the administrative penalty as outlined above or*
- b) request a review of the penalty notice by a Screening Officer*

If no action is taken by (in this case 3/29/2017) the above noted penalty will be subject to collection action....

The final notice goes on to state:

You may request a review of the above noted penalty notice by a Screening Officer either by attending the Winnipeg Parking Authority at 495 Portage Avenue during business hours or through the WPA website at (website address).

A Screening Officer will review the evidence gathered at the time the penalty notice was issued and any evidence you present and may uphold, reduce or cancel the penalty notice where the Municipal By-Law Enforcement Act authorizes them to do so. For more information about the screening process please contact 311 or visit our website.

A review of the WPA website section titled “contest a ticket” allows for citizens to contest the ticket through an online screening option or to attend in person. The website clearly states that there is a 30-day limit on the ability to request a review by a screening officer.

In this instance, the complainant contacted 311 as instructed in the final notice. We reviewed the recorded conversation between the complainant and a 311 operator on February 24, 2017. The operator advised the complainant that they would need to provide the screening officer with a

copy of the police report on the stolen licence plates as evidence that she was not responsible for the parking violation. To obtain the police report, the operator advised that the complainant would need to file a FIPPA request and once it was received, provide the information to the WPA for consideration by the screening officer.

Based on our review of the evidence, the complainant took responsible and reasonable action to challenge the parking violation penalty. Upon returning from vacation and receiving the police report she provided it to the WPA and requested a review.

As noted earlier, there is a legislated 30-day response time limit on the final notice. Neither the information provided by the 311 operator or the website advised the complainant that regardless of the need to obtain a copy of the police report, it was necessary for the complainant to immediately contact the WPA to request a review with a screening officer to be within the legal time limits.

The WPA confirmed that by requesting a date with the screening officer, the person would be within the 30-day time limit even if it meant that the screening officer would request additional information (in this case the police report) in order to determine a resolution of the parking ticket.

The WPA advised that, as a result of our inquiry with respect to this complaint, the WPA modified the script for the 311 operators effective August 21, 2017 with the additional information as follows:

As a FIPPA request may take up to 30 days to be answered, (PERSON) are encouraged to submit the request for review by a Screening Officer as soon as possible in order to ensure that they do not miss the timelines mandated by provincial legislation.

The WPA also has advised that the process for obtaining information from the WPS with respect to police reports has subsequently changed and, as a result, a FIPPA request may no longer be required. The WPA now asks the citizen for their police report number and the WPA now contacts the WPS directly to confirm that there is a police report on record. However, there may still be situations where the screening officer requires a full police report and in those situations, the citizen will need to file a FIPPA request to get the report.

This is a positive administrative change. However, the WPA also advised that this is a relatively new change and as yet, there is no formal agreement between the WPA and the WPS to exchange the information and we recommend that, in order to ensure a citizen's privacy is properly protected, a more formal agreement to exchange only the required and relevant information be completed. The WPA should ensure that, as procedures change, the 311 operators are made aware of the changes so that they can properly advise citizens calling in for information.

It is our opinion that the evidence presented indicates that the complainant acted immediately in response to receiving the final notice of penalty on February 24, 2017. We note that the final notice was the first time the complainant became aware that she was being held responsible for a parking violation issued on December 23, 2016 for a vehicle bearing her stolen licence plates.

While we acknowledge that the complainant was advised of the 30-day time limit in the final notice, she relied on the information subsequently provided to her by the 311 operator and acted in a reasonable way in response to the final notice, based on those instructions. In our opinion, the information the 311 operator provided was not complete and resulted in the complainant not meeting the legislated time limits.

We recommend that, if the WPA is going to rely on the 311 service to be a main contact for citizens to contact when enquiring about the process for setting a review with a screening officer for a parking violation, then it is incumbent on the WPA to ensure that the information provided is correct and complete.

Enforcement of the Penalty

It may be that the MBEA is restrictive in that it does not provide for any form of discretionary action in exceptional circumstances. At the moment, the only option to a person in a circumstance such as the one for this complainant would be to take the issue to court for a judicial decision, which would be time consuming and potentially costly.

Notwithstanding the restrictions of the MBEA, the WPA still has some discretion with respect to the enforcement of the payment of a ticket. Some tickets will never be paid because they are unable to locate the person responsible for the ticket, the person will have no assets to attach or it is too expensive to pursue collection. The WPA can make a business decision as to whether they will take the payment enforcement action. Similarly, in this case, the WPA could decide that, at a minimum, they will not pursue payment because of the fairness issues raised in this situation.

Given the circumstances in this particular situation, we recommend that collection action taken against the complainant be withdrawn and the payment of the ticket not be pursued. If possible, the violation should be cancelled. If the violation cannot be cancelled because of the restrictions of the MBEA, then a note should be made on the violation record explaining why the fine is not due and that the violation should not be considered in any history of violations for the complainant.

FINDINGS AND RECOMMENDATIONS

We recognize that this complaint is an isolated situation, given the number of similar parking violations that were considered without exceeding the legislated timelines. Nevertheless, we remain of the opinion that there is an issue of fairness to be considered in this situation.

The legislation clearly states that there will be a 30-day limitation for the registered owner to respond to the final notice to contest the penalty notice by scheduling a review in front of a screening officer. In this respect, the WPA followed the legislative requirements with respect to the final notice process.

However the directions provided to the complainant by the 311 operator were not complete. Citizens rely on the information provided to them by public bodies. It is imperative that public bodies ensure the information being communicated is accurate and complete. In this instance,

that was not the case. As such, the complaint is supported in part and our office makes the following recommendations:

- **That the WPA take steps to clearly communicate the requirement to request a review within the 30-day time limit, especially when there are unusual circumstances, as in the case of a reported theft of licence plates or a vehicle.**
- **That if the WPA continue to use the City of Winnipeg 311 service to provide information about its review process, it takes steps to ensure operators provide the complete information to citizens.**
- **That, in order to protect the privacy of citizens, the WPA and the Winnipeg Police Service formalize an agreement to exchange information related to police reports when citizens are contesting a parking ticket as a result of stolen licence plates or a stolen vehicle.**
- **That collection action taken against the complainant be withdrawn and the payment of the ticket not be pursued.**

WPA response to recommendations

As already noted in the report the WPA has taken steps to address the recommendations by our office. The WPA is taking steps to ensure that legislated time limits are clearly communicated to individuals. This has included changing the script of the information that the 311 operators provide to citizens calling for information on how to contest a parking violation.

In addition, the exchange of information from the Winnipeg Police Service to the WPA has been streamlined and the WPA is working on a formalized agreement relating to the transfer of information between the two public bodies.

Finally, the WPA has advised our office that it is not actively pursuing collection of this outstanding penalty and will, in accordance with generally accepted accounting principles, initiate write-off action as approved by council as part of the annual budget process.

Our office is pleased that the WPA has adopted the recommendations. This now concludes our review of this matter.

MANITOBA OMBUDSMAN

The Winnipeg Parking Authority

495 Portage Avenue
Winnipeg, MB R3B 2E4



FINAL NOTICE / DERNIER AVIS

Customer name Nom du client ou de la cliente	[REDACTED]	Account number Numero de compte	[REDACTED]
Customer address Adresse du client ou de la cliente	WINNIPEG, MB [REDACTED]	Notice Date Date de l'avis	02/17/2017
		Date of Mailing Date de l'envoi	02/20/2017

In accordance with section 22 of the Municipal By-law Enforcement Act, this is the final notice of your contravention of the municipal by-law noted below.

En vertu du paragraphe 22 de la Loi sur les contraventions municipales, la présente constitue le dernier avis en ce qui a trait à votre contravention au règlement municipal indiqué ci-dessous.

Contravention # / Numéro de contravention	[REDACTED]	Contravention / Contravention	SOP/stop on snow r/c b/w 2AM/37AM w/in snow r/c prk ban Dec-Feb/Stop/arr. dans arière à dév. prio. durant inter., 2-7, déc-fév
Issue Time / Heure d'émission	12/23/2016 04:59		
Licence Plate / Plaque d'immatriculation	[REDACTED]		
Location / Lieu	[REDACTED]		
Penalty / Pénalité	\$100.00		

You have 37 days from the mailing date of this notice to:

- a) pay the administrative penalty as outlined above; or
- b) request a review of the penalty notice by a Screening Officer

If no action is taken by 3/20/2017, the above noted penalty will be subject to collection action up to and including potential lien and seizure of vehicle(s) registered in your name and/or garnishment of wages and/or bank accounts. This could also affect your credit rating. The owner must also pay all collection costs, including without limitation, bailiff fees, towing, storage, auction and administration charges.

Vous disposez de 37 jours à partir de la date d'envoi du présent avis pour prendre l'une des mesures suivantes:

- a) payer la pénalité administrative indiquée ci-dessus;
- b) demander la révision de l'avis de pénalité par un agent ou une agente de contrôle.

Le défaut de prendre des mesures au plus tard le 3/20/2017, peut entraîner la prise de mesures de recouvrement, y compris l'enregistrement d'un privilège, la saisie de tout véhicule immatriculé à votre nom et la saisie-arrêt de salaire ou des comptes bancaires. Cela pourrait aussi avoir une incidence sur votre cote de crédit. De plus, il incombe au propriétaire ou à la propriétaire de payer tous les frais liés au recouvrement, notamment les droits d'huissier ainsi que les frais de remorquage, de mise en fourrière, de vente aux enchères et d'administration.

Review by Screening Officer/Révision par un agent ou une agente de contrôle

You may request a review of the above penalty notice by a Screening Officer either by attending the Winnipeg Parking Authority office at 495 Portage Avenue during business hours or through the WPA website at www.theparkingstore.winnipeg.ca

A Screening Officer will review the evidence gathered at the time the penalty notice was issued and any evidence you present and may uphold, reduce or cancel the penalty notice where the Municipal By-Law Enforcement Act authorizes them to do so. For more information about the screening process please contact 311 or visit our website.

Vous pouvez demander la révision, par un agent ou une agente de contrôle, de l'avis de pénalité susmentionné en vous présentant au bureau de la Direction du stationnement de Winnipeg (DSW), 495, avenue Portage, pendant les heures d'ouverture, ou en vous rendant au site Web de la DSW, à www.theparkingstore.winnipeg.ca (en anglais seulement).

Un agent ou une agente de contrôle révisera les preuves recueillies au moment de l'émission de l'avis de pénalité ainsi que toutes les preuves que vous fournirez. Il ou elle pourra maintenir, réduire ou annuler la pénalité dans la mesure où l'autorise la Loi sur les contraventions municipales. Pour plus de renseignements sur la procédure de contrôle, veuillez communiquer avec le Service 311 ou vous rendre sur notre site Web (en anglais seulement).