

Manitoba mbudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2017-0471

RURAL MUNICIPALITY

ACCESS COMPLAINT: FEE ESTIMATE

PROVISIONS CONSIDERED: 6(2)

OTHER STATUTES CONSIDERED:
THE MUNICIPAL ACT 263(1)

REPORT ISSUED ON MAY 31, 2018

SUMMARY: A rural municipality (the RM) received a request under the Freedom of Information and Protection of Privacy Act (FIPPA or the act) for access to copies of agendas and minutes relating to a named RM committee. The RM was of the view that the named committee was ‘ad hoc’ and, therefore, its records were of a type that were not subject to the requirements of the Municipal Act with regard to minutes of committees. As a result, the RM issued an estimate of the fees payable to give access to the requested information. As a result of our investigation, we concluded that the records described to our office by the RM as relating to the named committee (meeting notes, etc.), while not in the prescribed form, appeared to be of the type which should be available as set out in clause 263(1)(f) of the Municipal Act. Therefore, under subsection 6(2) of FIPPA the access to information provisions of the act would not apply to the information requested by the complainant. In view of our conclusion, the Estimate of Costs issued by the RM would not be applicable to the complainant’s request and the RM made the decision to give the complainant access to the records of the named committee without requiring the payment of a fee. As the RM chose to give the complainant access as set out under section 263 of the Municipal Act, our office considered this complaint to be resolved.

BACKGROUND

The complainant initially requested to view the minutes of a named committee of a rural municipality (the RM or the public body) as he would normally be allowed to do under clause 263(1)(f) of the Municipal Act. The RM explained to the complainant that because the named committee is an 'ad hoc' committee there was no requirement to generate minutes which must be made available to the public. In a meeting with the complainant the RM acknowledged the existence of records related to meetings of the named committee (for example, meeting notes); however, the RM stressed that there were no formal agendas or minutes as are required to be kept under subsection 109(1) and section 133 of the Municipal Act. The complainant subsequently submitted an access to information request under the Freedom of Information and Protection of Privacy Act (FIPPA or the act) for records (agendas and minutes) of the named committee such as did exist.

COMPLAINT

The complainant made a request to an RM under FIPPA for access to the following information:

...copies of Agenda and Minutes for the RM of [name removed] [name of committee removed] Committee...

On November 23, 2017 the RM provided the complainant with an Estimate of Costs in the amount of \$210.00 in accordance with subsection 82(2) of FIPPA by which the complainant was advised that there would be a fee payable for responding to his request for access to records.

Under subsection 59(1) of FIPPA, a person who has requested access to a record under the act may make a complaint to the ombudsman about any decision, act or failure to act of a public body that relates to the request.

Our office received a complaint disputing the fee estimate issued by the RM on November 30, 2017.

POSITION OF THE COMPLAINANT

In information provided to our office, the complainant explained that he was initially told by the RM that, as the named committee was 'ad hoc,' no information (agendas or minutes) existed which would be responsive to his access request. However, on receiving an Estimate of Costs, the complainant concluded that there were records responsive to his request, in which case he felt

that the requested information should be provided without a fee estimate as required by subsection 263(1) of the Municipal Act, which reads:

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:*

- (a) assessment rolls;*
- (b) financial plans;*
- (c) financial statements;*
- (d) reports of the auditor;*
- (e) [repealed] S.M. 1997, c. 53, s. 4;*
- (f) the minutes of meetings of the council and council committees, except the minutes for any part of a committee meeting that was closed under subsection 152(3);*
- (g) by-laws and resolutions of the council and resolutions of council committees;*
- (h) a report of the Ombudsman received by the council under clause 37(2)(b) of The Ombudsman Act;*
- (i) an election finance statement filed by a registered candidate in an election.*

Council may authorize access to other records

263(2) *The chief administrative officer must provide access to any other municipal record in the possession of the municipality if he or she is authorized by the council to provide access to the record.*

Copy of municipal record

263(3) *On payment of a fee that the council may set by by-law, the chief administrative officer must provide a copy of a record to which access has been provided under subsection (1) or (2).*

Copying fees

263(4) *A fee must not exceed a comparable fee payable under The Freedom of Information and Protection of Privacy Act.*

Certain information not available

263(5) *Information about a voter that, under section 34 (personal security protection) of The Municipal Councils and School Boards Elections Act, was omitted from, or obscured on, the voters list or other record must not be made available for inspection or copying under this section.*

The complainant acknowledged that there may be a fee charged by the RM for providing access to minutes of council committees, for example, as is allowed under subsection 263(4) of the

Municipal Act for copying fees; however, he considered a fee of \$210.00, which included time for search and preparation, to be excessive and unreasonable.

POSITION OF THE PUBLIC BODY

On receiving the complaint, our office contacted the RM and asked it to provide information explaining how the Estimate of Costs was calculated. We also asked the RM to provide more information about the creation and maintenance of records relating to the committee named by the complainant.

The RM responded acknowledging that a committee as named by the complainant does exist; however, the committee is ‘ad hoc’ and not a committee of council as set out in the RM’s Organizational By-law. The RM explained that, therefore, there were no public meetings and no minutes kept (or required to be kept) and that no minutes existed for the purposes of subsection 263(1) of the Municipal Act. The RM noted that the named committee does not make any decisions or issue reports. However, the RM advised that there are ‘records’ relating to the named committee which can be located and access can be given to those records subject to payment of a fee as allowed under FIPPA to cover the costs to search for and prepare the records.

INVESTIGATION AND ANALYSIS

Are the records requested by the complainant subject to the access provisions of FIPPA?

Before conducting our investigation into the complaint concerning the Estimate of Costs issued by the RM, our office had to determine if the records requested by the complainant are subject to the access to information provisions set out under Part 2 of FIPPA. Our office considered the following provisions, which set out the scope of the act and the records to which the access provisions of FIPPA apply, to be relevant to this matter:

Scope of this Act

3 *This Act*

(a) is in addition to and does not replace existing procedures for access to records or information normally available to the public, including any requirement to pay fees;

Part does not apply to publicly available information

6(2) *This Part does not apply to information that is available to the public free of charge or for purchase.*

On reviewing the complaint, it appeared to our office that the requested records, if consisting of meeting notes as described, could be municipal records subject to clause 263(1)(f) of the Municipal Act and available to the complainant on request. These records would therefore be outside the application of FIPPA.

Our office reviewed the Organizational By-law of the RM and we observed that article 4.1 lists the committees established as standing committees of council. We noted that the named committee is not listed. However, we also observed that article 4.4 contemplates the establishment of ad hoc committees “as needed” and involving cross committee responsibilities such as major sewer and water projects. We also noted that the named committee appears in the RM’s minutes of council as providing reports on project progress.

Our office also observed that while the definition of ‘committee’ which is found in the RM’s Procedural By-law No. 4258 specifically excludes a committee of the whole council or local urban district from the definition of ‘committee’ for the purposes of the bylaw, it does not exclude an ‘ad hoc’ committee from the definition of ‘committee.’ It is our view that if ‘ad hoc’ committees were intended to be outside the requirements of the RM’s procedural and organizational bylaws, this would have been made clear in the bylaw.

Likewise, our office is of the view that if the Municipal Act had intended ad hoc committees to be outside the requirements for committees as described in that legislation, this would have been made clear in the Municipal Act. For example, subsection 109(2) of the Municipal Act makes clear that councils have the option of exempting a committee composed entirely of municipal employees (i.e. a project specific working group) from the requirements of subsection 109(1) of the Municipal Act with regard to minutes, as follows:

Application of council provisions to committees

109(1) *The following provisions apply to council committees, with necessary modifications:*

- (a) section 133 (minutes);*
- (b) subsections 135(1), (2) and (4) (quorum);*
- (c) sections 136 and 138 (voting).*

Council may exempt employee committee

109(2) *A council that establishes a committee composed entirely of municipal employees may exempt the committee from the application of subsection (1).*

On being asked by our office the RM confirmed that meetings of the named committee on occasion included members of the RM council as well as RM employees.

As a result of our investigation, we concluded that the records described to our office by the RM as relating to the named committee (meeting notes, etc.), while not in the prescribed form, appeared to be of the type which should be available as set out in clause 263(1)(f) of the Municipal Act. Therefore, under subsection 6(2) of FIPPA the access to information provisions of the act would not apply to the information requested by the complainant. In view of our conclusion, the Estimate of Costs issued under FIPPA by the RM would not be applicable to the complainant's request.

Our office explained our conclusions to the RM and the RM made the decision to give the complainant access to the records of the named committee without requiring the payment of a fee. As the RM chose to give the complainant access as set out under section 263 of the Municipal Act to records of the named committee without payment of the Estimate of Costs, our office considered this complaint to be resolved.

Manitoba Ombudsman
May 31, 2018