

# Manitoba Ombudsman

## REPORT UNDER

### THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2019-0556

#### CITY OF WINNIPEG - WINNIPEG POLICE SERVICE

#### ACCESS COMPLAINT: REFUSED ACCESS

PROVISIONS CONSIDERED: 17(1), 17(2)(b), 17(4)(e)(i), 7(2)

REPORT ISSUED ON AUGUST 17, 2020

**SUMMARY:** The City of Winnipeg – Winnipeg Police Service (WPS) received a request under the Freedom of Information and Protection of Privacy Act for records related to the WPS Professional Standards Unit discussing officers accused of drunk driving from January 1, 2017, to present. The WPS refused access to the responsive records, on the basis that the records pertain to third parties and any release of them would be an unreasonable invasion of privacy. We determined that the decision to refuse access to this information was authorized and the records could not reasonably be severed. As such, the complaint is not supported.

#### BACKGROUND

On November 6, 2019, the City of Winnipeg – Winnipeg Police Service (WPS or the public body) received a request under the Freedom of Information and Protection of Privacy Act (FIPPA or the act) seeking access to the following records:

*Please provide a copy of any correspondence to or from the Winnipeg Police Service professional standards unit discussing officers accused of drunk driving from Jan. 1, 2017 to present.*

The WPS responded on November 26, 2019, refusing access to the responsive records in full. To support its decision to withhold the responsive records, in full, the public body relied on the following provisions of FIPPA: 17(1); 17(2)(b).

We received a complaint about the public body's decision to refuse access on December 11, 2019.

In submitting the complaint, the complainant advised that he had previously made requests for information about officers charged with another type of offence and he had been given records, in part. The complainant disputed the public body's claim that the redactions were intended to protect a third party and further suggested that the redactions should not apply as the third party in this case would be an employee of the public body.

## **DISCUSSION OF THE ISSUES AND FINDINGS**

We notified the public body of the complaint on December 23, 2019.

In responding to our office, the WPS confirmed that it withheld records from its Professional Standards Unit that discussed officers accused of driving impaired. The public body explained that the WPS members were off duty at the time of the occurrences being investigated and were considered to be third parties. Therefore, the public body determined that any release of information about these third parties would be an unreasonable invasion of their privacy. The public body noted it considered whether the records could be severed but determined that it could not disclose information without violating third party privacy.

The public body stated that it applied subsection 17(1) of FIPPA in conjunction with clause 17(2)(b) to the records in their entirety as the personal information in the records was found to be compiled in relation to and identifiable as part of criminal investigations by the police into possible violations of a law. The public body determined that because disclosure of the information was not necessary to further investigate or prosecute, the records could not be released.

Along with its representations, the WPS provided our office with unsevered copies of the responsive records. We proceeded to consider the provisions relied upon by the public body to refuse access, in relation to the information that was withheld under these provisions.

### **Does the mandatory exception to disclosure in section 17 apply to the information withheld under this exception, and if so, can the records reasonably be severed as required by subsection 7(2) of FIPPA?**

FIPPA defines personal information as recorded information about an identifiable individual including an individual's name, address, telephone number, email address, and personal views or opinions. Personal information also includes information that does not directly identify an individual but when combined with information otherwise available could allow an individual to be identified.

Subsection 17(1) is a mandatory exception to access, which states that the head of a public body is required to refuse to disclose personal information about another individual (a third party) if the disclosure would be an unreasonable invasion of the third party's privacy.

***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) identifies types of personal information which, if disclosed, are deemed to be an unreasonable invasion of privacy. In this case, the city withheld third-party personal information under subsection 17(1) and clause 17(2)(b) which provide 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.*

***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*

*(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of a law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;*

Clause 17(2)(b) protects a third party's personal information that was compiled and is identifiable as part of an investigation into a possible violation of a law. The third party may be any identifiable individual whose personal information is captured in such records. This exception applies to this type of information regardless of the status of an investigation (whether it is ongoing or concluded) or the outcome (whether or not any individual is charged with or found guilty of any violation of a law).

Based on our review, we determined that the information is of the type described in clause 17(2)(b), and therefore its disclosure would be deemed to be an unreasonable invasion of privacy. We considered the complainant's position that because the information is about employees of a public body, the exception should not apply. This is a relevant consideration because subsection 17(4) sets out situations where disclosures of information described in subsection 17(2) are not an unreasonable invasion of privacy. One of these situations relates to limited types of personal information about an individual who is an employee of a public body.

***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,*

Based on our review of the withheld information and our consideration of the positions set out by both the complainant and the public body, we concluded that subclause 17(4)(e)(i) does not apply to the information at issue, because it is not one of the types of information listed in this

provision. Because the limit to the exception in subclause 17(4)(e)(i) does not apply, the information is required to be withheld in accordance with subsection 17(1) in conjunction with clause 17(2)(b).

Our next consideration was whether the excepted information could reasonably be severed from the records, as is required by subsection 7(2) of FIPPA.

***Severing information***

*7(2) The right of access to a record does not extend to information that is excepted from disclosure under Division 3 or 4 of this Part, but if that information can reasonably be severed from the record, an applicant has a right of access to the remainder of the record.*

We note that significant media attention accompanied one or more incidents which are the subject of this access request and that information had been widely and publicly shared. Because identifying information is already publicly available regarding some of the individual officers, disclosure of additional information (even without obvious identifiers, such as names) is likely to render the individual officers that are the subject of this request for access identifiable (particularly to those who know or are acquainted with these individuals). Disclosing information about any investigations into the conduct of these officers could therefore reveal personal information that can be associated with an identifiable person. As such, based on our review, we are satisfied that the records could not reasonably be severed to release any information to the complainant.

Based on our review of the records, we determined that the city was required to refuse access to this information under the mandatory exceptions to disclosure provided by subsection 17(1) and clause 17(2)(b) of FIPPA.

We recognize that information about investigations of significant allegations of misconduct by police officers may be considered to be a matter of public interest because it relates to accountability of the police for the impartial administration of justice. However, the exceptions to access in section 17 of FIPPA are mandatory, and are not subject to any limits based on public interest considerations. As such, when the WPS is responding to an access request, it has no discretion to release information subject to a mandatory exception, and our office cannot ask a public body to breach the requirements of FIPPA. We also observe that there are other processes outside of FIPPA, such as investigations by the Independent Investigation Unit or the Law Enforcement Review Agency, that exist to provide accountability for police administration of justice. During our investigation, the WPS advised that it would be prepared to provide the complainant with the total number of officers accused of impaired driving from January 1, 2017, to November 6, 2019. As the complainant advised our office that he was not interested in receiving this number, we did not ask the public body to release this information to the complainant.

## **CONCLUSION**

Based on our finding, the complaint is not supported.

In accordance with subsection 67(3) of the Freedom of Information and Protection of Privacy Act, the complainant may file an appeal of the decision by the City of Winnipeg to refuse access to the Court of Queen's Bench within 30 days after receipt of this report.

August 17, 2020  
Manitoba Ombudsman