

Manitoba Ombudsman

Title	Report with recommendations under FIPPA and report on compliance with recommendations
Case number	2020-0634
Act	Freedom of Information and Protection of Privacy Act
Public body	Manitoba Executive Council Office
Type of access complaint	No response
Provisions considered	9 and 11(1)
Date of public release	December 24, 2020

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Summary:

A request was made under the Freedom of Information and Protection of Privacy Act (FIPPA) to Manitoba Executive Council (MEC) for access to records. Three months after receiving the access request, Manitoba Executive Council issued a fee estimate. The applicant promptly paid the fee estimate. Another eight months passed, and MEC had not yet made an access decision.

We found that MEC did not comply with the time limit for responding to the request and it did not uphold its duty to assist the applicant. The ombudsman recommended that MEC make an access decision by November 30, 2020, and provide a copy of that decision to the complainant and our office.

FIPPA required that MEC provide our office with its response to our report by November 23, 2020, to indicate whether it accepted the recommendations. We received the response from MEC on November 27, 2020, accepting the recommendations. MEC made an access decision on December 4, 2020.

Manitoba Ombudsman

**REPORT WITH RECOMMENDATIONS UNDER
THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
CASE 2020-0634**

MANITOBA EXECUTIVE COUNCIL OFFICE

ACCESS COMPLAINT: NO RESPONSE

PROVISIONS CONSIDERED: 9 and 11(1)

REPORT ISSUED ON NOVEMBER 6, 2020

SUMMARY: The public body received an access request on November 27, 2019, seeking access to records pertaining to the applicant. It issued a fee estimate on February 21, 2020, which the applicant promptly paid in full. Nearly 11 months have passed since the access request was received and the public body has still not responded with an access decision. Our investigation found that the public body failed to respond within the time period provided under FIPPA and has failed in its duty to assist the applicant. As such, we determined that the complaint was supported. This report contains recommendations to the public body.

BACKGROUND

On November 27, 2019, Manitoba Executive Council (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:

I wish to obtain any and all records in Executive council that deal with myself, or my role as [removed] from 2016-2019.

The public body determined that fees were payable to process the request and issued a fee estimate on February 21, 2020, totaling \$1,200. The complainant contacted our office on February 26, 2020, and filed a complaint about the fee estimate issued by the public body. On May 19, 2020, we issued our report finding that the fee estimate was authorized.

The complainant paid the fee estimate in full on or about February 28, 2020, while awaiting an access decision from the public body. On June 9, 2020, our office received a complaint about the lack of response.

DISCUSSION OF ISSUES AND FINDINGS

FIPPA prescribes a time limit in which a public body is required to respond to a request for access:

Time limit for responding

11(1) *The head of a public body shall make every reasonable effort to respond to a request in writing within 30 days after receiving it unless*

(a) the time limit for responding is extended under section 15; or

(b) the request has been transferred under section 16 to another public body.

There is a requirement under FIPPA to make every reasonable effort to respond to the request within 30 days of receipt, unless extended under section 15 or transferred under section 16. Manitoba Executive Council Office did not transfer the request, extend the 30-day time limit for responding, or make a request to the ombudsman for a longer extension. Therefore, the 30-day time limit for responding to the application was December 27, 2019.

In addition, FIPPA imposes a duty on public bodies to assist applicants, in terms of responding without delay, openly, accurately, and completely. Section 9 of FIPPA states as follows:

Duty to assist applicant

9 *The head of a public body shall make every reasonable effort to assist an applicant and to respond without delay, openly, accurately and completely.*

The complainant advised our office that he did not receive any communication further to the public body's acknowledgement that his request had been received. The complainant provided our office with email correspondence with the public body and we note that he contacted the public body three times in the month of February to request updates on the processing of this request.

The public body issued a fee estimate on February 21, 2020. Typically, when a fee estimate is issued, the time limit for responding is suspended until the fees are paid. However, in this case, the fee estimate was issued well after the date by which the public body was obliged to provide an access decision and the complainant paid the fees in full on or about February 28, 2020. Manitoba Executive Council ought to have responded promptly and without delay once those fees were paid.

Further to our notification to Manitoba Executive Council of this complaint, the public body advised our office on June 15, 2020, that it was still experiencing delays caused by the COVID-19 pandemic, and that these delays were affecting the processing of FIPPA requests. The public body indicated it would attempt to prioritize the processing of this request in light of the fee estimate having been paid.

On June 29, 2020, we again contacted the public body and were advised that the search for records had been completed, and all responsive records were compiled and with the FIPPA coordinator for review and potential severing. The FIPPA coordinator advised that they had been assigned to other duties within the department of Finance, reducing the amount of time able to be dedicated to processing FIPPA requests.

Although the public body provided a series of frequent and routine updates, it continued to advise that it was unable to make significant progress processing this request due to workload volumes. The last update we received from the public body regarding this matter was September 8, 2020.

Our office made several attempts to ascertain when a response would be made by the public body. Despite our repeated attempts, we did not receive any specific details on when the public body would be responding.

The public body has not yet responded to the complainant regarding whether access will be granted nor has it provided a letter indicating any reason for the delay. In fact, Manitoba Executive Council has taken almost 11 months since the request was received, and has taken over seven months since the fee estimate was paid in full.

Our office found that Manitoba Executive Council failed to respond within the time period as set out in subsection 11(1) of FIPPA and has not fulfilled its duty to make every reasonable effort to assist an applicant and to respond openly, completely, and without delay.

RECOMMENDATIONS

Based on the findings, the ombudsman makes the following recommendations, in consideration of the various attempts made by our office to resolve this matter:

1. The ombudsman recommends that the public body respond to the complainant no later than November 30, 2020, and provide a decision on whether access will be granted, in accordance with section 12 of FIPPA.
2. The ombudsman recommends that the public body submit to our office a copy of its response on the date that it is provided to the complainant.

HEAD'S RESPONSE TO THE RECOMMENDATIONS

Under subsection 66(4), Manitoba Executive Council must respond to the ombudsman's report in writing within 15 days of receiving this report. As this report is being sent by email to the head on this date, the head would be required to respond by November 21, 2020. However, because that day is a Saturday, the time limit to respond is extended to the next regular business day. As such, the head shall respond by Monday, November 23, 2020. The head's response must contain the following information:

Head's response to the report

66(4) *If the report contains recommendations, the head of the public body shall, within 15 days after receiving the report, send the Ombudsman a written response indicating*

(a) that the head accepts the recommendations and describing any action the head has taken or proposes to take to implement them; or

(b) the reasons why the head refuses to take action to implement the recommendations.

OMBUDSMAN TO NOTIFY THE COMPLAINANT OF THE HEAD'S RESPONSE

When the ombudsman has received Manitoba Executive Council's response to her recommendations, she will notify the complainant about the head's response as required under subsection 66(5).

HEAD'S COMPLIANCE WITH RECOMMENDATIONS

If the head accepts the recommendations, subsection 66(6) requires the head to comply with the recommendations within 15 days of acceptance of the recommendations or within an additional period if the ombudsman considers it to be reasonable. Accordingly, the head should provide written notice to the ombudsman and information to demonstrate that the public body has complied with the recommendations and did so within the specified time period.

November 6, 2020
Manitoba Ombudsman

Manitoba Ombudsman

REPORT ON COMPLIANCE WITH RECOMMENDATIONS UNDER THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2020-0634

MANITOBA EXECUTIVE COUNCIL OFFICE

ACCESS COMPLAINT: NO RESPONSE

SUMMARY: In a letter dated November 27, 2020, Manitoba Executive Council (MEC) provided its response to the ombudsman's report with recommendations under the Freedom of Information and Protection of Privacy Act accepting the recommendations. MEC made its access decision on December 4, 2020, and provided it to the complainant and the ombudsman.

COMPLIANCE WITH RECOMMENDATIONS

On November 6, 2020, the ombudsman issued a report with recommendations in this case following the investigation of a complaint against Manitoba Executive Council (MEC) about it not responding to an access request. The ombudsman recommended that MEC make an access decision by November 30, 2020, and provide a copy of that decision to the complainant and our office.

Subsection 66(4) of FIPPA required that MEC respond to the ombudsman's report by November 23, 2020, to indicate whether the recommendations have been accepted. On November 27, 2020, MEC responded to the ombudsman stating that it accepted the recommendations as set out in our report.

Under subsection 66(6) of FIPPA, when a public body accepts a recommendation it is required to comply with the recommendation within 15 days or within such additional time as the ombudsman considers reasonable. In accepting the recommendations, MEC agreed to make its access decision by November 30, 2020, as specified in the recommendations set out in the report. MEC made its access decision by letter dated December 4, 2020. On December 9, 2020, the complainant confirmed that he had received the access decision that granted partial access to the records responsive to the access request.

CONCLUSION

Manitoba Executive Council did not comply with the time limit to respond to the ombudsman's report and recommendations. The public body accepted the recommendation to make its access

decision by November 30, 2020; however, it did not comply with that recommendation. Nevertheless, the public body did make its access decision on December 4, 2020, and therefore the ombudsman did not pursue further action, as permitted under subsection 66.1(1) of FIPPA, to request a review of this matter by the information and privacy adjudicator.

Manitoba Ombudsman
December 22, 2020