

Manitoba Ombudsman

Title	Report with recommendations under the Freedom of Information and Protection of Privacy Act (FIPPA) and report on compliance with recommendations
Case number	2020-1026
Act	Freedom of Information and Protection of Privacy Act
Public body	Manitoba Finance
Type of access complaint	No response
Provisions considered	9, 16(2)(b), 59(5), and 60(3)
Date of public release	September 3, 2021

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Manitoba Ombudsman

REPORT WITH RECOMMENDATIONS UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2020-1026

MANITOBA FINANCE

ACCESS COMPLAINT: NO RESPONSE

PROVISIONS CONSIDERED: 9, 16(2)(b), 59(5), 60(3)

REPORT ISSUED ON JUNE 3, 2021

SUMMARY: The public body received an access request on February 24, 2020. It was required to issue an access decision to the applicant within 30 days of receiving the request. Almost 16 months have passed since the public body received the access request and it has not yet responded to the applicant with an access decision. Our investigation found that the public body failed to respond within the time limit provided by FIPPA and failed in its duty to assist the applicant. As such, the complaint is supported. This report contains recommendations to the public body.

BACKGROUND

Manitoba Finance (the public body) received an access request under the Freedom of Information and Protection of Privacy Act (FIPPA) on February 24, 2020. The request had initially been submitted to Manitoba Indigenous and Northern Relations on February 13, 2020, which transferred the request to Manitoba Finance under subsection 16(1) of FIPPA.

The applicant requested the following records:

The “Interim Provincial Policy For Crown Consultations with First Nations, Metis Communities and Other Aboriginal Communities” [...] states:

EVALUATION: This Policy will be reviewed periodically to determine if consultation is sufficiently occurring to meet the Crown’s obligations to consult.

Please provide copies of all such evaluations.

Further to this, please provide:

- the dollar amounts paid out under the Crown-Aboriginal Consultation Participation Fund in each of the last 10 fiscal years

- itemization of the recipients of these payments, and the project, action or decision from which the consultation arose in each case
- total amount spent by the Manitoba Government on Section 35 consultation (both via the Crown-Aboriginal Consultation Participation Fund as well as other external and internal expenditures) related to the Kelsey Generating Station between 2008 and the present
- total amount spent by the Manitoba Government on Section 35 consultation (both via the Crown-Aboriginal Consultation Participation Fund as well as other external and internal expenditures) related to the Churchill River Diversion between 2009 and the present

On July 28, 2020, the applicant contacted our office and we received a complaint about Manitoba Finance's failure to respond to the request.

PRELIMINARY MATTER

We note that FIPPA requires a complaint about a public body's failure to respond to be submitted to our office within 120 days from the date the request was submitted. Subsection 60(3) of FIPPA reads as follows:

120-day time limit for failure to respond

60(3) *If the head of a public body fails to respond in time to a request for access to a record, the failure is to be treated as a decision to refuse access, in which case the complaint must be delivered to the Ombudsman within 120 days after the request for access was made.*

As the complaint was not made within the time limit required by FIPPA, the complaint could not be accepted. Nevertheless, we considered that the applicant had submitted the request over five months prior and our office was provided with documentation demonstrating the applicant received no contact from Manitoba Finance until July 27, 2020, after the applicant initiated contact with the public body to inquire about the status of the access request. At that time, the applicant was told the response would be further delayed. As such, we determined that there were reasonable grounds for our office to initiate a complaint under subsection 59(5) of FIPPA. This provision reads as follows:

Ombudsman may initiate a complaint

59(5) *The Ombudsman may initiate a complaint respecting any matter about which the Ombudsman is satisfied there are reasonable grounds to investigate under this Act.*

On August 6, 2020, our office notified Manitoba Finance of this complaint about its failure to respond to the applicant.

DISCUSSION OF THE ISSUES AND FINDINGS

Subsection 16(1) of FIPPA permits an access request to be transferred to another public body. Subsection 16(2) requires the public body that receives the transferred request to respond to it within 30 days of receipt, as follows:

Response within 30 days after transfer

16(2) *If a request is transferred under subsection (1),*

(b) the head of the public body to which the request is transferred shall make every reasonable effort to respond to the request within 30 days after receiving it unless that time limit is extended under section 15 or notice is given to a third party under section 33.

In addition, FIPPA imposes a duty on public bodies to assist applicants, which includes responding without delay. Section 9 of FIPPA states:

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.*

Upon being notified of the complaint, Manitoba Finance advised our office on August 6, 2020, that the responsive records were held by Treasury Board and estimated that it would require until October to process the request. Our office continued to follow-up with the public body regarding the status of the access decision. On November 2, 2020, the public body advised it was still compiling records. On December 29, 2020, Manitoba Finance confirmed the responsive records had been received by the FIPPA coordinator and were undergoing review. We did not receive any specific details on when the public body would be responding.

On March 23, 2021, Manitoba Finance advised our office that it anticipated providing the applicant with an access decision within three to four weeks. This timeframe passed without the public body providing an access decision to the applicant or providing our office with any specific details on when the public body would be responding.

Manitoba Finance has not issued an access decision with respect to the request despite almost 15 months passing since it received the access request.

Our office found that Manitoba Finance failed to respond within the time period set out under clause 16(2)(b) of FIPPA, and has not fulfilled its duty to respond to the applicant without delay.

RECOMMENDATIONS

Based on the finding, the ombudsman makes the following recommendations to Manitoba Finance, 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 applicant no later than June 18, 2021, 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 not charge the applicant fees for processing the request, should any be applicable.
3. 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 applicant.

HEAD'S RESPONSE TO THE RECOMMENDATIONS

Under subsection 66(4), Manitoba Finance 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 June 18, 2021. 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 APPLICANT OF THE HEAD'S RESPONSE

When the ombudsman has received Manitoba Finance's response to her recommendations, she will notify the applicant about the head's response.

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.

June 3, 2021
Manitoba Ombudsman

Manitoba Ombudsman

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

CASE 2020-1026

MANITOBA FINANCE

ACCESS COMPLAINT: NO RESPONSE

SUMMARY: In a letter dated June 25, 2021, Manitoba Finance provided its response to the ombudsman's report with recommendations under the Freedom of Information and Protection of Privacy Act accepting the recommendations. Manitoba Finance made its access decision on June 18, 2021, and provided it to the applicant and the ombudsman.

COMPLIANCE WITH RECOMMENDATIONS

On June 3, 2021, the ombudsman issued a report with recommendations in this case following the investigation of a complaint against Manitoba Finance (the public body) about it not responding to an access request. The ombudsman recommended that Manitoba Finance make an access decision by June 18, 2021, and provide a copy of that decision to the applicant and our office.

Subsection 66(4) of FIPPA required that Manitoba Finance respond in writing to the ombudsman's report by June 18, 2021, to indicate whether the recommendations have been accepted. The public body notified our office that it was issuing its access decision to the applicant as recommended and providing a copy to our office. Our office received a copy of the access decision letter on June 17, 2021, as the public body was preparing to issue it.

The public body was required to respond in writing to the ombudsman's report by June 18, 2021, however it did not do so until June 25, 2021. Manitoba Finance's response to the ombudsman stated that it accepted the recommendations as set out in our report and complied with the recommendations.

CONCLUSION

Manitoba Finance did not comply with the time limit to respond in writing to the ombudsman's report and recommendations. As the public body accepted the recommendation to make its

access decision by June 18, 2021, and it complied with that recommendation, no further action was required.

Manitoba Ombudsman
July 16, 2021