

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2021-0347

MANITOBA FINANCE

PRIVACY COMPLAINT: DISCLOSURE

PROVISIONS CONSIDERED: 36(1)(c), 42(2), 44(1)(a)

REPORT ISSUED ON MAY 25, 2021

SUMMARY: Our office was contacted by an individual who had submitted information to the Manitoba COVID Tip Line, and believed that there had been an unauthorized disclosure of their personal information from the tip line to the City of Winnipeg. Although the individual did not wish to make a formal complaint at that time, our office reviewed the COVID Tip Line Report Form and identified concerns about what individuals were told would happen with the information they provided through the form. These concerns were shared with Manitoba Finance, the public body responsible for the tip line. Subsequently, in February 2021, the individual submitted a complaint to our office under the Freedom of Information and Protection of Privacy Act (FIPPA) about their concern of unauthorized disclosure of their personal information. Our investigation determined that the disclosure of the complainant's personal information by Manitoba Finance to the City of Winnipeg was authorized under FIPPA and the complaint was not supported. During our investigation, Manitoba Finance expanded the wording of the notice on the COVID Tip Line Report Form, which substantively addressed our concerns.

BACKGROUND

In late 2020, our office was alerted to a privacy concern regarding the Manitoba COVID Tip Line Report Form. An individual reported to our office that they had submitted a concern using the Manitoba COVID Tip Line Report Form, and were surprised that their personal information had been shared with the City of Winnipeg, as they were under the impression that their personal information would not be disclosed. The individual believed their personal information had been disclosed as the City of Winnipeg contacted the individual about the concern they had submitted to the provincial tip line. The individual believed this was an unauthorized disclosure as the

information was supposed to be confidential. The individual advised our office that they had also made an inquiry to the Manitoba COVID Tip Line about the apparent disclosure. At the time, the individual did not wish to make a formal complaint, advising they would wait to hear back from the COVID Tip Line.

Although the individual did not pursue a complaint at that time, our office looked into what information the public was being given about how the information they provided on the tip line report form might be disclosed. We observed that the online notice read as follows:

Please note: All information provided will be kept confidential. We will not disclose your personal information without your consent, unless we are required or authorized to do so by law or other regulation. Your contact information is collected so we can follow-up with you if we have additional questions or require clarification about the compliance/enforcement issue. (<https://forms.gov.mb.ca/covid-tip-line/>)

In December 2020, our office contacted Manitoba Finance, who is the public body responsible for the Manitoba COVID Tip Line. Without identifying the individual, our office communicated the concern we received to Manitoba Finance. We suggested that Finance expand the notice to include a statement that information may be shared with other entities. Manitoba Finance responded, indicating to our office that the matter of notice would be addressed.

COMPLAINT

Under subsection 59(3) of the Freedom of Information and Protection of Privacy Act (FIPPA) an individual who believes that his or her personal information has been collected, used, or disclosed by a public body in violation of FIPPA may make a complaint to the ombudsman.

On February 22, 2021, our office received a privacy complaint alleging an unauthorized disclosure of personal information from Manitoba Finance to the City of Winnipeg. The complaint was received from the same individual that had previously brought the issue to our attention informally. Upon receiving the complaint, our office checked the Manitoba COVID Tip Line Report Form (<https://forms.gov.mb.ca/covid-tip-line/>), and observed that the wording of the notice had remained unchanged since December 2020, when we had contacted Manitoba Finance.

INVESTIGATION

On February 24, 2021, our office informed Manitoba Finance that the individual had made a formal complaint, and that in reviewing the complaint we noted that the wording of the online reporting form had not changed. We indicated that changing the notice promptly would ensure that other individuals understand what will happen with their personal information that they provide and would avoid the experience that the complainant had. Several days later, we sent further correspondence requesting that Finance clarify under which provisions and legislation the disclosure of the complainant's personal information was authorized. Further contact with Finance on these matters occurred through March, April, and May 2021, with information being received from the public body in stages.

In the remainder of this report, we have broken down our consideration of the issues into two sections. The first section considers the disclosure of the complainant's personal information and the public body's authority for making the disclosure, and the second section addresses issues relating to the wording of the notice on the COVID Tip Line Report Form.

Disclosure and Authority for Disclosure

In April 2021, the public body provided our office with clarification about the information it had collected from the complainant and that it had disclosed to the City of Winnipeg. Finance informed our office that the information was disclosed to the City of Winnipeg, as the report was about a matter for which the city was responsible.

Personal information is defined in FIPPA (subsection 1(1)). The clauses relevant to this investigation are as follows:

"personal information" means recorded information about an identifiable individual, including

- (a) the individual's name,*
- (b) the individual's home address, or home telephone, facsimile or e-mail number,*
- (l) the individual's own personal views or opinions, except if they are about another person,*

Our office confirmed that the following personal information was collected and disclosed: name, email address, telephone number, and the complainant's personal views and opinions. Upon confirming that a disclosure of personal information took place, we next considered if the disclosure was authorized.

Privacy protections, including those concerning disclosure, are set out in Part 3 of FIPPA. The general duties of public bodies concerning disclosure are that every disclosure must be authorized under the act, and must be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.

A public body is permitted (authorized) to disclose personal information if one of the circumstances set out under section 44 of FIPPA applies to the disclosure. In some circumstances, a disclosure may be authorized by FIPPA because the disclosure is required or authorized under another act.

As part of our investigation, we asked that Finance clarify under which legislation (act) and specific provision(s) it was authorized to disclose the complainant's personal information. In May 2021 Finance informed our office that the disclosure was authorized under the following provisions of FIPPA:

Disclosure of personal information***44(1)*** *A public body may disclose personal information only*

- (a) for the purpose for which the information was collected or compiled under subsection 36(1) or for a use consistent with that purpose under section 45;*
- (l) where necessary to protect the mental or physical health or the safety of any individual or group of individuals;*
- (r) for law enforcement purposes or crime prevention;*

Finance explained that with respect to the COVID Tip Line, personal information is collected by Finance and disclosed to law enforcement agencies to assist in the enforcement of public health orders aimed at protecting individuals and groups of individuals from COVID-19. Finance further explained that the disclosure of the personal information has a direct connection with the law enforcement purposes for which it was collected.

For a disclosure to be authorized under subsection 44(1) of FIPPA, the disclosure needs only meet one of the criteria listed. We first considered whether the disclosure of the personal information was authorized by clause 44(1)(a) of FIPPA.

In order for a disclosure to be authorized under clause 44(1)(a) of FIPPA, the disclosure must be for the purpose for which the information was collected or compiled under subsection 36(1) or a use consistent with that purpose under section 45. The public body advised that collection of the personal information occurred under clause 36(1)(c) of FIPPA. The relevant provision reads as follows:

Purpose of collection of information***36(1)*** *No personal information may be collected by or for a public body unless*

- (c) the information is collected for law enforcement purposes or crime prevention.*

FIPPA (Part 1) provides the following definition of “law enforcement”:

"law enforcement" *means any action taken for the purpose of enforcing an enactment, including*

- (a) policing,*
- (b) investigations or inspections that lead or could lead to a penalty or sanction being imposed, or that are otherwise conducted for the purpose of enforcing an enactment, and*
- (c) proceedings that lead or could lead to a penalty or sanction being imposed, or that are otherwise conducted for the purpose of enforcing an enactment;*

FIPPA (Part 1) also provides a definition for “enactment”:

“enactment” *means an Act or regulation;*

We observe that the COVID Tip Line Reporting Form provides the following guidance on its website (<https://forms.gov.mb.ca/covid-tip-line/>, accessed May 4, 2021):

Fill out this form to share information with enforcement agencies about possible violations of the public health orders, or call 1-866-626-4862 (toll-free) and press 3 on the call menu.

This means that collection of information by the COVID Tip Line is for the identified purpose of taking action for the purpose of enforcing the Public Health Act, which is the act under which public health orders are issued. As defined under FIPPA, “action taken” is not limited to policing, but also includes action such as investigations, inspections, or proceedings conducted for the purpose of enforcing an enactment, which in the case is the Public Health Act.

Manitoba Finance explained to our office that the complainant’s personal information was disclosed to the City of Winnipeg, as the report the complainant submitted was about a matter for which the city was responsible. Upon reviewing the information the complainant submitted using the COVID Tip Line Report Form, our office determined that the information related to a matter that would reasonably be expected to fall under the jurisdiction of the City of Winnipeg to investigate, inspect, or otherwise take action.

Based on our review, our office determined that the disclosure of the complainant’s personal information was authorized under clause 44(1)(a) of FIPPA. As our office determined that the disclosure was authorized under this clause, it was not necessary for our office to consider whether the disclosure was also authorized under clauses 44(1)(l) or 44(1)(r) of FIPPA.

Our office next considered whether the the disclosure of personal information was limited to the amount reasonably necessary to accomplish the authorized purpose for which the information was disclosed. Limits on the amount of personal information disclosed by a public body are set out under subsection 42(2) of FIPPA:

Limit on amount of information used or disclosed

42(2) Every use and disclosure by a public body of personal information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.

As previously noted, the personal information disclosed consisted of the complainant’s name, telephone number, email address, and personal views and opinions (i.e. the reported concern). It is our view that the disclosure of personal information did not exceed the minimum amount necessary to accomplish the purpose for which it was disclosed, which was related to enforcing orders made under the Public Health Act.

Wording of the Notice on the COVID Tip Line Report Form

As indicated previously, when our office first heard of the complainant’s concern about the disclosure of their personal information in late 2020, our office observed that the notice provided on the COVID Tip Line Report Form could be enhanced to provide greater clarity and transparency on how citizens’ personal information would be used and disclosed. We reached out to Manitoba Finance at that time, to ask the public body to review and enhance the wording

on the form. As no changes were made to the form by the time we received the individual's complaint about disclosure, our investigation also addressed the issues with the form.

We explained to the public body that in our view, the notice, as it appeared on the online form, was misleading to individuals providing their personal information to Manitoba Finance because it seemed clear to us that Finance anticipated making routine disclosures to other public bodies and law enforcement agencies tasked with enforcing public health orders related to COVID-19.

On May 11, 2021, Finance informed our office that it had amended the notice on the COVID Tip Line Report Form. The amended notice reads as follows:

Please note: the Manitoba Government Inquiry office of Manitoba Finance is responsible for receiving information on this form and facilitating law enforcement investigations into compliance with public health orders issued under The Public Health Act. The Manitoba Government Inquiry office is authorized to collect your personal information on this form for law enforcement purposes (s. 36(1)(c) of The Freedom of Information and Protection of Privacy Act ("FIPPA")). The information you provide on this form will be used by law enforcement agencies to conduct investigations into whether public health orders created under The Public Health Act are being followed by organizations and members of the public. Your contact information will be disclosed to law enforcement agencies that will conduct the investigations in case they have additional questions about the compliance or enforcement issue you reported on this form.

Your personal information is protected by FIPPA. Any other use or disclosure of your personal information by Manitoba Finance must be authorized by you or by FIPPA. If you have any questions about the collection or disclosure of your personal information, please contact the Acting Director of Digital Communications and Engagement at mgi@gov.mb.ca.

We acknowledge that this revised notice provides a more detailed explanation regarding the collection and disclosure of personal information, and will help individuals to better understand what may happen with the personal information they provide when submitting the form. We observe that the notice wording is law enforcement-focused, and that it states that contact information will be disclosed to "law enforcement agencies" that will conduct the investigation. We note that by regulation under the Public Health Act, a number of classes of persons, beyond traditional law enforcement agencies, are given authority to enforce Public Health Act orders.¹ It is our view that an individual reading the notice could reasonably interpret this to mean that their contact information will be provided to a police agency, but not that it will be provided to other entities such as a city, municipality, provincial department, or other entity whose employees may also be responsible for investigating possible violations of public health orders. We suggest that Manitoba Finance consider how the notice might be read and understood by the general public and to make any further modifications that may be needed to ensure this aligns with the intended messaging.

¹ Additional Enforcement Personnel Regulation, M.R. 40/2020

CONCLUSION

Our review determined that the disclosure of the complainant's personal information by Manitoba Finance was authorized under clause 44(1)(a) of FIPPA and was limited to the minimum amount necessary to accomplish the purpose for which it was disclosed. Therefore, the complaint is not supported.

Our office also found that the wording of the notice on the report form should be modified to provide greater clarity and transparency for individuals about how their personal information will be disclosed. The public body made changes to the form which substantively addressed our concerns.

May 25, 2021
Manitoba Ombudsman