

Manitoba Ombudsman

REPORT WITH RECOMMENDATIONS ISSUED ON MARCH 11, 2011

AND

RESPONSE TO THE RECOMMENDATIONS

UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2010-0352

MANITOBA FAMILY SERVICES AND CONSUMER AFFAIRS

ACCESS COMPLAINT: FAILURE TO RESPOND

PROVISIONS CONSIDERED: 9, 11(1)(2), 15(1)

PUBLICLY RELEASED ON SEPTEMBER 26, 2011

SUMMARY OF REPORT WITH RECOMMENDATIONS AND RESPONSE

The complainant applied for records related to holiday or Christmas gifts provided to employees of Child and Family Services Authorities and their agencies for the years 2007 to 2009 and made a complaint that Manitoba Family Services and Consumer Affairs did not respond to her access request. Our investigation determined that the public body failed to respond within the time period required under *The Freedom of Information and Protection of Privacy Act* (FIPPA). The Ombudsman also found that the public body failed in its duty to assist an applicant by not responding openly and without delay. The investigation report contained four recommendations made to the public body.

The public body responded to the Ombudsman's report in accordance with the requirements of FIPPA and accepted the four recommendations. The public body demonstrated that it had complied with three of the four recommendations. Regarding the outstanding recommendation, the public body requested that the Ombudsman allow an additional period of 30 days to comply with the recommendation, to which the Ombudsman agreed. The public body demonstrated that it had complied with the outstanding recommendation within the additional time period.

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REPORT ISSUED ON MARCH 11, 2011

SUMMARY: The complainant applied for records related to holiday or Christmas gifts provided to employees of Manitoba and Family Services (the public body), specifically, to employees of Child and Family Services Authorities and their agencies for the years 2007 to 2009 and alleged that the public body did not respond to her request for access within the time limit set out under *The Freedom of Information and Protection of Privacy Act (FIPPA)*. Our investigation determined that the public body failed to respond within the time period provided for under FIPPA and has yet to respond to the request. The Ombudsman found that the complaint was supported. The Ombudsman also found that the public body failed in its duty to assist an applicant by not responding openly and without delay. This report contains recommendations to the public body.

THE COMPLAINT

On June 29, 2010 Manitoba Family Services and Consumer Affairs received the complainant's application for access under *The Freedom of Information and Protection of Privacy Act (FIPPA)* to records related to the following:

Please confirm whether employees, both staff and management, were provided holiday or Christmas gifts in 2007, 2008 and 2009 in the form of either bonuses or material gifts and what those gifts were including the dollar value of the items.

In July 2010 the complainant clarified with the public body that she was only interested in receiving records pertinent to the Child and Family Services Authorities and their agencies.

The complainant filed a complaint with the Ombudsman. The complaint was dated

September 13, 2011 and was received by our office on September 14, 2011, and indicated that the public body had failed to respond to the request within the legislated time period.

POSITION OF MANITOBA FAMILY SERVICES AND HOUSING

Manitoba Family Services and Housing received the application for access on June 29, 2010 and on July 12, 2010, extended the time limit for responding by an additional 30 days. In December 2010 the public body advised our office that most of the information was available, but that it was still awaiting information from the Northern Authority. As at today's date, the public body has not provided any records to the complainant.

ANALYSIS OF ISSUES AND FINDINGS

Did Manitoba Family Services and Housing fail to respond to a request as set out in sections 11 and 15 of FIPPA?

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.

Failure to respond

11(2) *The failure of the head of a public body to respond to a request within the 30 day period or any extended period is to be treated as a decision to refuse access to the record.*

The access request was received by the public body on June 29, 2010 and on July 12, 2010, the public body extended the time limit for responding under section 15 of FIPPA, specifically relying on clause 15(1)(c) to extend the time limit by an additional 30 days, in order to consult with Child and Family Services Authorities and their agencies. This rendered the time limit for responding August 30, 2010.

Clause 15(1)(c) of FIPPA states as follows:

Extending the time limit for responding

15(1) *The head of a public body may extend the time for responding to a request for up to an additional 30 days, or for a longer period if the Ombudsman agrees, if*

(c) time is needed to consult with a third party or another public body before deciding whether or not to grant access to a record.

Our office received the "no response" complaint on September 14, 2010. We verbally notified the public body of the complaint on September 17, 2010 and, on that same day, sent the public

body our notice of the complaint in writing. Our letter requested that the public body reply to our office by October 8, 2010. Since October 2010 our office has called the public body on several occasions asking for a response/update. In December our office was advised that part of the responsive information had been compiled. We therefore asked the public body to consider the release of whatever information/records were available to the complainant at that time.

On December 6, 2010 our office proceeded with an extension of 90 days to complete our investigation, provided for under section 65 of FIPPA.

90-day time limit for investigation

65 *An investigation must be completed and a report made under section 66 within 90 days after a complaint is made, unless the Ombudsman*

(a) notifies the complainant, the head of the public body and any other person who has made representations to the Ombudsman that the Ombudsman is extending that period; and

(b) gives an anticipated date for providing the report.

This rendered our deadline for completing the investigation March 14, 2011.

Our office followed up with two additional letters to the public body. Our letter dated January 6, 2011 to the public body's policy analyst responsible for this file, asked the public body to consider releasing information available at that time and provide the remainder of the responsive records (records respecting the Northern Authority) at its earliest opportunity. We asked that our office be provided with a copy of the public body's response to the complainant, indicating the reasons for the delay, by February 1, 2011. This letter was copied to the public body's Access and Privacy Coordinator and the Assistant Deputy Minister of Child and Family Services. Our letter dated February 11, 2011 was written to the public body's Assistant Deputy Minister of Child and Family Services and copied to the public body's responsible policy analyst and again, to the Access and Privacy Coordinator. This letter again requested, among other things, that the department make a partial release of the records available at that time and explain the delay concerning the remainder of the information.

The public body has yet to respond to the complainant. The Ombudsman found that Manitoba Family Services and Consumer Affairs failed to respond within the extended period as set out in subsection 15(1) of FIPPA.

Did Manitoba Family Services and Housing fulfill its duty to assist an applicant as set out in section 9 of FIPPA?

FIPPA imposes a duty on public bodies that reasonable efforts be made 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 public body has not responded openly and without delay as it has not yet provided any records to the complainant, even though the public body had advised that some of the responsive information was compiled as early as December 2010. According to our records, the last time the public body corresponded with the complainant was on July 12, 2010 when it extended the time limit for responding by an additional 30 days, rendering the deadline August 30, 2010.

The Ombudsman found that Manitoba Family Services and Consumer Affairs failed in its duty to make every reasonable effort to assist an applicant and to respond openly and without delay.

RECOMMENDATIONS

The Ombudsman has made 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 and release any responsive information/records that have already been compiled.
2. The Ombudsman recommends that the public body explain the delay to the complainant concerning the remainder of the requested information/records.
3. The Ombudsman recommends that the public body provide a further response to the complainant once the remainder of the information/records is compiled, and no later than within 30 days of acceptance of the recommendations, or within a longer period if the Ombudsman agrees.
4. The Ombudsman recommends that the public body provide our office with a copy of its correspondence to the complainant.

HEAD'S RESPONSE TO THE RECOMMENDATIONS

Under subsection 66(4), Manitoba Family Services and Consumer Affairs must respond to the Ombudsman's report in writing within 15 days of receiving this report. As this report is being sent by courier to the head on this date, the head shall respond by March 28, 2011. 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 Family Services and Consumer Affairs' 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.

Alternatively, if the head believes that an additional period of time is required to comply with the recommendations, the head's response to the Ombudsman under subsection 66(4) must include a request that the Ombudsman consider an additional period of time for compliance with the recommendations. A request for additional time must include the number of days being requested and the reasons why the additional time is needed.

March 11, 2011
Irene A. Hamilton
Manitoba Ombudsman

Manitoba Ombudsman

RESPONSE TO THE RECOMMENDATIONS UNDER *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

CASE 2010-0352

MANITOBA FAMILY SERVICES AND CONSUMER AFFAIRS

ACCESS COMPLAINT: FAILURE TO RESPOND

PROVISIONS CONSIDERED: 9, 11(1)(2), 15(1)

SUMMARY: On March 28, 2011 the public body provided its response to the Ombudsman, accepting the four recommendations. Its response demonstrated that the public body had already complied with three of the four recommendations. Regarding the outstanding recommendation, the public body requested that the Ombudsman allow an additional time period of 30 days to comply. The Ombudsman agreed to extend the time period for compliance to May 26, 2011. On May 26, 2011 the public body demonstrated that it had complied with the outstanding recommendation.

RESPONSE TO THE RECOMMENDATIONS

Under subsection 66(4), Manitoba Family Services and Consumer Affairs was required to respond to the Ombudsman's report in writing within 15 days of receiving the report. As the report was sent by courier on March 11, 2011 the head had until March 28, 2011 to respond. The head's response was to 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.*

Manitoba Family Services and Consumer Affairs provided its response to the Ombudsman on March 28, 2011 and accepted the recommendations as follows:

- 1. The Ombudsman recommended that the public body respond to the complainant and release any responsive information/records that had already been compiled.**

A response containing the information we have compiled so far was mailed to the applicant on March 18, 2011.

- 2. The Ombudsman recommended that the public body explain the delay to the complainant concerning the remainder of the requested information/records.**

We will explain the delay and let applicant know that we continue to work with the Authorities to get the rest of the information to them as soon as possible.

- 3. The Ombudsman recommended that the public body provide a further response to the complainant once the remainder of the information/records was compiled, and no later than within 30 days of acceptance of the recommendations, or within a longer period if the Ombudsman agreed.**

We will make every effort to give the applicant the rest of the information as soon as it has been received and will commit to doing so no later than 30 days. If we need more time, we will seek your permission to extend the deadline.

- 4. The Ombudsman recommended that the public body provide our office with a copy of its correspondence to the complainant.**

Attached is a copy of our initial response. When our further response is sent to the applicant, we will ensure your office is copied.

Our office notified the complainant about the head's response as required under subsection 66(5) on April 4, 2011.

Subsection 66(6) required the head to comply with the recommendations within 15 days of acceptance for recommendations #1, #2 and #4 and within 30 days of acceptance of recommendation #3 or within an additional period if the Ombudsman considered it to be reasonable. By way of its response dated March 28, 2011 to our office, the public body provided written notice and information to demonstrate that it had complied with recommendations #1, #2 and #4 within the 15 day timeline. In its response, the public body provided our office with a copy of the letter sent to the complainant on March 18, granting full access to the records available at that time, along with the reason for the delay concerning the remainder of the requested information/records.

On April 28, 2011 the public body requested that the Ombudsman allow an additional extension of 30 days in order to comply with recommendation #3. On April 29, 2011 the Ombudsman agreed that the deadline for the public body to comply with recommendation #3 would be extended to May 26, 2011. On May 26, 2011 the public body complied with recommendation #3, providing the complainant with a further response. The public body granted full access to the outstanding information, and provided reasons for the delay. Our office received a copy of this correspondence.

Irene A. Hamilton
Manitoba Ombudsman