

Manitoba mbudsman

REPORT WITH RECOMMENDATIONS ISSUED MAY 6, 2011

RESPONSE TO THE RECOMMENDATIONS ISSUED MARCH 6, 2013

UNDER

THE OMBUDSMAN ACT

CASES: 2009-0469 & 2010-0081 (web version)

CITY OF WINNIPEG

APRIL 4, 2014

CASE SUMMARY

A complainant alleged that the process in which the City of Winnipeg decided to redesignate sections of Plessis Road and Grassie Boulevard to a non-truck route was unfair.

Our office received a second complaint which raised general concerns with the way the City of Winnipeg establishes and deletes truck routes. The complainant alleged that the process was not transparent and therefore unfair.

Given that the two complaints raised similar issues, our office investigated them together.

As a result of the investigation, the ombudsman recommended that the City of Winnipeg develop and implement a policy on designating, altering or deleting truck routes to ensure such decisions are fair and promote transparency.

The recommendation was not accepted by the City of Winnipeg who maintained that the current process already provides the public with opportunities to comment and provide input through committees of council.

OMBUDSMAN JURISDICTION

Manitoba Ombudsman is an independent office of the Legislative Assembly of Manitoba, reporting to the assembly through the office of the speaker. The responsibilities and authority of the ombudsman are set out in *The Ombudsman Act*, *The Freedom of Information and Protection of Privacy Act*, *The Personal Health Information Act*, and *The Public Interest Disclosure (Whistleblower Protection) Act*.

Under *The Ombudsman Act* (the act), Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, and municipalities, and their officers and employees. Investigations may be undertaken on the basis of a written complaint from a member of the public, or upon the ombudsman's own initiative.

The actions and decisions complained about in these two complaints are matters of administration arising from the manner in which the City of Winnipeg designates, alters or deletes truck routes within the city.

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal by-law. On other occasions, it is written policy or established procedures implemented to give effect to legislative purpose. In cases concerning an impact on individual rights or benefits, we also examine the fairness of the action or decision. A complaint can raise questions of procedural fairness, substantive fairness or relational fairness. Procedural fairness relates to how decisions are reached; the steps followed before, during and after decisions are made. Substantive fairness relates to the fairness of the decision itself and relational fairness relates to how people are treated during the decision-making process.

While our office has a mandate to investigate complaints, the investigative process we follow is non-adversarial. We carefully and independently consider the information provided by the complainant, the decision maker, and any witnesses we determine to be relevant to the case. Administrative investigations can involve an analysis of statute or by-law provisions, document reviews, interviews and site visits.

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. If a complaint is supported by a finding of maladministration, the ombudsman may make recommendations pursuant to section 36 of *The Ombudsman Act*.

Administrative investigations can also identify areas where improvements may be suggested to a government body without a finding of maladministration. Such suggestions are made to support and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can improve the relationship between government and the public, and reduce administrative complaints.

THE COMPLAINTS

Complaint #1

On August 7, 2009, Manitoba Ombudsman received a complaint as a result of an amendment to Traffic By-law No. 1573/77 – the redesignation of Plessis Road (north of Regent Avenue West) and Grassie Boulevard (east of Lagimodiere Boulevard) to a non-truck route.

The complainant alleged that he and other residents in the area were not provided adequate notice or information by the City of Winnipeg concerning the proposed amendment nor were they given the opportunity to voice their concerns.

Complaint #2

On March 25, 2010, we received a complaint which raised general concerns about how truck routes are established in the City of Winnipeg and how specific streets are deleted from the truck route system.

This complaint was made by the Manitoba Trucking Association (MTA) who were of the view that the process was not transparent and questioned whether there were any standards or criteria for establishing or removing a street from the truck route system.

KEY ISSUES

1. Was the process resulting in the redesignation of sections of Plessis Road and Grassie Boulevard fair?
2. Are there criteria/policy in place to ensure truck routes in the City of Winnipeg are designated in a fair and consistent manner?

SCOPE OF THE INVESTIGATION

Our investigation of these two complaints included the following:

- a review of multiple submissions made by both complainants throughout the course of our investigation.
- telephone discussions with the Winnipeg Chamber of Commerce about the general issue of the city's handling of truck routes in addition to a formal meeting with the chamber.
- a review of the chamber of commerce policy position report (September 2007).
- discussions with the City of Winnipeg – these included but were not restricted to the city clerk's office, public service, office of the chief administrative officer and the mayor's office.
- a review of minutes from the meetings of relevant committees of council and city council meetings.

- a review of *The City of Winnipeg Charter*, relevant by laws, and various city administrative reports.
- a review of *Winnipeg Transportation Master Plan* (October 2011).

BACKGROUND

As part of our investigation, we examined in detail the process in which the City of Winnipeg redesignated sections of Plessis Road and Grassie Boulevard to a non-truck route.

Introduction of Amendment to Traffic By-law No. 1573/77

The amendment to Traffic By-law No. 1573/77 was initiated through a 2008 petition by the Plessis Road Area Residents Group, containing over 400 signatures of area residents.

The community group submitted the petition to the East Kildonan-Transcona Community Committee and requested that Plessis Road be designated a non-truck route and that the speed limit on Plessis Road be lowered for reasons of safety, noise, and vibration.

Proposed amendment discussed at Community Committee Meeting

The matter was discussed at the November 17, 2008 community committee meeting; however, the issue was not referenced on the corresponding agenda. Complainant #1 asserts that the reason for the absence of the matter on the agenda was that representatives from the Plessis Road Area Residents Group were permitted to speak at the community committee meeting without prior notice.

The issue appears in the November 17, 2008 meeting minutes under "Reports". The disposition listed it as minute #36 states in part:

The East Kildonan-Transcona Community Committee referred the petition and resolutions of the Plessis Road Residents Group to the Standing Policy Committee on Infrastructure Renewal and Public Works for favourable consideration, namely:

1. Reduction of the speed limit on Plessis Road (Grassie Boulevard to Dugald Road) from 60 to 50 KPH to be consistent with the rest of Plessis Road.
2. Removal of the Truck Route Designation.

Proposal moves on to Standing Policy Committee

The matter was then elevated to the Standing Policy Committee on Infrastructure Renewal and Public Works (SPCIRPW) regular meeting on December 2, 2008. It is reflected in the corresponding agenda, minutes and disposition.

The corresponding disposition refers to the petition and states, in part:

The Standing Policy Committee on Infrastructure Renewal and Public Works referred the East Kildonan-Transcona motion, as amended, to the Winnipeg Public Service for report back to its meeting on February 10, 2009, namely:

1. Reduction of the speed limit on Plessis Road (Grassie Boulevard to Kildare Avenue) from 60 to 50 KPH to be consistent with the rest of Plessis Road.
2. Removal of the Truck Route Designation on Plessis Road north of Regent Avenue.

The Winnipeg public service provided an administrative report, dated February 13, 2009, to SPCIRPW. The recommendation of the public service was that "Plessis Road between Regent Avenue and Grassie Boulevard not be deleted as a Truck Route."

The issue was revisited in the March 10, 2009 SPCIRPW regular meeting whereby the committee heard presentations from the Transcona ward councillor (who was accompanied by one of the members of the Plessis Road Area Residents Group), the general manager of the Manitoba Trucking Association (MTA), and two other individuals.

The corresponding disposition refers to the discussion and states, in part:

The Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the East Kildonan-Transcona Community Committee, as amended, and did not concur in the recommendation of the Winnipeg Public Service and directed the Winnipeg Public Service as follows:

1. That the Winnipeg Public Service be authorized to apply to The Highway Traffic Board of Manitoba to adjust the speed limit on Plessis Road, north of Kildare Avenue West to Gunn Road, from 60 km/h to 50 km/h.

The Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the East Kildonan-Transcona Community Committee, as amended, and did not concur in the recommendation of the Winnipeg Public Service and submits the following to Council:

1. That the City of Winnipeg Traffic By-law No. 1573/77 be amended by deleting Plessis Road, north of Regent Avenue West, and Grassie Boulevard, east of Lagimodiere, as a Truck Route.
2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Amendment before Executive Policy Committee

The matter was then referred to Executive Policy Committee where it was tabled at the March 19, 2009 regular meeting. The corresponding agenda, minutes and disposition reflect the issue

and reference that a member of the Plessis Road Area Residents Group and a spokesperson for the general manager of the Manitoba Trucking Association made presentations.

The corresponding disposition refers to the Standing Policy Committee on Infrastructure Renewal and Public Works Report dated March 10, 2009 and states, in part:

The Executive Policy Committee concurred in the recommendation for Items 1, 2, 5, 6 and 7 of the Standing Policy Committee on Infrastructure Renewal and Public Works and forwarded the items to Council...

Amendment passed by City Council

The Manitoba Trucking Association appeared at council on March 25, 2009 and made recommendations that council defer a decision on this matter until an in-depth review of Plan Winnipeg is conducted, and that an overall review of freight movement and truck routes is conducted with the intent of developing a long-term sustainable freight movement policy. However, the motion to delete Plessis Road truck route north of Regent Avenue West to Grassie Boulevard, east of Lagimodiere Boulevard was adopted by council.

As it is entitled to do, council dispensed with the rule that requires that no more than two readings of any by-law occur at any given meeting of council. *By-law No. 54/2009: A By-law of the City of Winnipeg to delete Grassie Boulevard and part of Plessis Road as a truck route* was given first, second, and third readings at the March 25, 2009 council meeting. The result of dispensing with this procedural limitation was to deny any further opportunity for public representations in relation to the issue.

POSITION OF COMPLAINANTS

Complaint #1

The complainant was of the view that the process followed by the City of Winnipeg for establishing and changing truck routes was not a fair administrative process. The matter of designating Plessis Road and Grassie Boulevard as a non truck route was first discussed at East Kildonan-Transcona Community Committee meeting but was not included in the agenda published on the city's website. The complainant argues that without advance notice residents were deprived of information related to the issue being discussed, the opportunity to be heard, and the opportunity to challenge or dispute information.

The complainant noted that the city's public service provided an administrative report recommending that Plessis Road not be deleted as a truck route. However, the Standing Policy Committee without providing any reasons disregarded the public service report and referred the matter to the Executive Policy Committee who in turn passed it on to council where the motion to delete Plessis Road as a truck route was adopted.

Complaint #2

The Manitoba Trucking Association took the position that the process was not transparent and pointed out that there were no standards or criteria for establishing a truck route or deleting a street from the truck route system. While the association was of the view that for a process to be fair there must be a policy in place that identifies specific criteria to establish, alter and delete city truck routes. The complainant explained that a process without principles and rules is not a fair process; rather it was a process that was susceptible to subjective decision making.

POSITION OF CITY OF WINNIPEG

The position of the city has been that *By-law No. 54/2009: A By-law of the City of Winnipeg to delete Grassie Boulevard and part of Plessis Road as a truck route* was enacted in accordance with an appropriate process.

We wrote to the city clerk seeking clarification on how the city informs members of the public about potential truck route re-designation decisions. It was unclear how the general public would become aware of the process by which this type of issue would proceed through the decision-making process, and be able to find the corresponding agenda and minutes of the committee meeting. As well, we inquired in general about the process used for amending city traffic by-laws, addressing petitions from the public, and advertisement of public hearings.

The city clerk wrote to us on November 2, 2009 and stated (in part):

The City Organization By-law No.7100/97 provides that the Standing Policy Committee on Infrastructure Renewal and Public Works has jurisdiction to consider matters involving traffic control and transportation planning, and is to be the Traffic Authority of the City of Winnipeg. Under those provisions, the changing of a truck route status is within the jurisdiction of the Standing Committee, however in this instance as the matter involved an amendment to The City of Winnipeg Traffic By-law No. 1573/77, the Standing Committee was required to submit its recommendation to Council, through the Executive Policy Committee.

As this particular matter commenced at the Community Committee, the critical path for the decision-making process was the Community Committee, followed by the Standing Committee, followed by the Executive Policy Committee, followed by a decision by City Council. As this is not a public hearing process, as defined by the Development Procedures By-law No.5893/92, there was an opportunity for an individual to appear in delegation at any or all of the committees (including Council) throughout the decision making process. If this matter was a public hearing under By-law No. 5893/92, the opportunity to make representation would (only) be with the designated hearing body...

The city clerk advised that there is no requirement for a public hearing when the city is considering altering a truck route.

ANALYSIS OF ISSUES AND EVIDENCE

Although a public hearing may not be required, a fair administrative process should include advance notice to the parties that might be affected, appropriate information related to the issue being discussed, an opportunity to be heard, and an opportunity to challenge or dispute any information.

This issue did not appear on the agenda at the initial stage of discussion (the East Kildonan - Transcona Community Committee), and as a result, Day Street and other area residents who were affected by the decision may not have been aware that it was being discussed.

In early April 2009, when complainant #1 read about the by-law being passed he contacted his city councillor to voice his concerns. He advised that he and other area residents had not been made aware of the proposal and consideration by the city to alter the Plessis Road truck route. Consequently they missed the opportunity to make presentations to the various committees.

There appears to be no notification requirements and as a result, interested members of the public may not have the opportunity to challenge or dispute information that is being considered at the various committee discussions on the proposed change. Specifically, with respect to the process resulting in the decision to delete a portion of Plessis Road truck route, it would appear appropriate notice and information related to the issue being discussed was not provided to the parties who might be affected. This affected the public's opportunity to be heard and did not afford the public the opportunity to challenge or dispute any information.

The position of the city has been that *By-law No. 54/2009: A By-law of the City of Winnipeg to delete Grassie Boulevard and part of Plessis Road as a truck route* was enacted in accordance with an appropriate process. While the flow between political committee levels may reflect established process, there appears to be a lack of any standards, policies or legislation that guide the decision-making process to ensure that decisions regarding truck routes are consistent and fair.

In addition, there does not appear to be a requirement for the city to provide reasons for a decision. In this particular case, we are unclear as to the basis upon which the city reached its decision to alter the Plessis Road truck route. No reasons for the decision were provided to clarify why that decision was made, especially in light of the recommendations made by key stakeholders (the MTA and the Winnipeg public service). Clear and meaningful reasons for the decision that are understandable to the people affected would have assisted in clarifying the situation.

It appears that there were procedural fairness requirements that have not been met in the processes employed by the city in considering truck route by-laws and alterations to or deletions from the by-law.

As is our practice, when we feel there may be an opportunity for administrative improvement, we like to collaborate with the entity involved for further input. Accordingly, following the completion of our review, we wrote to the acting chief administrative officer on November 2,

2010, advising of the procedural fairness issues identified in our investigation and requested the City of Winnipeg review the issue. We did not receive a response from the city and followed up with a letter on December 20, 2010, but did not receive a response to this correspondence either. As a result we proceeded to issue recommendations as a result of our findings as per section 36(1) of *The Ombudsman Act*.

RECOMMENDATIONS

Based on the information our office obtained, Manitoba Ombudsman on May 6, 2011, recommended that the City of Winnipeg develop and implement a policy on designating, altering or deleting truck routes. This policy should:

- specify notice requirements and provide a process by which affected residents will be given notice when a proposal is being considered;
- outline the process for how and by whom decisions will be made; and
- provide that reasons for the decision will be given to all parties and will be available to the public in a clear and timely manner.

Subsection 36(3) of *The Ombudsman Act* requires that at the next meeting of council, the meeting will be closed and the report shall be discussed.

Report considered at closed meeting

36(3) Where the Ombudsman reports to a head of council under clause (1)(e), the head of council shall at the next meeting of council close the meeting to the public in accordance with The Municipal Act or The City of Winnipeg Charter, as the case may be, and council shall meet as a committee to discuss the report.

Subsection 36(2) states

Nature of recommendations

36(2) Without limiting the generality of subsection (1), in making a report under subsection (1), the Ombudsman may recommend

- (a) that a matter should be referred to the appropriate authority for further consideration; or
- (b) that an omission should be rectified; or
- (c) that a decision should be cancelled or varied; or
- (d) that any practice on which a decision, recommendation, act or omission was based should be altered or reviewed; or
- (e) that any law on which a decision, recommendation, act or omission was based should be reconsidered; or
- (f) that reasons should be given for any decision, recommendation, act or omission; or

(g) that any other steps should be taken.

And subsection 37(1) states:

Notice of proposed steps

37(1) Where the Ombudsman makes a recommendation under section 36, he may request the department, agency of the government or municipality to notify him within a specified time of the steps that it has taken or proposes to take to give effect to his recommendations.

Our office asked that council review this matter and respond no later than June 30, 2011 advising of the steps taken or proposed to give effect to this recommendation. In a November 21, 2011 letter the City of Winnipeg's chief administrative officer advised our office that the Public Works Department was preparing recommendations for council's consideration of this matter.

At that time we expected to be advised of the outcome of council's efforts, which we understood was to occur sometime in the first quarter of 2012. However we heard nothing further from the city on this point until we were advised by one of the complainants that city council had dealt with the issue at its March 21, 2012 council meeting. Minutes from that meeting state the following:

That no changes be made to the current process for adding or deleting City Truck Routes since a process that is open to the public for comment and input through committees of Council already exists.

As the City of Winnipeg had not informed us of its formal position on this matter we wrote to the city's CAO on January 22, 2013, explaining that:

Our office has never received formal notification from the City regarding either the acceptance or rejection of our May 6, 2011 recommendation.

It seems that the City is satisfied that no changes to the current process for adding or deleting City Truck Routes are necessary since "a process that is open to the public for comment and input through committees of Council already exists." While the City has had the opportunity to respond to our office and explain how the current process meets the spirit and intention of the recommendation no such clarification was ever provided to our office.

RESPONSE FROM THE CITY OF WINNIPEG

In a letter to our office dated March 6, 2013, the city explained that it was satisfied that the present process provides citizens with a fair opportunity to offer input or express concerns. Further, the city assured our office that the public service gave careful consideration to the concerns we presented and to our May 6, 2011 recommendation.

The following are the city's "key considerations" that led to the conclusion that "... no changes be made to the current process for adding or deleting City Truck Routes since a process that is open to the public for comment and input through committees of Council already exists."

In all cases, if a Standing Policy Committee decision results in a proposed amendment to the truck route listings in the Traffic By-Law No, 1573/77, a by-law amendment will be submitted for Council's consideration and such a submission will provide opportunity for public response, including appearances in delegation.

Committee and Council meeting agendas regarding truck routes and other transportation issues are available online at www.winnipeg.ca/CKLDMIS. Further, the City's Manager of Web and Social Media has taken steps to improve the visibility of the information on the City's homepage, by adding a constantly updated window entitled "Latest Council and Committee Agendas," which went live April 29, 2011. Any individual who wishes to appear in delegation at Committee or Council meetings can arrange to do so, by contacting the City Clerk.

With respect to the consideration of by-law 54/2009, which occasioned the concern raised with your office, we note that the opportunity to appear in delegation to address this by-law was exercised by citizens at both the meeting of the Executive Policy Committee on March 19, 2009 and at City Council itself, on March 25, 2009.

On both of these occasions, our records indicate that delegations were heard both in favour of, and in opposition to, the proposed by-law.

The city explained that the public service endeavours to consult with as many directly-affected citizens, businesses, and community organizations as possible. However, the city explained that:

At the same time, we believe that there are limitations upon the scope of notification which merit consideration, relating especially to the size of the areas in question and the numbers of people who might be considered to be directly or indirectly affected by such proposals.

After considering the information provided by the city, we wrote to both of the complainants on May 15, 2013, giving them an opportunity to comment on the city's position and the issue in general. Following a further review of the matter and taking in account the various submissions we received from our complainants, Manitoba Ombudsman wrote to the city on December 31, 2013.

Manitoba Ombudsman advised the City of Winnipeg that it was of the view that the city's position, as set out in its March 6, 2013 letter, did not meet the spirit and intent of the May 6, 2011 recommendations. The city's response appeared to confirm that the existing process did not have specific criteria against which decisions could be made and as a result it seemed to create an inherent unfairness.

Manitoba Ombudsman advised the city that the existing process resulted in elected officials being placed in the difficult position of making administrative decisions, within a highly charged environment, creating unnecessary conflict among stakeholders who may have differing interests.

Further, the absence of clear policy and criteria may result in stakeholders concluding the process is unduly influenced by politicized issues and that the decisions are subjective or based on irrelevant grounds.

More recently, in a letter dated February 28, 2014, the city public works department confirmed that there is no policy governing the designation of truck routes and the authority for this designation rests with city council. It was further clarified that the role of public works is to make recommendations on the suitability of designated truck routes and provide analysis of potential impacts. In doing so, public works uses “generic criteria” that is based on best practices, the existing council resolution on the designation of regional streets, and on the capacity of the transportation network.

Manitoba Ombudsman remains of the view that the lack of policy and more specific criteria for such an important process does not appear to be fair to the trucking industry and citizens who are impacted by the decisions.

The recommendation that policy be developed and implemented provides an opportunity for administrative improvements whereby the city could further consider the existing process and create criteria by which future decisions will be made. A clear framework and criteria for the truck route process would demonstrate the city’s commitment to enhance transparency and promote fair decision making.

Accordingly, we are reporting on this matter pursuant to the provisions of section 37 (2)(b) of *The Ombudsman Act*.

Further report on recommendations

37(2) If within a reasonable time after a request respecting recommendations is made under this section, no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments, if any, made by or on behalf of the department, agency of the government or municipality affected, may report the matter, including a copy of the report containing the recommendations,

(b) in the case of a report under clause 36(1)(e), to the head of council;

and may mention the report in the Ombudsman's next annual report to the Assembly.

The release of our public report now concludes our involvement regarding these complaints

MANITOBA OMBUDSMAN