

Manitoba mbudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASES 2016-0227 and 2016-0237

CITY OF WINNIPEG – WINNIPEG POLICE SERVICE

ACCESS COMPLAINTS: EXTENSION OF THE TIME LIMIT TO RESPOND

PROVISIONS CONSIDERED: 11(1), 15(1)(c), and 15(2)

REPORT ISSUED ON NOVEMBER 21, 2016

SUMMARY: The complainant submitted two access requests under the Freedom of Information and Protection of Privacy Act, seeking access to information from the Winnipeg Police Service (the WPS). The WPS advised that it would require an additional 30 days to issue a response in each case as it was required to consult with an external public body. We found that the WPS was authorized to issue both of the 30-day extensions. As such, the complaints are not supported.

THE COMPLAINT

On June 9, 2016, the complainant submitted one access request under the Freedom of Information and Protection of Privacy Act (FIPPA or the Act) to the Winnipeg Police Service (the WPS or the public body). The complainant submitted a second access request on June 15, 2016. The access requests read as follows:

2016-0227

*All records and communications involving police officer issued enforcement tickets at St. Mary's rd and Bishop Grandin Blvd for 2015
To include discussing type of offenses being targeted.*

2016-0237

All communications & documents related to police officer issued traffic enforcement tickets at St. Mary's Road & Bishop Grandin Boulevard from January – June 2016. To include discussing type of offences being targeted.

On July 15, 2016, the public body advised the complainant that it required an additional 30 days to respond to the access requests.

Two complaints disputing the time extensions issued by the WPS were received by our office on July 19, 2016.

POSITION OF THE PUBLIC BODY

The public body advised that, in both cases, all records were located by June 24, 2016. The WPS stated that it determined that a fee estimate would be required to process each access request, and that an Estimate of Costs was prepared and sent out for each access request on June 27, 2016. The complainant paid the required fees on July 11, 2016.

The WPS advised that it determined that consultations with Manitoba Public Insurance (MPI) were required, and that those consultations commenced on July 15, 2016.

The public body requested that MPI respond with any recommendations or concerns by August 8, 2016. This, however, was after the due date by which the WPS was required to respond to each access request (the due date for response in 2016-0227 was July 29, while the due date for 2016-0237 was July 23). The WPS advised that because of this it extended the time limit to issue a response by 30 days in accordance with clause 15(1)(c) of FIPPA.

With regard to 2016-0237, the WPS advised that while processing the records it came across further information that required a review from MPI which was initiated on August 12. The WPS advised that it received the response from MPI regarding this additional information on August 16 and that the records and access decision letter were completed by the WPS and sent to the complainant on August 22.

Similarly, regarding 2016-0227, the public body advised that while processing the records it came across further information that required a review from MPI which was initiated on August 25. On August 26 MPI responded advising that it had no concerns regarding the records about which it was consulted, and on August 29 the records and access decision letter were completed and sent to the complainant.

ANALYSIS OF ISSUES AND FINDINGS

Subsection 11(1) of FIPPA prescribes the time limit for a public body to respond to an application for access. A public body is directed to respond to an application for access within 30 days after receiving it, unless the time limit for responding is extended under section 15.

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

In response to each access request, the WPS issued an Estimate of Costs to the complainant pursuant to section 82 of FIPPA on June 27, 2016, thereby suspending the time within which the WPS was required to respond to the applicant. At this point in time, there were 18 days

remaining within the extended time limit for responding to one access request (2016-0227) and 12 days remaining for the public body to respond to the other access request (2016-0237).

Issuing a fee estimate impacts the time limit under which a public body is required to respond to an access request, as outlined in subsection 82(4) of FIPPA which reads as follows:

Effect of estimate on time limits

82(4) *When an estimate is given to an applicant under this section, the time within which the head is required to respond under subsection 11(1) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.*

In both cases, the complainant paid the required fees on July 11, 2016, at which point the time resumed accumulating towards the 30-day limit.

The WPS wrote to the complainant on July 15, 2016 and advised that it was extending the response time limit for an additional 30 days for both access requests as provided for in clause 15(1)(c) of FIPPA, which reads 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

If an extension is taken under subsection 15(1), then notice in writing must be sent to the applicant/complainant in the manner set out in subsection 15(2):

Notice of extension to applicant

15(2) *If the time is extended under subsection (1), the head of the public body shall send a written notice to the applicant setting out*
(a) the reason for the extension;
(b) when a response can be expected; and
(c) that the applicant may make a complaint to the Ombudsman about the extension.

In the public body's July 15, 2016, correspondence, the complainant was informed that an extension was needed in order to consult with a third party (MPI) with respect to the responsive records, that the deadline for response to his access applications was extended for an additional 30 days, and that the complainant had the right to file a complaint with the ombudsman's office with regards to the extensions. Following our review, we found that the public body had complied with the requirements of subsection 15(2), which necessitates that notice of the extensions be given to the applicant/complainant.

We note that the requested records relate to a pilot project undertaken by both MPI and WPS which targets high collision intersections, such as the one identified in the complainant's access requests. Given that some of the responsive records pertained to both public bodies, it was

reasonable for the WPS to consult MPI prior to issuing its access decisions. We therefore found that the WPS was authorized, under clause 15(1)(c) to extend the time for responding in order to consult with the third party.

We were advised by the WPS that following the completion of its consultation with the third party that it did proceed quickly to respond to the complainant's applications. The WPS responded to one access request (2016-0237) on August 22, 2016, and to the other access request (2016-0227) on August 29, 2016. We note that the access decisions were finalized and issued by the WPS within the extended time limit for responding afforded by clause 15(1)(c) and within a matter of days after hearing back from the other public body, MPI

Based on our review, we found that the extensions taken by the City of Winnipeg – Winnipeg Police service were authorized and reasonable in the circumstances.

CONCLUSION

Based on the findings of the ombudsman, the complaints are not supported.

November 21, 2016
Manitoba Ombudsman