

# Manitoba Ombudsman

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| <b>Title</b>                    | Report with recommendations under the Freedom of Information and Protection of Privacy Act (FIPPA) and report on compliance with recommendations |
| <b>Case numbers</b>             | 2020-1991, 2020-1992, 2020-1993 and 2020-1994  |
| <b>Act</b>                      | Freedom of Information and Protection of Privacy Act   |
| <b>Public body</b>              | Manitoba Infrastructure  |
| <b>Type of access complaint</b> | No response  |
| <b>Provisions considered</b>    | 9, 11(1), 15(1)(c)   |
| <b>Date of public release</b>   | May 11, 2021   |

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## Summary:

Requests were made under FIPPA to Manitoba Infrastructure for access to records. Manitoba Infrastructure informed the applicant it was extending its time limit to respond under clause 15(1)(c) of FIPPA, making the time limit to respond to the access requests October 26, 2020.

Over six months passed between that date and the date of our report with recommendations, and the public body had not yet made access decisions. We found that Manitoba Infrastructure did not comply with the time limit for responding to the requests and it did not uphold its duty to assist the applicant. The ombudsman recommended that Manitoba Infrastructure make access decisions by March 29, 2021, and provide copies to the applicant and to our office.

FIPPA required that Manitoba Infrastructure provide our office with its response to our report by March 29, 2021, indicating whether it accepted the recommendations. On March 16, 2021, Manitoba Infrastructure issued its access decisions, and on March 18, 2021, we received their formal response accepting the recommendations.

# Manitoba Ombudsman

## REPORT UNDER

### THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2020-1991 2020-1992, 2020-1993, 2020-1994

#### MANITOBA INFRASTRUCTURE

ACCESS COMPLAINT: NO RESPONSE

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

REPORT ISSUED ON MARCH 12, 2021

**SUMMARY:** The public body received the four access requests on August 27, 2020. It determined that third party consultations were required and extended the time limit to respond by an additional 30 days, meaning it was required to issue access decisions to the applicant within 60 days of receiving the requests. Over six months have passed since the public body received the access requests and the public body has not yet responded to the applicant with access decisions. 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 complaints are supported. This report contains recommendations to the public body.

#### BACKGROUND

On August 27, 2020, Manitoba Infrastructure (the public body) received the following four access requests under the Freedom of Information and Protection of Privacy Act (FIPPA):

2020-1991

*Communications – internal and external – related to the Rapid City dam.  
Date range: June 26, 2020 to present.*

2020-1992

*Record of decisions made regarding the Minnedosa dam.  
Date range: June 26 to present*

2020-1993

*Record of decisions made regarding the Rivers dam.  
Date range: June 26 to present*

2020-1994

*Record of decisions made regarding the Rapid City dam.  
Date range: June 26 to present*

The public body determined that third-party consultations were required, and Manitoba Infrastructure extended the time limit to respond to October 26, 2020. On November 6, 2020, our office received a complaint from the applicant about the lack of response to the access requests.

## **DISCUSSION OF THE ISSUES AND FINDINGS**

Subsection 11(1) of FIPPA provides public bodies with 30 days in which to respond to an access request. Under subsection 15(1) of FIPPA, a public body may extend the time limit for responding by an additional 30 days. The relevant provisions read as follows:

### ***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.*

### ***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; or*

Manitoba Infrastructure extended the time limit under clause 15(1)(c) of FIPPA. Therefore, the time limit to respond to the applications was October 26, 2020.

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 Infrastructure advised our office on November 12, 2020, that these four responses were awaiting approval. Our office continued to follow-up with the public body regarding the status of the access decisions, including by what date Manitoba Infrastructure anticipated providing access decisions to the applicant. We did not receive any specific details on when the public body would be responding.

On January 11, 2021, our office requested that the public body issue access decision without delay and no later than January 19, 2021. Infrastructure advised our office that it was working on issuing the responses by the requested date. However, access decisions were not issued. Two additional deadlines (January 27, 2021, and February 10, 2021) were provided to the public body by our office. These deadlines also passed without the public body providing access decisions to

the applicant or providing our office with any specific details on when the public body would be responding.

On March 1, 2021, our office again requested information on the status of the four access requests. We subsequently advised that if the access decisions were not forthcoming, our office would be making a recommendation that Manitoba Infrastructure respond to the four access requests.

The public body has not issued access decisions with respect to the four access requests despite that it has been over six months since Manitoba Infrastructure received the access requests from the applicant.

Our office found that Manitoba Infrastructure failed to respond within the time period set out under subsections 11(1) and 15(1) of FIPPA, and has not fulfilled its duty to respond to the applicant without delay.

## **RECOMMENDATION**

Based on the finding, the ombudsman makes 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 no later than March 29, 2021, and provide decisions on whether access will be granted, in accordance with section 12 of FIPPA.
2. The ombudsman recommends that the public body submit to our office a copy of its response(s) on the date that it is provided to the complainant.

## **HEAD'S RESPONSE TO THE RECOMMENDATIONS**

Under subsection 66(4), Manitoba Infrastructure 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 March 27, 2021. However, because that day is a Saturday, the time limit to respond to our office is extended to the next regular business day. As such, the head shall respond by Monday, March 29, 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 COMPLAINANT OF THE HEAD'S RESPONSE**

When the ombudsman has received Manitoba Infrastructure's 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.

March 12, 2021  
Manitoba Ombudsman

# Manitoba Ombudsman

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

CASE 2020-1991, 2020-1992, 2020-1993, 2020-1994

### MANITOBA INFRASTRUCTURE

#### ACCESS COMPLAINT: NO RESPONSE

**SUMMARY:** In a letter dated March 18, 2021, Manitoba Infrastructure provided its response to the ombudsman's report with recommendations under the Freedom of Information and Protection of Privacy Act, accepting the recommendations. Manitoba Infrastructure issued its access decision to the applicant on March 16, 2021, and provided the ombudsman with a copy.

#### COMPLIANCE WITH RECOMMENDATIONS

On March 12, 2021, the ombudsman issued a report with recommendations following an investigation that found Manitoba Infrastructure had not responded to four access requests it received in August 2020. The ombudsman recommended that Manitoba Infrastructure issue access decisions to the applicant about the four access requests by March 29, 2021, and provide our office with copies.

Subsection 66(4) of the Freedom of Information and Protection of Privacy Act (FIPPA) required that Manitoba Infrastructure respond to the ombudsman's report by March 29, 2021, to indicate whether the recommendations have been accepted. Under subsection 66(6) of FIPPA, when a public body accepts a recommendation it is required to comply with the recommendation within 15 days, or within such a time as the ombudsman considers reasonable. On March 16, 2021, Manitoba Infrastructure issued its access decisions to the applicant and provided our office with a copy. On March 18, 2021, Manitoba Infrastructure responded to the ombudsman stating that it accepted the recommendations set out in the report. The applicant subsequently confirmed receipt of the access decisions with our office.

#### CONCLUSION

Manitoba Infrastructure accepted the ombudsman's recommendations, and issued the access decisions within the time limit set out in the ombudsman's report with recommendations.

Manitoba Ombudsman  
April 6, 2021