

# Manitoba Ombudsman

## REPORT UNDER

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

CASE 2010-0405

#### WINNIPEG REGIONAL HEALTH AUTHORITY

#### ACCESS COMPLAINT: REFUSED ACCESS

#### PROVISIONS CONSIDERED: 4(i)

REPORT ISSUED ON JANUARY 26, 2011

**SUMMARY:** The complainant applied to the Winnipeg Regional Health Authority for access to all records containing information concerning the death of a third party. Access to the records was refused on the basis that the records relate to an inquest under *The Fatality Inquiries Act* and the proceedings concerning the inquest have not been completed.

#### THE COMPLAINT

The complainant requested the following records under *The Freedom of Information and Protection of Privacy Act* (FIPPA) on August 27, 2010:

1. *The Administrative Review report regarding the Death of [name of third party];*
2. *Video recordings of the Health Sciences Centre Adult Emergency area from September 19, 2008, 14:45 hrs to September 21, 2008, 01:00 hrs;*
3. *Correspondence, e-mails, memos, and other records of internal communications to, from, or among WRHA directors, officers and employees related to the [name of third party];*
4. *Correspondence and other records of communications with the Government of Manitoba, Minister of Health, or other ministers, ministries, departments, or employees of the Government of Manitoba related to the [name of third party] matter;*
5. *Correspondence and other records of communications with David Frayer, Betty Owen, or other individuals involved in the Inquest into the Death of [name of third party] (but excluding solicitor-client privileged communications with WRHA's own legal counsel);*

6. *Correspondence and other records of communications with the Winnipeg Police Service concerning [name of third party] since September 19, 2008;*
7. *News releases, public statements, speaking notes, and briefing materials concerning the death of [name of third party] and WRHA's and/or HSC's response thereto, and all notes, e-mails, memoranda, correspondence and other records concerning the conceptualization, development, and implementation of WRHA and/or HSC's public communications concerning the [name of third party] matter; and*
8. *All other documents in the possession or control of the WRHA or HSC that relate to [the third party's] attendance at the HSC on September 19-21, 2008, his death, and WRHA's and/or HSC's response to this matter.*

The Winnipeg Regional Health Authority sent the complainant a response letter, dated September 24, 2010, advising that access to the requested information was being refused pursuant section 4(i) of FIPPA, which states that the Act does not apply to records relating to an inquest under *The Fatality Inquiries Act* if all proceedings concerning the inquest have not been completed.

The complainant filed a complaint with the Ombudsman's office on October 20, 2010 regarding the Winnipeg Regional Health Authority's decision to refuse access to the requested information.

#### **POSITION OF WINNIPEG REGIONAL HEALTH AUTHORITY**

The position of the Winnipeg Regional Health Authority (WRHA) regarding its refusal of access pursuant to clause 4(i) of FIPPA was as follows:

*[We are] aware that you, as counsel in the inquest, have already been provided with many of the documents you have requested such as the Administrative Review Report. WRHA has also provided many of the other records to Counsel for the Inquest, such as the videotapes. As soon as a production order is made, those and many other documents will be provided to you in that forum. At present, we reasonably expect that any documents you are entitled to will be provided in that forum.*

*For your information, news releases issued by the WRHA are publicly available on the WRHA website: <http://www.wrha.mb.ca/media/releases/index.php>.*

*As you are aware, an inquest has been called related to [the third party's death]. This being the case, the provisions of The Freedom of Information and Protection of Privacy Act do not apply to your request.*

Clause 4(i) of FIPPA states:

***Records to which this Act applies***

**4** *This Act applies to all records in the custody or under the control of a public body but does not apply to*

*(i) a record relating to a prosecution or an inquest under The Fatality Inquiries Act if all proceedings concerning the prosecution or inquest have not been completed.*

## **ANALYSIS OF ISSUE AND FINDINGS**

### **Does FIPPA apply to the requested records?**

Pursuant to *The Fatality Inquiries Act*, an inquest was called into the death of the third party by the Province's Chief Medical Examiner on February 4, 2009.

*The Freedom of Information and Protection of Privacy Act* applies to all records in the custody or under the control of a public body except those records described clauses 4(a) to 4(k), even if the records described are in the custody or under the control of a public body.

In particular, clause 4(i) provides that FIPPA does not apply to a record relating to a prosecution or an inquest under *The Fatality Inquiries Act* if all proceedings concerning the prosecution or inquest have not been completed. Once all proceedings have been completed, then the records relating to the prosecution or inquest are once again subject to FIPPA.

Our office has been informed that the Winnipeg Police Service has commenced a criminal investigation into whether any criminal charges surrounding the death of the third party should be laid. The Winnipeg Police Service further advised that its investigation was presently in the initial stages and that it would take some time to complete.

We next contacted the Inquest Counsel appointed to the inquiry by the Manitoba Department of Justice and enquired as to the up-to-date status of the inquest into the death of the third party. Counsel advised that the inquest was on hold until such time as the Winnipeg Police Service completed its investigation as to whether or not it would be laying any criminal charges. Once their investigation is completed and if it is determined that there is no basis to lay any criminal charges, then the inquiry process will resume at that time. However, should criminal charges be laid, then these charges will have to be disposed of by the courts prior to the commencement of the inquiry.

The Inquest Counsel further advised that once the Winnipeg Police Service's investigation has been completed and the inquest process is back on track, a production order will most likely be issued at some point in time thereafter.

In light of the foregoing, it became apparent that until such time as the production order is issued, there will be no possibility for the public body to determine with any degree of certainty what records, information and documents in its possession concerning the death of the third party might be relevant to the inquest and what might not be. Under these circumstances, it was reasonable for the Winnipeg Regional Health Authority to conclude that the requested records were not subject to FIPPA at the present time.

The Ombudsman found that clause 4(i) of FIPPA applied to the requested records as all proceedings relating to the inquest of the third party under *The Fatality Inquiries Act* have not been completed. Therefore, the records requested by the complainant are not subject to FIPPA at this time.

## **CONCLUSION**

Based upon the Ombudsman's findings in this matter, the complaint is not supported.

January 26, 2011  
Manitoba Ombudsman