



**MANITOBA
OMBUDSMAN**

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT INVESTIGATION REPORT

Rural Municipality of
East St. Paul

Refused Access
Complaint

CASE# MO-07489
Final Report

Issue Date:
February 25, 2026

Provisions considered:
FIPPA - 23(1)(a) and (f),
28(1)(c) and (e)



SUMMARY

The complainant submitted an access request to the Rural Municipality of East St. Paul (“the RM” or “the public body”) on February 21, 2024. The request was for a copy of the draft Utilities Master Plan prepared by Tetra Tech consultants for the RM in relation to sewer and/or water treatment planning. The RM refused access to the record under the provisions of clauses 23(1)(a) and (f) of The Freedom of Information and Protection of Privacy Act (FIPPA).

During our investigation, the RM issued a revised access decision in which they granted partial access to portions of the withheld information. The RM continued to withhold the remaining information under clauses 23(1)(a) and (f) and also applied clauses 28(1)(c) and (e) of FIPPA.

Based on our review, we determined that the cited exceptions in the revised access decision apply to the withheld information. As the RM was only authorized to refuse access to some of the information that was withheld in the initial decision, the complaint is partly supported.

MANITOBA OMBUDSMAN ROLE

The Manitoba Ombudsman plays a crucial role in safeguarding democracy by exercising their responsibilities for investigating complaints and reviewing compliance with access to information and protection of privacy rights under The Freedom of Information and Protection of Privacy Act (FIPPA) and The Personal Health Information Act (PHIA).

Upon receiving a complaint under FIPPA, the Ombudsman makes initial contact with the complainant and with the public body involved. During an investigation, the Ombudsman reviews the complaint in relation to the provisions of FIPPA, considers the relevance of other legislation, examines any records relating to the complaint and speaks with employees of the public body.

If the matter cannot be resolved informally, the Ombudsman provides a report to the complainant and the public body containing findings about the complaint and any recommendations the Ombudsman considers appropriate respecting the complaint.

THE COMPLAINT

This report is regarding a complaint submitted to our office on April 16, 2024, under The Freedom of Information and Protection of Privacy Act (FIPPA) in relation to the access request the complainant made to the Rural Municipality of East St. Paul (the “RM” or “the public body”) on February 21, 2024. The complainant requested:

“A utility master plan report prepared for the RM by Tetra Tech Consultants. This report would relate to sewer and/or water treatment planning.”

The public body, in its access decision letter dated April 8, 2024, refused access in full to the requested record. The decision cited FIPPA provision 23(1)(a), which protects information that could reasonably be expected to reveal advice, opinions, proposals, policy options, recommendations, and provision 23(1)(f), which protects information on pending policy or budgetary decisions.

Under subsection 59(1) of FIPPA, an applicant may make a complaint to the Manitoba Ombudsman about any decision, act or failure to act that relates to his or her request for access. On April 12, 2024, our office received this complaint about the public body’s decision.

INVESTIGATION

Our office notified the RM of the complaint and requested further explanation of the reasons for its decision to refuse access, along with a copy of the withheld record. The public body provided a copy of the 122-page responsive record, entitled Draft Utilities Master Plan (“the Plan”) and representations about its decision to refuse access. It explained that the responsive record details the investigation, analysis, options, advice and recommendations from a third-party engineering firm, that sets out possible considerations, potential upgrades and expansions to its water and wastewater systems throughout the municipality. The RM explained the Plan is relevant to the RM’s assessment of future needs, liabilities, policy considerations and decision making about proposed upgrades and impacts on affected lands both for developed and undeveloped areas as well as timing, cost sharing formulas, and negotiations with stakeholders.

Our office reviewed the representations provided by the public body and we conducted a line-by-line review of the Plan and were unable to find evidence that all information in the Plan falls under exceptions to access in section 23 of FIPPA. We provided the RM with

our analysis regarding the application of the cited exceptions to disclosure of FIPPA, and explained that we could not establish that all the information in the Plan falls under clauses 23(1)(a) and (f) of FIPPA.

We gave the public body the opportunity to provide additional information to justify its decision to withhold the information. Alternatively, our office asked that the RM reconsider its access decision and release information from the Plan that is not protected by any other exceptions to disclosure.

As a result of our feedback, the RM reconsidered its initial decision and issued a revised access decision on September 25, 2024, granting the complainant partial access to the Plan with some redactions. The Plan is 122 pages long, and 39 pages were released without any severing, 35 pages were released with some redactions, and 48 pages were withheld in full. Some information continued to be withheld under the provisions of 23(1)(a) and (f).

On October 1, 2024, the complainant informed our office that they remained unsatisfied with the revised access decision. The complainant alleged that the RM had stated in its decision that the Plan was not finalized because it was inconsistent with the RM's vision and as such, the complainant felt it should be released to taxpayers. The complainant further argued that the entire information in the plan could be considered as a technical report under clause 23(2)(f) of FIPPA, a limit to the exceptions in subsection 23(1), meaning the information should be available for access under the Act.

In light of the above, our office advised the RM that this complaint was not resolved, and we requested further clarification regarding the responsive record and cited provisions.

On February 6, 2025, the RM provided us with further representations explaining the basis for its decision to redact information under the provisions of 23(1)(a) and (f) together with 28(1)(c) and (e) of FIPPA. Upon receipt of this submission, our office asked the RM to provide additional information about the harm that would result from disclosing the withheld information. Our office also asked the RM to notify the complainant of the change to its original decision and the revised decision letters. On July 28, 2025, the RM issued another revised decision letter to the complainant with information about the additional provisions under section 28 that it was relying on and provided justification for its decision to withhold information.

The remainder of our investigation report deals with the information that continued to be withheld from the revised access decision. In order to complete our investigation and

make findings, we conducted a further review of the information that was withheld and obtained additional representations and explanations from the complainant and from the public body. This included representations the RM provided to us on July 28, 2025, in support of its decision to withhold under clauses 28(1)(c) and (e), in addition to clauses 23(1)(a) and (f).

Public Body's Representations

We considered the RM's representations dated February 6, 2025 and July 28, 2025 regarding the application of exceptions to disclosure under section 23 and section 28. The RM provided extensive explanation with examples to illustrate their position, on how disclosure of the remaining withheld information could impact the RM's decision-making functions and harm the RM's financial interests and negotiating position as it relates to competitive bidding for projects or portions of projects to which the Plan relates.

The RM said the Plan was commissioned to review the status of its capital infrastructure and provide recommendations on how to manage current servicing issues and/or issues that are projected to arise in the future. It explained that the Plan speaks about existing infrastructure status and the impact any proposed water and waste projects could have on the RM's budgetary plans, its residents and its wastewater management.

Regarding the decision of the RM to apply the provisions of 23(1)(a) and (f) to withhold information, the RM took the position that the Plan reflects the analysis, opinions and recommendations of the third party, provided to the RM in confidence. It stated that the section 23 provisions allow the public body to keep information confidential and to allow the decision maker to consider and decide on a course of action without unfair pressure. The public body further submitted that the disclosure of the withheld information in the Plan would reveal budgetary, funding options and recommendations regarding existing infrastructure and potential future projects in the municipality.

The RM further took the position that the Plan provides recommendations on how capital projects could be funded, possible options on servicing costs and other related options for the Council to consider. In relation to clause 23(1)(f), the RM stated that the Plan consists of information related to options and estimates of future or pending projects of the RM which are subject to budgetary decisions of the RM, and should not be disclosed prematurely.

In relation to the application of the provisions of clauses 28(1)(c) and (e) of FIPPA, the RM explained that the information at issue, if disclosed, could compromise the ability of the

RM to choose options for its infrastructure in seeking competitive bids for projects and in negotiation with developers for development agreements in the best interests of the citizens of the RM.

The RM explained that disclosing this specific information, could reasonably be expected to result in prospective bidders using the estimates as the baseline for their bids, discouraging competition among bidders to provide the best prices and recommendations on how to complete projects.

The RM shared concerns that if it releases the information at issue from the Plan, bidders could limit their proposed method(s) of construction based on information on specifications in the Plan instead of proposing other effective construction options.

The RM also expressed its concern about the impact disclosure could have on the process of balanced negotiations between it and developers in relation to cost sharing and other terms of development agreements relating to projects specified in the Plan. It stated that “The Master Plan information on proposed cost-sharing could be used by a developer as a basis to not pay an amount greater than what is set out in the Master Plan”.

In relation to clause 28(1)(e), the RM shared that protecting the information is important to prevent undue loss or benefit to a person. The RM argued that the information could lead to speculation of future increases in value of lands identified in certain areas of the RM which could in turn decrease the value for lands in areas not identified for certain improvements in the RM. The RM expressed its concerns that if it releases more information from the Plan, it could lead to the practice of ‘land banking’ by developers. Land banking is a practice where developers speculatively purchase land in specific areas in anticipation that new developments are proposed in those areas, which could further increase the value of those lands in future. This could result in undue loss to local landowners if they sell land unaware of the potential for development in the area and undue gain to others if they purchase the land while its value is lower, knowing that its value will increase if it is targeted for development.

The RM concluded that there is a reasonable expectation of harm to its residents’ economic and financial interests resulting from the disclosure of the withheld information, and the risk of harm is more than just speculative or a mere possibility.

ANALYSIS & FINDINGS

Is the public body authorized to refuse access to information under section 23 of FIPPA?

The discretionary exceptions set out in section 23 are intended to protect the advisory and decision-making processes of a public body. Preserving the confidential relationship between a public body and its advisors ensures full and frank discussions take place among those advising a public body. The RM relied on clauses 23(1)(a) and (f) of FIPPA:

Advice to a public body

23(1) *The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal*

(a) advice, opinions, proposals, recommendations, analyses or policy options developed by or for the public body or a minister;

(f) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

A discretionary exception means a public body may refuse access, but it is not required to do so. Accordingly, a public body must exercise its discretion about whether to refuse or give access to information to which a discretionary exception applies.

The exceptions in section 23 protect a type of information contained in a record and may not apply to all the information in a record. In addition, subsection 23(2) sets out limits to the application of subsection 23(1), meaning if the information is subject to one of the limits in subsection 23(2), the exception in subsection 23(1) does not apply to that information.

We first considered the remaining information in the Plan to which the RM applied clauses 23(1)(a) and (f). With respect to the application of clause 23(1)(a) of FIPPA, our office consulted the 'Manitoba FIPPA Resource Manual' (the Manual). While our office is not bound by the information contained in the Manual, we frequently consider it as it was created by the Manitoba government as a reference to assist public bodies in meeting the requirements of FIPPA. The Manual explains that:

The exception in clause 23(1)(a) is intended to maintain and encourage candour in the giving of advice, opinions, recommendations and related analytical alternatives in the context of a deliberative or decision-making process involving a minister or a public body.¹

With respect to the terms 'analyses' or 'policy options', the manual explains that:

These terms are closely related to advice and recommendations, and involve the development of advantages and disadvantages of possible courses of action.²

With regard to clause 23(1)(f), the manual explains that the exception provides protection for information where its disclosure could lead to a premature disclosure of an anticipated policy or budgetary decision.

The Manual's definition of "plan" is as follows:

A "plan" is a formulated and especially detailed method by which a thing is to be done; a design or scheme; an intention or proposed proceeding.

A proposed plan is a plan that has not been finalized and put into operation.

A proposed project means a planned undertaking that has not been implemented.

"Pending" means awaiting decision or settlement, undecided; about to come into existence. Once the policy or budgetary decision has been made and implemented, it is no longer pending and the exception in clause 23(1)(f) no longer applies. A decision is implemented when those who are expected to carry it out have been authorized and instructed to do so.

The exception in clause 23(1)(f) no longer applies once the policy or budgetary decision has been made and put into effect.

We reviewed the portions of the record to which these clauses were applied. The Plan contains information about proposals on planned phases, project monitoring, protocols and oversight, as well as policy options regarding water and sewage systems yet to be

¹ Manitoba FIPPA Resource Manual, p. 5-159. The Manual may be consulted online at https://www.gov.mb.ca/fippa/public_bodies/resource_manual/index.html.

² Ibid, p. 5-161.

implemented in the municipality. We determined the Plan contained plans, analyses, recommendations, technical and financial considerations and funding options for a proposed course of action that was subject to change based on budgetary allocation.

Based on our review, the withheld information is of the type described in clause 23(1)(a) and some of the information is also of the type described in clause 23(1)(f).

The complainant pointed out that the final paragraph of the revised decision states that the Plan does not currently reflect the RM's vision, which they argue is inconsistent with the claim disclosure would reveal pending policy and budgetary decisions under clause 23(1)(f). We reviewed the decision letter and confirmed that the RM said the following: "The Draft Utilities Master Plan contains a spectrum of opinions, proposals, recommendations, analyses and policy options that may not presently align with the municipality's vision and/or budgetary considerations; hence they are not currently under action consideration."

We considered the complainant's argument in relation to what the RM said in its decision letter, and in relation to our review of the information that continues to be withheld. Based on our review, we believe that the withheld information reflects items that have not been implemented and that clause 23(1)(f) still applies. Even if this were not the case, it does not change the fact that clause 23(1)(a) applies to information consisting of opinions, analyses, policy options and recommendations regardless of whether they are currently being actioned.

We assessed the provisions of subsection 23(2) to determine if any provisions might apply that would limit the exceptions to disclosure in subsection 23(1). In view of the nature of the withheld record, we considered the information in the record in relation to the following specific limiting provisions to determine their applicability:

Exceptions

23(2) Subsection (1) does not apply if the information

(d) is the result of a product or environmental test conducted by or for the public body;

(f) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal;

In our initial review of the responsive record, we provided feedback to the RM on these limits to the application of subsection 23(1) and this resulted in additional portions of the records being released to the complainant. We are satisfied that the information that

continues to be withheld is not the types of information described in clauses 23(2)(d) and (f).

Based on our review, we determined that the RM appropriately applied clauses 23(1)(a) and (f) to the information remaining at issue and that no limits to the exception were applicable.

As clauses 23(1)(a) and (f) are discretionary, we asked the RM about its decision to exercise discretion not to release the remaining information in the record. The RM shared concerns that if it releases information within the Plan, it would severely impact, prejudice and compromise the RM's ability to consider the proposed upgrades and expansion, make policy decisions, and deal with stakeholders in implementing its intended projects reflected in the Plan. The RM took the position that it must balance a number of factors and competing interests in making these critical policy and budget decisions in the best interests of the RM and its residents.

We considered its representations and determined that the RM reasonably exercised its discretion in deciding to withhold the information rather than release it.

Is the public body authorized to refuse access to information under section 28 of FIPPA?

Subsection 28(1) of FIPPA is a discretionary exception to disclosure which allows public body to protect its economic and other interests by withholding information, if disclosure could harm those interests. Here, the RM relied on clauses 28(1)(c) and (e) of FIPPA to refuse access to this information, which read as follows:

Disclosure harmful to economic and other interests of a public body

28(1) *The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to harm the economic or financial interests or negotiating position of a public body or the Government of Manitoba, including the following information:*

- (c) *information the disclosure of which could reasonably be expected to*
- (i) result in financial loss to,*
 - (ii) prejudice the competitive position of, or*
 - (iii) interfere with or prejudice contractual or other negotiations of,*
- a public body or the Government of Manitoba;*

(e) information the disclosure of which could reasonably be expected to result in an undue loss or benefit to a person, or premature disclosure of a pending policy decision, including but not limited to,

(i) a contemplated change in taxes or other source of revenue,

(ii) a contemplated change in government borrowing,

(iii) a contemplated change in the conditions of operation of a financial institution, stock exchange, or commodities exchange, or of any self-regulating association recognized by The Manitoba Securities Commission under an enactment of Manitoba, or

(iv) a contemplated sale or purchase of securities, bonds or foreign or Canadian currency.

The discretionary exceptions in subsection 28(1) of FIPPA aim to protect the economic and financial interests of a public body considering the potential harm that could reasonably be expected to result from the disclosure of the types of information covered in that provision. According to the Manual, economic interests include a public body's interests in the management of its financial resources and other resources (such as infrastructure). Likewise, financial interests capture matters involving management of assets and liabilities, collection of taxes and revenues and interests in financial transactions with others.

With respect to the provisions of clause 28(1)(c), the RM explained that the information if released could reasonably be expected to impact its economic interests and also its negotiating position during competitive bidding processes for any projects (or portions of projects) that may proceed in future. The RM explained to our office that the Plan consists of recommended designs, specifications, methodologies and processes involved in the construction of new developments and capital infrastructure in the municipality and associated potential costs for various aspects of infrastructure projects.

The RM further explained that its competitive bidding process for infrastructure projects will often begin with a request for proposals (RFPs) from contractors for feasibility studies of design of the municipality's system requirements. Municipalities would generally not disclose information from a Master Plan at this point, as they would want to see what bidders independently propose. The municipality and its own engineer would then use information in the Master Plan in evaluating the bids received, assessing the feasibility of the work, and selecting the successful bid. After that, the process moves to a second request for proposals, which requires contractors to submit a full bid on the proposed project including detailed requirements and pricing. At this point, the RM would evaluate all the bids and determine the lowest qualified bid.

In both rounds of bids, the RM expects that the information supplied by proponents reflects an objective and independent view of all factors without gleaning from any information from the Plan. The RM explained that if bidders had access to the Master Plan, including information on the methods for completing the work and anticipated costs, there would be no incentive for firms to identify and propose alternate and/or lower cost options for completing the work. This would harm the ability of the RM to obtain the best value for money on behalf of its citizens.

We reviewed the withheld information and found that it describes a variety of projects and their associated estimates, information which could serve as the baseline for competitive bidding on these projects. We considered the examples provided in the submission from the RM, and we agree that the technical and financial analyses, if released, could negatively impact the RM's ability to provide municipal services in the most financially responsible manner including ensuring the best possible services and systems provided at the lowest competitive cost.

We also note that much of the information in the Plan describes decision-making options, equipment specifications, system descriptions and sizing, land ownership and cost responsibilities for potential new developments. Our office acknowledges that the Plan was commissioned by the RM for its own use at its own expense to help guide its decision-making, including around the development and servicing of land. The Plan identifies a variety of options for how to raise revenue to pay for the construction costs, and is considered by the RM in deciding how to apportion costs and in negotiations with private developers for the creation of development agreements and provision of services in proposed developments. We agree with the RM that disclosing such information would harm the ability of the RM to negotiate development agreements that are more beneficial for its citizens.

Regarding subclause 28(1)(c)(iii), the FIPPA Manual states as follows that:

"Prejudice" in the context of paragraph 28(1)(c)(iii) means that disclosure of the information would harm or injure the negotiations of a public body".

Based on this analysis, we found that the release of any part of the remainder of information could reasonably be expected to prejudice the economic and financial interests of the RM by harming competitive bidding for projects and by putting the RM at a disadvantage in its negotiations with developers about the cost and manner of servicing new developments.

We reviewed the portions of the record to which these clauses were applied and the RM's submission, including the supporting examples. We determined that the remainder of information in the Plan is subject to the exception to disclosure under subclause 28(1)(c)(iii).

Section 28 has a limit to the exception that is similar to one considered earlier in this report regarding section 23. Subsection 28(2) provides:

Exception

28(2) Subsection (1) does not apply to the results of a product or environmental test conducted by or for a public body, unless the test was done for the purpose of developing methods of testing or for the purpose of testing products for possible purchase.

Based on our review, we are satisfied the remaining withheld information does not consist of product or environmental testing, and the limit to the exception does not apply.

For the same reasons that we found that the RM's exercise of discretion in applying section 23 was reasonable, we find that the exercise of discretion in applying section 28 is also reasonable.

Based on our findings, we agree that the RM has demonstrated that releasing the severed information could harm the RM's economic and financial interests and prejudice its negotiations with contractors and developers. As we determined that subclause 28(1)(c)(iii) applied to the information remaining at issue, it was not necessary to determine if clause 28(1)(e) also applied to the same information.

CONCLUSION

Based on our initial review, the public body was not authorized to withhold the Utilities Master Plan in full. The RM released the information to which exceptions did not apply. Based on our findings, our office concludes the public body was authorized to refuse access to the remaining withheld information in the Utilities Master Plan under clauses 23(1)(a) and (f), and subclause 28(1)(c)(iii). Therefore, the complaint is partly supported.

In accordance with subsection 67(3) of The Freedom of Information and Protection of Privacy Act, the complainant may appeal the Rural Municipality of East St. Paul's decision to refuse access to the Court of King's Bench within 30 days of receiving this report.

This report is available in alternate formats upon request.

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