



LET IT ALL HANG OUT: Freedom of Information and municipalities

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In 1967, *The Hombres*, a one-hit-wonder Memphis band, encouraged the world in song to “let it all hang out.” On April 3, 2000, the date on which *The Freedom of Information and Protection of Privacy Act* (FIPPA) began to apply to municipal governments, the Province of Manitoba sent the same message to municipalities, planning districts and conservation districts.

FIPPA grants all persons (not just residents or ratepayers of a municipality) a right of access to **all** information and records (paper, digital or otherwise) that are in the custody or control of any of these public bodies. The right of access is subject only to the specific, limited restric-

tions on disclosure set out in FIPPA.

FIPPA's structure is consistent with modern access to information legislation in other provinces and with comparable federal legislation. It provides for a *prima facie* entitlement to information. To quote Madam Justice Steele, as she then was, in the 1999 decision in *Kattenburg v. Manitoba*:

[FIPPA] promotes the general principle that information held by government should be available to the public, except where other considerations legitimately require denial of such access. Disclosure is the rule rather than the exception . . .

FIPPA also deals with the protection of an individual's personal information. This

article only deals with access to information rights.

Access to information is not something entirely new to municipalities and planning bodies. In a previous article the author discussed the obligation on municipal councils to hold public meetings and the limitations on *in camera* discussions. *The Municipal Act* (the Act) identifies specific municipal records to which any person must be given access, along with a right to obtain copies. The records include assessment rolls, financial plans, financial statements, auditor's reports, minutes of council and committee meetings, by-laws and resolutions of council and its committees. FIPPA rights are over and above the rights under the Act.



Most municipalities will respond voluntarily to reasonable requests for information and will provide copies of documents without the necessity of a formal, written FIPPA request. It is sometimes surprising, however, as to the frequency with which the most innocuous requests for access to records are resisted or refused, even where there is a clear entitlement to the information.

FIPPA requires that each public body designate a person or group of persons as the "head". The head is responsible for all decisions relating to FIPPA requests. The head may delegate responsibility to a person who will act as the body's "Access and Privacy Officer." (Who is this person in your municipality/district?)

Once a request for information has been received, there is an obligation to act. Every reasonable effort must be made to respond to a request within thirty days after its receipt. The head also has a positive legal obligation to assist every person who is seeking information and to respond to such persons in a manner that is open, accurate, complete and without delay. There is no room for stonewalling.

An information request response must state:

- Whether the access to the record will be granted;
- How will the access be granted (e.g., inspection of the records, paper copies, digital copies);
- If access is refused, why it is refused, quoting the specific sections of FIPPA that justify the refusal and providing the name and telephone number of an employee who can answer the person's questions about the refusal; and
- If the information is refused, a statement that the applicant may make a complaint to the Provincial Ombudsman.

All of this necessitates the dedication of sufficient resources to respond to such requests in a timely manner. There is the ability to extend the thirty day deadline, but reasons must be given for the extension.

What *must* a public body refuse to disclose? Some of the mandatory exceptions to disclosure are:

- Personal information on an individual such as health information, financial

circumstances, character references, social assistance eligibility, ethnic origin, etc.


- Information which, if released, would be harmful to the information provider's business interests (such as trade secrets or commercial, financial or other information) provided that it was supplied to the public body on a confidential basis;
 - Information provided in confidence by another level of government.
- A public body *may* choose to withhold:
- Draft resolutions or by-laws (unless put before council or committee);
 - Substance of an in camera meeting (but remember, the Act strictly limits the ability to have in camera meetings);
 - Information which may harm a law enforcement matter;
 - Information subject to solicitor-client privilege; and
 - Information harmful to the financial interests of the public body.

There are other exceptions too numerous to list in this brief article.

Public bodies are under a further duty to persons who have supplied the information in the first place. Where it has been

decided that access to information will be given, but the access may result in an unreasonable invasion of privacy or affect the information provider's business interests, the head must, where practicable and as soon as practicable, give written notice to the information provider that there is an intent to disclose the information. The provider then has the right to object to disclosure. If the public body decides to grant access, notwithstanding the objection, the provider has a right to make a complaint to the Ombudsman and have that determined before the information is disclosed. Parties can appeal a decision of the Ombudsman to the courts.

The fee that a municipality or other public body may charge for providing information is limited to the amounts set out in the *Access and Privacy Regulation*. In any case, it may not exceed the actual cost of providing the information.

When dealing with a FIPPA request, be careful with confidential third party and personal information and information that may impact the economic interests of others, including your body. Otherwise, as the song said, "Keep an open mind – let it all hang out." 



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