

Manitoba mbudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE 2016-0412

CITY OF FLIN FLON

REPORT ISSUED ON NOVEMBER 16, 2017

CASE SUMMARY

Manitoba Ombudsman received a complaint from a property owner in the City of Flin Flon who received a bill from the city for repairs made to the waterline from his property to the main waterline in the street. The city initially issued an invoice in excess of \$10,000 to the property owner and after some discussion with the property owner and reconsideration, issued an adjusted invoice of just over \$2,700 to the property owner. The property owner is questioning the authority to assess costs to him and the validity of the amount ultimately billed to him.

Our office found that the City of Flin Flon does have the authority to bill property owners for repairs to waterlines; however we also found that the city did not communicate to the public its changes in policy with respect to charging for waterline repairs and did not provide the property owner with sufficient billing information to understand how the invoice amount was arrived at. Nor did the city provide the property owner with sufficient information as to the extent and location of the waterline repairs.

As a result, we made a number of recommendations to improve administrative practices and ensure citizens are treated fairly. The City of Flin Flon has advised our office that it will be taking actions to implement the recommendations contained in this report.

OMBUDSMAN JURISDICTION AND ROLE

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal by-law. On other occasions, it is written policy or established procedures implemented to give effect to legislative purpose.

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. Administrative suggestions may be made to support and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can enhance the relationship between government and the public, and reduce administrative complaints.

THE COMPLAINT

Manitoba Ombudsman received a complaint in December 2016 from a property owner related to a billing from the City of Flin Flon for a waterline repair. The city originally billed the complainant \$10,153.06 for the repairs; however later adjusted the amount to \$2,756.25. The complainant questioned whether he was liable for the bill as he believed the repair was made on city property as opposed to his property.

KEY ISSUES

In response to the complaint, the ombudsman determined that an investigation would be conducted into the following administrative issues pursuant to section 15 of the Ombudsman Act:

- 1. Did the city have the authority to charge the complainant for the costs of the waterline repair and did it act in accordance with its policies, procedures and by-laws?**
- 2. Did the city allocate the costs of the waterline repairs in accordance with its policies, procedures and by-laws?**
- 3. Is the city required to, or should it, consult with the property owner with respect to repairs that the property owner could be liable for?**

BACKGROUND INFORMATION

In January 2016, City of Flin Flon staff came to the complainant's property to determine if there was a waterline leak. The property owner next door was complaining about water coming into their basement. A leak was confirmed and the city's Works and Operations division began digging both on city property and on the complainant's property to determine the exact location of the leak. The property is a business property not a private residence.

Aside from the initial inspection and casual observation of a leak at the line joining his property to the main at the street, the complainant was not aware of the extent of the work done by the city. In April 2016, the complainant received an invoice from the city in the amount of \$10,153.06 related to the repair of the water line.

After complaining to the city and ultimately, in September 2016, contacting the Manitoba Ombudsman, the complainant received a revised invoice for \$2,756.25 dated October 15, 2016

and later an explanation from the city advising him that this bill represented the costs of repairs of the waterline from his office to his property line. (The original bill represented the portion of the costs of the repairs from his office all the way to the main line)

The complainant is of the opinion that any breaks in the waterline were on city property not his property and therefore he is not liable for any costs related to the repairs. Secondly, the complainant advised our office that he is aware that there have been other waterline repairs made around the city and to his knowledge, none of the property owners have been billed for any portion of the work that involved the water line from the property line to the main line.

Finally, the complainant noted that he was not consulted about the repairs nor was he provided with any options with respect to how the repairs were to be made. The billings, both the original and the revised billing are, in his opinion, arbitrary and unfair.

RESPONDENT'S POSITION

The city is of the opinion that By-Law 10/77 provides it with the authority to bill a property owner for repairs made to the waterline. The city believes that the revised billing, representing repairs to the waterline on the complainant's property is more than fair and reasonable, given that the by-law provides for the city to actually bill the property owner for all of the related repairs on the waterline connecting a property to the main line. This would include the cost of repairs for example from the property line, through any sidewalk or boulevard to the street where the main line is situated.

SCOPE OF THE INVESTIGATION

Our investigation of this complaint included the following:

- Review of related policies and procedures for the City of Flin Flon for waterline repairs.
- Review of similar by-laws for other Manitoba cities/municipalities.
- Review of information provided by the City of Flin Flon with respect to the specific repairs.

ANALYSIS

- 1. Did the City have the authority to charge the complainant for the costs of the waterline repair and did it act in accordance with its policies, procedures and by-laws?**

Section 252 (1) of the Municipal Act provides municipalities with the authority to charge fees for work, services and utilities provided by the municipality as follows:

Powers respecting works, services, utilities

252(1) A municipality exercising powers in the nature of those referred to in clauses 250(2)(b), (c) and (e) may set terms and conditions in respect of users, including

- (a) setting the rates or amounts of deposits, fees and other charges, and charging and collecting them;*
- (b) providing for a right of entry onto private property to determine compliance with other terms and conditions, to determine the amount of deposits, fees or other charges, or to disconnect a service; and*
- (c) discontinuing or disconnecting a service and refusing to provide the service to users who fail to comply with the terms and conditions*

The City of Flin Flon passed By-Law 10/77 on March 1, 1977. Section 21 of that by-law addresses the issue of responsibility for costs for repairs to the waterlines as follows:

21: That all damage or injury to the piping, meters or water of the said water works and sewerage system caused by frost action or hot water action, or negligence on the part of any occupant of the premises, shall render the owner of such premises from which such damage arose, liable to pay the cost of repairing said damage so done.

The city advised that due to the amount of bedrock in the townsite, the waterlines in Flin Flon are laid close to the surface in many locations and as a result are susceptible to frost damage. In this case, the waterline leak occurred in January as a result of frost damage and as a result By-Law 10/77 applies.

It is our view that By-Law 10/77 provides the city with the authority to bill property owners for repairs to the waterline from their residence or office, if private property, right through to the connection of the line to the main waterline and therefore the city did act in accordance with its by-laws.

However, as part of our investigation, we reviewed similar by-laws for five other Manitoba communities¹: While all five of the communities had repair liability by-laws, all of the by-laws were much more specific on where the property owner's responsibility begins and when the property owner becomes liable for costs. For example, all of the bylaws state that the property owner is responsible for the maintenance of the water line, albeit from different points on the waterline (some from the main, some from the border of the property line, etc.).

The City of Flin Flon by-law indicates that the property owner is responsible for the entire costs from the main line through to the building where it connects; however, that is not explicitly stated, nor does the by-law suggest that the property owner is responsible for general maintenance costs. Our office would suggest that the city consider amending its by-law so it is clear as to the liability of the property owner and accurately reflects the billing practices of the city. In doing so, the city may wish to consider whether it wants to continue to have the property owner be liable for the full costs of the repairs, or only for repairs from their property line to the

¹ The five communities were the Local Government District of Pinawa, Rural Municipality of Gimli, City of Dauphin, City of Portage la Prairie, and City of Selkirk.

connection to their residence or office. As a result, we make the following administrative suggestion:

The city should consider amending by-law 10/77 so that it is clear as to the liability of the property owner and accurately reflects the intended billing practices of the city.

2. Did the city allocate the costs of the waterline repairs in accordance with its policies, procedures and by-laws? Was the complainant charged a fair amount?

Liability for repairs

The city advises that in the past, it tended to absorb the costs of the repairs from property lines to the main water line even though the by-law attributes the full liability to the property owner.

The city advised our office that the director of works (DOW) for the city has always had the discretion to determine the billing practices for repairs to water and sewer lines and over time the practice of having the city assume this portion of the repair costs became de facto policy. There are, however, no guidelines for the DOW to consider when applying discretion to cost allocations.

The city advised our office that, in 2015, a new director of works was hired and the practice of only billing property owners a portion of the costs for waterline repairs was reviewed. It was ultimately suggested that the city begin to bill in accordance with By-Law 10/77. The DOW brought this matter to the Engineering Services Committee on November 4, 2015 and, according to the city, the Engineering Services Committee approved the change; however the minutes for the meeting only show the statement, *Discussion held regarding policy regarding leaks, breaks.*

The city advises that the Engineering Services Committee has some discretion as to what must go to council for approval and what the committee can decide. In this instance, the committee can make policy changes and would not need to bring such a change forward to council in general (on matters of major project commitments or by-law changes, the committee must seek council approval). The mayor and other council members frequently attend the committee meetings and are generally aware of the committee actions and decisions.

The Engineering Services Committee meeting minutes are made available to the general public on request but are not publicly posted.

One of the first properties to be affected by this change in policy was the complainant's. According to the city, the actual full costs for the repairs to the water line from the main onto the property of the complainant, was in excess of \$19,500; however, the DOW, at their discretion, reduced the billing to \$10,153.08 (including GST).

How those costs were allocated to the complainant is not exactly clear as the billing only states amounts without any relationship back to the actual costs of the repair work. In this particular case, we were advised that the DOW considered the complexity of the job, whether the property owner would have had to make repairs at some point in the near future to their waterline, and the amount and cost of restoration work (to streets, sidewalks, etc.) that would need to be done after the

waterline was fixed. The DOW determined that the costs of the post repair work would be borne by the city, not the property owner.

The city advises that there is no policy or guidelines with respect to the discretion of the DOW in determining how costs for waterline repairs are allocated between the city and the property owner. In situations such as these, having discretion is necessary as there will be differing circumstances in each waterline repair. However, not having guidelines increases the risk of inconsistency in decisions and may create a real or perceived unfairness in cost allocations.

After much discussion between the city and the complainant, the city decided to charge the complainant only for costs from his office to his property line. In a December 2, 2016, letter the property owner was advised that the amount was adjusted to \$2,756.25 (including GST), however no explanation as to how the amount was arrived at was provided with the invoice. The city has since provided our office with more detail of the billing as follows:

Item	Quantity in hours	Rate in \$	Cost per item
Labour: 4 men For 6 hours	24	28.25	\$678.00
Tandem	6	100.00	600.00
Backhoe	6	120.00	720.00
Truck	6	50.00	300.00
Trailer with tools	6	54.50	327.00
Total			\$2625.00

The city advised that property owners would share a proportionate cost of the equipment and machinery needed to complete the full repair to the waterline, from the property to the main waterline.

The change in the billing amount was noted in the September 29, 2016 Engineering Services Committee minutes where it states: *The Committee recommends that the property owner be invoiced for the work done by the city on his property-\$2,625.00 plus GST*

The above-noted change in billing practices is in fact reverting back to the prior city practice of billing only for the costs of repairs made to the waterlines on their property. This remains the practice to date.

While the city has authority to draft by-laws and determine how costs related to water repairs should be allocated, it is important that citizens are aware of what their liability will be. Any changes in practices or policies must be communicated to the public.

In this case it is doubtful that, should a member of the public request and read the Engineering Committee minutes from September 29, 2016, that they would have understood that there was a change in policy, given the abbreviated minute only referenced the discussion.

It is our view that the city must ensure that minutes of all committees fully explain the decision being made. Citizens rely on such records to be able to understand the decisions made by their government. In order to do so, records such as the minutes of committee and council meetings should provide sufficient detail. The initial change in practice of holding the property owner responsible for only repairs made on their property to being responsible for the full costs of the repair of the waterline connecting the property to the main line was a significant change with significant implications to the property owner, given that the bill in question in this complaint was for in excess of \$10,000.

As a result we make the following recommendations:

The city should ensure that minutes of all committees of council fully explain the decision being made.

The city should also ensure that when significant policy changes are being made that citizens are made aware of such changes.

The city should develop at a minimum some general guidelines as to how discretion will be applied by the director of works in determining how costs will be allocated between the property owner and the city.

Location of the waterline repair and billing

The complainant stated that he does not believe any repairs were made to the waterline on his property. He confirms seeing a leak at the point where his waterline meets the main line; however he was never shown any leaks on his own property. The city has advised that they did not take photographs or videos of the leaks, nor did they show the complainant the leak that they claim was on his property. Both the complainant and the city can confirm that there was digging done on the complainant's property; however, the complainant believes that the city began digging on his property working back towards the main line in an effort to find the leak, which, according to the complainant, eventually turned out to be at the main connection. Given the lack of any supporting documentation, we cannot confirm the location of the leak or leaks.

The complainant was never provided any evidence as to where the leaks were ultimately found nor were any details provided as to the costs invoiced to him. Neither the original billing for \$10,153.08 nor the revised billing for \$2,756.25 provided any detail as to how the amount was arrived at or how the amounts related to the actual full costs of the repairs that were made. A breakdown of costs for the \$2,756.25 was provided to our office in the course of our investigation. This lack of information and detail can potentially leave property owners with the impression that that the billing amounts are arbitrary and hence unfair. As such we recommend the following:

The city should provide more detailed cost information to property owners, including the full cost of the repair, the allocation of costs to the property owner and the reasoning for the allocation when billing for repairs.

The city should, wherever possible be documenting the repairs made with photographs, video and ideally, by showing the property owner what was found during the exploration process and what repairs were ultimately made.

3. Is the city required to or should it consult with the property owner with respect to repairs that the property owner could be liable for?

The city advises that, where possible, it will consult with property owners before and during the repair process and will, in some circumstances, allow property owners to hire their own contractors to make any repairs on their property. In an emergency situation however, the city will take control of the entire repair as occurred in this particular situation². In this instance, as other nearby properties were experiencing water coming into their building and as there was a high probability of damage from freezing if repairs were not made quickly, the city took control of the repairs.

Notwithstanding the need for a quick response, it would be in the city's and the property owner's best interest if some form of consultation occurred while the repairs were underway. At a minimum, some information should have been provided to the property owner as the repair work progressed, especially because most property owners will not recognize that they may be responsible for some of the repair costs. While it may not be possible in all circumstances to have discussions with the property owner, any consultations that do occur should be documented and if the city is unable to consult with the property owner, the reasons should also be documented.

For the property owner, the issue of liability could be significant. In this particular situation, if the city had decided to charge in accordance with the by-law as written, the property owner could have been responsible for up to \$19,500 in costs, a significant unexpected expense for a property owner.

While there is an issue with respect to communication with the property owner, there is also an issue of fairness. Not providing information early in the process, not providing information as the process is underway and not providing complete information, such as billing details, can create the impression that the city is not treating citizens fairly.

As a result we recommend the following:

The city should consult with and provide as much information as possible to property owners when making repairs for which the property owner may be liable. Given the potential liability for a property owner, the city should have a policy that includes

² Section 247 (1) of the Municipal Act provides authority for a municipality to do whatever may be necessary to eliminate an emergency

consultation with property owners during the repair process, including advising the property owner when the property owner is or may be liable for some of the costs.

CONCLUSION

Our office finds that the City of Flin Flon has the authority to charge property owners for waterline repairs, in accordance with section 252(1) of the Municipal Act and the City of Flin Flon By-Law 10/77. The by-law allows for the city to recover the costs of repairs to waterlines from the main line on through the property, meaning that the costs to the property owner could include the costs of repairs from the street to the home/business as opposed to costs from the property line to the home/business. Our office also finds that the city has the right to make policy as to what waterline repair costs will be recovered from property owners.

That being said, Manitoba Ombudsman has made several recommendations for administrative improvements to ensure property owners are treated fairly when it comes to allocating costs for repairs and are fully aware of their liability and any changes in related practices and policies of the city. We believe these administrative improvements will reduce the risk of perceived or real unfairness in the process.

THE CITY'S RESPONSE TO THE RECOMMENDATION

We provided the city with an advance copy of this report so it could advise our office as to whether it accepted our recommendations. In a telephone conversation with the CAO on November 14, 2017, he advised that the report had been presented to council, the recommendations accepted, and that steps were being taken to implement the recommendations. Those steps include a redrafting of by-law 10/77 to clarify that property owners would be responsible for waterline repair costs from their property line to the property and policies are being prepared to improve the communication with property owners and the public with respect to waterline repairs and property owners' responsibilities.

The release of our report now concludes our involvement regarding this complaint.

MANITOBA OMBUDSMAN