Manitoba Ombudsman

750 - 500 Portage Avenue
Winnipeg, Manitoba R3C 3X1
Telephone: (204) 982-9130
Toll Free in Manitoba:
1-800-665-0531
Fax: (204) 942-7803
E-mail: ombudsma@ombudsman.mb.ca
www.ombudsman.mb.ca

500 av. Portage, Pièce 750
Winnipeg (MB) R3C 3X1
Téléphone : (204) 982-9130
Sans frais au Manitoba :
1 800 665-0531
Télécopieur : (204) 942-7803
Courriel : ombudsma@ombudsman.mb.ca
www.ombudsman.mb.ca

THE CITY OF WINNIPEG
RECEIVED
NOV 09 2010
CHIEF ADMINISTRATIVE
OFFICE SECRETARIAT

November 2, 2010

Mr. Michael Ruta
Acting Chief Administrative Officer
City of Winnipeg
3rd Floor, 510 Main Street
Winnipeg MB, R3B 1B9

Dear Mr. Ruta:

* contacted my office regarding the Winnipeg City Council and sub committees' processes regarding by-law 54/2009 * is concerned that the City's process for establishing and changing truck routes is not a fair administrative process.

* alleged that the Plessis truck route issue was not reflected in the City of Winnipeg website agendas, thereby depriving * (and other impacted area residents) of: advance notice; appropriate information related to the issue being discussed; the opportunity to be heard; and the opportunity to challenge or dispute any information.

We wrote to the City Clerk seeking clarification on how the City informs members of the public about potential roadway re-designation projects. As well, we inquired about the process used for amending city traffic by-laws, addressing petitions of the public, and advertisement of public hearings.

The City Clerk wrote to us and stated (in part):

> *The City Organization By-law No.7100/97 provides that the Standing Policy Committee on Infrastructure Renewal and Public Works has jurisdiction to consider matters involving traffic control and transportation planning, and is to be the Traffic Authority of the City of Winnipeg. Under those provisions, the changing of a truck route status is within the jurisdiction of the Standing Committee, however in this instance as the matter involved an amendment to The City of Winnipeg Traffic By-law No. 1573/77, the Standing Committee was required to submit its recommendation to Council, through the Executive Policy Committee.*
>
> *As this particular matter commenced at the Community Committee, the critical path for the decision-making process was the Community Committee, followed by the Standing Committee, followed by the Executive Policy Committee, followed by a decision by City Council. As this is not a public hearing process, as defined by*

* NAMES AND OTHER PERSONAL INFORMATION ASSOCIATED WITH ANY IDENTIFIABLE INDIVIDUAL HAVE BEEN DELETED FROM THE TEXT OF THIS LETTER

the Development Procedures By-law No.5893/92, there was an opportunity for an individual to appear in delegation at any or all of the committees (including Council) throughout the decision making process. If this matter was a public hearing under By-law No. 5893/92, the opportunity to make representation would (only) be with the designated hearing body...

Findings

Based on our review, it appears as though there had been arguments made by key stakeholders (i.e. the Department of Public Works, the Manitoba Trucking Association, and the Winnipeg Chamber of Commerce) providing reasons why the truck route should not be deleted.

With respect to community considerations, it is our understanding that the proposed changes to the Plessis Road Truck Route may have an impact on people who reside on streets other than Plessis Road. It is our understanding that there had been concerns from individuals residing on Day Street who had not been made aware of the situation and subsequently, missed the opportunity to make presentations.

The process is not one that falls within the scope of a "public hearing". As a result of the absence of the matter being reflected on the agenda at the initial stage of discussion (the East Kildonan - Transcona Community Committee), Day Street residents and other area residents potentially impacted by this decision may not have been aware of the situation.

It is unclear how a person unaware of the intention to discuss this issue at the Community Committee would know to locate information on the issue in the minutes of that meeting or through the Standing Policy Committee on Infrastructure Renewal and Public Works agenda and corresponding minutes or the Council agenda or minutes. Most members of the general public would not know the process by which this type of issue would be elevated and be able to find the corresponding agenda and minute information.

As such, members of the public were not provided with advance notice that a decision that may affect them was being discussed. The information that had been considered in the decision making process was not clear. There appeared to no opportunity for residents (other than those who signed the petition) to state or present their case(s). There appeared to be no opportunity for potentially impacted residents to challenge or dispute any information that was considered in the decision making process.

While the information received in response to inquiries by our office is appreciated, we are still unclear as to what considerations led to the decision by the city to alter the Plessis Road Truck Route and more generally, the process by which these decisions are made.

Also, it is my understanding that, in cases where a matter has been previously discussed, and the same matter arises again at a later date, this would be reflected in Committee Minutes as "Decision Making History". It appears as though the matter concerning changes to the Plessis Road Truck Route had arisen at least as early as 2004. Despite this, the chronology provided by the City in the response and the related minutes found on the City's website for the related dates do not reflect this.

It would appear that given this situation, members of the public monitoring the City's website information would not be able to interpret or be aware of the issue being discussed, by which committee or office in the City, and when they would have the opportunity to make presentations - all of which seems to support * concerns.

Winnipeg Chamber of Commerce Recommendations

In the course of our review of * concerns, we obtained a copy of the January 2005 Winnipeg Chamber of Commerce policy document. This document outlines three recommendations which appear to relate to the concerns raised by * . The recommendations were:

- *Encourage the City of Winnipeg to develop a transparent truck route policy as part of a long-term economic development strategy.*
- *Implement a clear, formalized and balanced truck route policy that includes mechanisms for designating and discontinuing truck routes and reflects input from various stakeholders.*
- *Be more transparent in ensuring stakeholders are given acceptable notification by the City when issues surrounding the establishment or changes to the current truck route system are discussed.*

My office made inquiries with the City regarding the outcome of the recommendations in this document. It is our understanding that the City was unable to find reference to the January 2005 Winnipeg Chamber of Commerce policy document being submitted to a committee of council, and was unable to comment on the disposition.

Manitoba Trucking Association's Concerns

The Manitoba Trucking Association (MTA) has also raised concerns regarding how truck routes are established and how specific streets are taken off of the truck route system within the City.

The MTA believes that the process is not transparent and they question if there are any standards or criteria for establishing a truck route and for removing a street from the truck route system.

They are of the view that there appears to be an absence of consultation by the City regarding truck route matters and offer that "any past interactions from the MTA were the result of the MTA's reaction to finding out that a proposal to remove a street from the truck route system was in progress".

* NAMES AND OTHER PERSONAL INFORMATION ASSOCIATED WITH ANY IDENTIFIABLE INDIVIDUAL HAVE BEEN DELETED FROM THE TEXT OF THIS LETTER

Procedural Fairness

As you may be aware, my office developed a handbook titled "Understanding Fairness" which is a handbook on fairness for Manitoba municipal leaders. This handbook was intended to assist municipalities and their administrative staff to achieve fairness in the important work that they do, and to provide tools to help promote fairness and make it the standard of practice.

The handbook outlines three aspects of fairness: procedural, substantive and relational. It appears that in this situation, there may be an issue related to procedural fairness. It is not the City's decision itself that is of concern for my office, but the transparency of the process by which this decision was made.

Procedural fairness requires that:

- the person(s) who will be affected by a decision is given advance notice that a decision will be made;
- the person affected by a decision is given the information that will be considered when a decision is made;
- the person affected by a decision is given a meaningful opportunity to state or present his or her case;
- the person affected by a decision is given an opportunity to challenge or dispute any information that might be contrary to his or her position when a decision is being made;
- the decision-maker be thorough, and thoughtfully review all the information provided by the person affected by a decision;
- the decision-maker be impartial (unbiased and without a personal interest in the outcome of the decision); and
- the decision-maker give meaningful reasons for the decision that are understandable to the person affected.

The position of the City appears to be that By-Law 54/2009 was enacted in accordance with the current process that is in place. However, it would appear that there are procedural fairness issues relating to truck route by-laws and deletions or alterations to these by-laws.

I am referring this matter to you for review and would appreciate receiving your perspective on this matter.

If you have any questions, please call me at 982-9134.

Yours truly,

Irene A. Hamilton
Manitoba Ombudsman