

# Freedom of Information in the City of Winnipeg

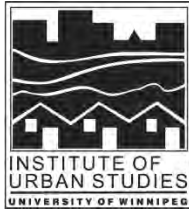
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1975

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The Institute of Urban Studies





THE UNIVERSITY OF  
WINNIPEG

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**FREEDOM OF INFORMATION IN THE CITY OF WINNIPEG**

Published 1975 by the Institute of Urban Studies, University of Winnipeg  
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Note: The cover page and this information page are new replacements, 2016.

The Institute of Urban Studies is an independent research arm of the University of Winnipeg. Since 1969, the IUS has been both an academic and an applied research centre, committed to examining urban development issues in a broad, non-partisan manner. The Institute examines inner city, environmental, Aboriginal and community development issues. In addition to its ongoing involvement in research, IUS brings in visiting scholars, hosts workshops, seminars and conferences, and acts in partnership with other organizations in the community to effect positive change.

SUBJECT: FREEDOM OF INFORMATION  
IN THE CITY OF WINNIPEG

CONTENTS: DISCLOSURE SECTIONS UNDER  
PRESENT ACT  
  
PROPOSED AMENDMENTS  
  
COMMENTARY

PREPARED FOR: Committee Reviewing  
City of Winnipeg Act

Prepared by: The Institute of Urban Studies  
University of Winnipeg

DISCLOSURE SECTIONS UNDER THE PRESENT CITY OF WINNIPEG ACT

CITY OF WINNIPEG

S.M. 1971, c. 105

**Disclosure.**

**78 (1)** The clerk shall, at any time when the offices of the city are open for the transaction of business, on the demand of any person, produce to him and permit him to examine

- (a) the latest assessment roll;
- (b) the latest tax roll;
- (c) the latest list of electors;
- (d) any monthly financial statement for the then current year prepared by the treasurer;
- (e) any report of the auditor;
- (f) the minutes of any council meeting or of any open committee meeting;
- (g) all attachments to the minutes of any council meeting and open committee meetings;
- (h) any by-law of the city or resolution of the council thereof; and
- (i) the agenda of any open committee meeting.

Am. S.M. 1972, c. 93, s. 19.

**Inspection of records by any person.**

**78 (2)** Without limiting the generality of subsection (1), but subject to the provisions of The Local Authorities Election Act, any person may inspect lists of electors, poll books and other documents pertaining to an election in the possession of or under the control of the clerk, at all reasonable times, and the clerk shall within reasonable time furnish copies thereof to any applicant at a charge to be determined by council.

**Copies of by-laws etc.**

**78 (3)** The clerk shall, on payment of the proper fee thereof, furnish within reasonable time to any elector of the city, or any other person interested in any by-law, order or resolution a copy of the by-law, order or resolution certified under his hand and under the corporate seal of the city.

**Inspection of other documents.**

**78 (4)** With the approval of the council, as shown by a resolution thereof, the clerk shall produce for the examination of any person, on his demand, as provided in subsection (1), any other record or document of the city in the possession of, or under the control of, the clerk.

S.M. 1971, c. 105, s. 78; Am. S.M. 1972, c. 93, s. 19.

**Application for zoning by-law.**

**609 (1)** An application for the enactment of a zoning by-law shall be made by the owner of the land, building or structure or by a person authorized in writing by him, and shall be in such form, and accompanied by such supporting material and the payment of such fee as the council deems advisable.

**Referral of application or recommendation.**

**609 (2)** When an application in the required form and with the required supporting material is received by the city, or when the commissioner on environment has recommended the enactment of a zoning by-law by the city, the Commissioner of Environment shall refer the application or recommendation to the community committee for the community in which the land referred to in the application is located if the land is in the city, and to the committee on environment if it is located in the additional zone, and public notice shall be given,

- (a) that on a day and at a time and place stated in the notice, a meeting will be held to receive representations from any person who wishes to make them in respect of the proposed zoning changes; and
- (b) stating that a copy of the application and supporting material and a statement of the proposed zoning changes may be inspected at times and in a place or places specified in the notice.

Am. S.M. 1972, c. 93, s. 79; S.M. 1974, c. 73, s. 54.

**Non-conforming zoning by-law.**

**609 (2.1)** Where the commissioner of environment is of the opinion that the zoning by-law applied for would not conform to The Greater Winnipeg Development Plan, a relevant district plan or an action area plan, he shall refer the application to the committee on environment and if that committee is of the same opinion the application shall not be referred to the community committee unless and until an application is received to amend the plan and remove the nonconformity and the council has given first reading to a by-law to amend the plan.

En. S.M. 1974, c. 73, s. 54.

**Application and supporting material available for inspection.**

**609 (3)** The clerk shall make available for inspection a copy of the application and supporting material and a statement of the proposed zoning changes at the place or places and during the times stated in the notice.

Am. S.M. 1974, c. 73, s. 54.

Proposed amendments to the City of Winnipeg Act which would facilitate the flow of information.

S. 78 (1)  
modified

S. 78 (1) The clerk shall at any time when the offices of the City are open for the transaction of business on the demand of any person, produce to him and permit him to examine and copy<sup>1</sup>, at a reasonable duplication charge, any document in the possession or under the control of the City clerk and not an exempt document under s.s. (3)<sup>2</sup>.

New Section

S. 78 (2) For the purpose of this section, document means any document including any opinion, record, proceeding, map, drawing or picture, regardless of form of characteristic.

S. 78 (3) The following documents are exempt from the provisions of s. (1):

New Section

a) documents, the release of which would result in direct personal financial gain or loss by a person or group of persons including the City<sup>3</sup>;

b) personnel documents reflecting on the personal competence or character of an individual except where that individual is making the request;

1. It will be noted that the disclosure sections now in force give a person the right to inspect documents, not duplicate them.

2. It will be noted that the present disclosure section provides in effect that all documents are secret unless it is a document listed in S. 78 (1) or its release is approved by council pursuant to S. 78 (4). Under the proposed amendments every document is to be made available to the public unless the City can demonstrate that it falls within the exempt category.

3. By virtue of this exemption, the City will not have to disclose documents the disclosure of which may financially prejudice the City. For example, documents prepared in negotiation of purchases of property may be kept secret because the disclosure may lead to land speculation and force prices to rise.

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c) documents to be used in imminent legal proceedings until those documents have been submitted as evidence in those proceedings;

d) documents that are specifically excluded from disclosure by statute;

e) preliminary departmental or interdepartmental drafts, notes, recommendations and memoranda in which opinions are expressed on policies formulated except where the documents or portions thereof contain material of a primarily factual nature.

S. 78 (4) If any document contains material which is not wholly exempt under s.s. (3) the clerk shall separate the exempt and make the non-exempt material available for examination and duplication.

New Section

S. 78 (5) The clerk shall, on payment of the proper fee thereof, furnish within reasonable time to any resident of the City any by-law, order or resolution a copy of the by-law, order or resolution certified under his hand and under the corporate seal of the City.

S. 78 (3)  
modified

1. It will be noted that both the Ontario draft legislation and the American Freedom of Information Act provide an exemption for documents relating to negotiations leading up to a contract until the contract has been executed or negotiations concluded and for documents relating to policy decisions under consideration but not yet finalized. It is submitted that these exemptions are inappropriate for the Winnipeg situation because the Act places a responsibility on private citizens to help formulate policy not merely scrutinize completed deeds as in other jurisdictions.

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S. 78 (6) The clerk shall furnish to any resident of the City the agenda of any committee, council, board or other civic meeting at least three days prior to the date of that meeting and shall maintain a mailing list for that purpose.

New Section

S. 78 (7) The clerk shall within ten days after a demand for any document either:

a) make the document available for examination or duplication, or

b) notify the person making the request that the clerk is refusing to provide the document because it falls into an exempt category and that the decision may be appealed to the Executive Policy Committee.

New Section

S. 78 (8) Within 15 days of receiving a notice of appeal, the Executive Policy Committee shall review the decision of the clerk and notify the appellant of its decision forthwith.

New Section

S. 78 (9) Any person denied the right to inspect and duplicate a document under the control of the City may petition the Attorney-General to review the document to determine if it may be withheld. If the Attorney-General denies the petition or if the City continues to withhold the document the person seeking disclosure may apply to the Court of Queen's Bench for injunction and declaratory

New Section



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relief.<sup>1</sup>

New Section S. 78 (10) In any suit filed under s.s. 9 the court shall have jurisdiction to order production of any document improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the City to sustain its action. The court may, on its own motion, view the documents in controversy in camera before reaching a decision.<sup>2</sup>

New Section S. 78 (11) For the purposes of this section any document prepared by the City or its administration or prepared as a result of the spending of public money and which is in the possession of or under the control of any City official is deemed to be in the possession of or under the control of the City clerk.

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1. It will be noted that appeals lie to the Attorney-General and then to the courts rather than to the Ombudsman as provided in the Ontario Bill, or directly to the courts. The concept of petitioning the Attorney-General is drawn from a Model Legislation Freedom Act prepared by the Freedom of Information Clearinghouse.

2. To give the courts power to study the exempted document and make its decision based on that study is crucial. To do otherwise would be to give that body charged with the duty to classify documents the power to regulate itself. Prior to 1974 the American Freedom of Information Act did not unequivocally give to the courts power to inspect documents, in all circumstances. This led to the case of *E.P.A. v Mink* (410 U.S. 73 (1973)) where the Supreme Court held that the Courts did not have power to inspect a document to sift out and disclose non-exempt components. The 1974 amendments effectively remedied this deficiency. Moreover in Great Britain a claim of executive privilege may be reviewed by a judge's inspection of the documents.

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S. 78 (12) In addition to the duties imposed on the clerk by other provisions of this Act he shall maintain and make available for public inspection and copying current indexes providing identifying information for the public as to documents in his possession or under his control.

New Section

Zoning

S. 609 (1) An application for the enactment of a zoning by-law shall be made by the owner of the land, building or structure or by a person authorized in writing by him, and shall be in such form and accompanied by such supporting material<sup>1</sup> and the payment of such fee as the council deems advisable.

S. 609 (2) When an application in the required form and with the required supporting material is received by the City, or when the commissioner on environment has recommended the enactment of a zoning by-law by the City,

S. 609 (2)  
modified

1. It will be noted that council has the discretion to dictate what supporting material shall be provided by the applicant. The question of what material should be provided and made available to all interested parties is the subject of a later submission.

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the Commissioner of Environment shall refer the application or recommendation to the community committee for the community in which the land referred to in the application is located if the land is in the City, and to the committee on environment if it is located in the additional zone, and public notice shall be given,

a) that on a day and at a time and place stated in the notice, a meeting will be held to receive representations from any person who wishes to make them in respect of the proposed zoning changes; and

b) stating that a copy of the application, supporting material, and a statement of the proposed zoning changes may be inspected and duplicated at times and in a place or places specified in the notice and that a copy of any report prepared by the administration dealing with the zoning application will be made available for inspection and duplication by any person at least 14 days prior to the meeting.

S. 609 (3) The clerk shall make available for inspection and duplication a copy of the application and supporting material and a statement of the proposed zoning changes at the place or places and during the times stated in the notice but without limiting the generality of the foregoing the application and material shall be made available at the office of the City clerk and at the office of the affected Community Committee at least 14 days prior to the meeting

S. 609 (3)  
modified

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and shall be sent to members of the Community Committee,  
designated officer of each Resident Advisory Group and  
the applicant.

S. 609 (3.1) Notwithstanding S. 78 (7) any report prepared by the administration or any other person dealing with a zoning application shall be made available to any person for inspection and duplication at least 14 days prior to the meeting held pursuant to S. 610 (1).

New Section

Development Plan Amendment

S. 575 (1) Before giving a Greater Winnipeg development plan by-law a first reading, the council shall consult with the community committee or the community committees for the community or communities and the council or councils of the municipality or municipalities in the additional zone which the council considers may be affected significantly by the proposed amendment, alteration, repeal or replacement of the Greater Winnipeg development plan.

S. 575 (2) The council shall after the first and before the second reading of a Greater Winnipeg development plan

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by-law give public notice,

a) that, on a day, and at a time and place stated in the notice, a meeting will be held to receive representations from any persons desiring to make them in respect of, the proposed amendment, alteration, repeal, or replacement of the Greater Winnipeg development plan or any part thereof; and

b) stating that a copy of the proposed amendment, alteration, repeal or replacement may be inspected and duplicated by any person at a place, and at times, stated in the notice and that any report dealing with the development plan by-law will be made available for inspection and duplication at least 14 days prior to the meeting.

S. 575 (2)  
modified

S. 575 (3) The council shall make available for inspection and duplication a copy of the proposed amendment, alteration, repeal, or replacement of the Greater Winnipeg development plan, including all maps and sketches forming a part thereof and shall permit any person to inspect and copy it at the place and during the times stated in the notice, but without limiting the generality of the foregoing the material shall be made available at the office of the City clerk and at the affected Community Committees and shall be sent to counsellors of the affected Community Committees, designated officers of the Resident Advisory Groups and the applicant.

S. 575 (3)  
modified

S. 575 (3.1) Notwithstanding S. 78 (7), any report prepared by the administration or any other person dealing with a

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New Section development plan by-law shall be made available to any person for inspection and duplication at least 14 days prior to the meeting held pursuant to S. 575 (3).

Action Area, District and Subdivision Plans

Similar amendments must be enacted to those sections dealing with District plans, Action Area plans and Subdivision plans., i.e. Section 587 (1) and (2) and Sections 637 (12) and (14).

## Freedom of Information Amendments: Commentary

### Introduction

An important and unique aspect of the Unicity structure is the establishment of mechanisms to incorporate citizen input both into the formulation of policy and into the quasi-judicial decision making processes.

Specifically, the objectives of the City of Winnipeg Act as outlined by the Provincial Government white paper were<sup>1</sup>:

- a) achieve financial equity between the fourteen municipal jurisdictions;
- b) eliminate conflict and stalemate between municipalities;
- c) greater efficiency in municipal services;
- d) develop and encourage a greater degree of involvement and interest by the citizen in local government. (underlining mine)

These objectives have been incorporated into the Act.

With regard to the citizen participation aspect of the Act, Mr. Justice Matas of Manitoba's Court of Appeal has this to say:<sup>2</sup>

One of the important aspects of the legislation is an express intention to involve citizen participation in municipal government, e.g. S. 23 and 24 on community committees, S. 609 et seq. on zoning.

1. Govt. of Manitoba "Proposals for Urban Reorganization in the Greater Winnipeg Area" Dec. 1970.

2. Stein v. Winnipeg, 1974 W.W.R.

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Democratic jurisdictions as we typically know them provide for citizen involvement after the fact. The role of the private citizen is to scrutinize the policies and record of their representatives and through voting procedures show their approval or disapproval of these decisions. As pointed out by President Johnson on signing the United States Freedom of Information Act in July of 1966:

democracy works best when the people have all the information that the security of the nation permits. No one should be able to put curtains of secrecy around decisions which can be revealed without injury to the public interest . . . . I signed this measure with a deep sense of pride that the United States is an open society in which the people's right to know is cherished and guarded.

It is submitted that a free flow of information is even more essential under the concept of democracy embraced by the City of Winnipeg Act. Citizens charged with the responsibility of participating in policy formulation and quasi-judicial decision making cannot fulfill that mandate if necessary information is not provided.

Whether or not the intention of the Legislature, as outlined by the White Paper, has been fulfilled or thwarted has been the subject of other studies<sup>1</sup>. While we shall deal with this matter in a subsequent submission, it

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1. Axworthy and Cassidy Unicity: The Transition, Institute of Urban Studies.



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is not germane to the amendments discussed here. It is our intention at this time to suggest amendments to the Act which will facilitate a freer flow of information among council, administration, community committees, resident advisory groups, and private citizens. The mechanism for acquiring, utilizing and disseminating information accessible under our suggested amendments will be the subject of a later presentation.

It is respectfully submitted that if all relevant information is not provided to the parties involved in the decision making process, the concept of local democracy for Winnipeg envisioned by the Legislature is doomed to failure.

Citizen Participation in the Decision Making Processes  
under the City of Winnipeg Act

Even a most cursory perusal of the methodology of decision making under the City of Winnipeg Act reveals that citizen participation plays an integral role. Provisions is made for citizen input through the use of two mediums: the Community Committee structure and public hearings.

Community Committees

The City is presently divided into twelve Community Committees, each of which is comprised of the

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councillors who represent the wards constituting the particular community (s. 20 (1)). The Community Committee is given certain duties and powers under the Act, most of which contemplate involving citizens of the area. These duties are as follows:

1) It is the responsibility of each Community Committee to develop and implement techniques to maintain the closest possible communication between the City and residents of the community so that residents' views on policies, proposals, budgets and delivery of services may be communicated to the Council, the Committees of the Council and the Boards<sup>1</sup>. . . (underlining mine).

2) To develop and maintain techniques to provide the residents of the Community with information concerning existing and potential City policies, programs, and budgets so as to facilitate residents in discussing and developing views concerning these matters<sup>2</sup>.

3) The Community Committee is required to meet, in public not in camera, at least once a month to consider the business of the community<sup>3</sup>, must conduct meetings to facilitate participation by residents of the community in the preparation of submissions, concerning the annual current and capital budgets<sup>4</sup> . . . and at least once each year hold a community conference with all residents of the community to participate in a discussion of city plans and programs<sup>5</sup>.

To advise and assist the Community Committee councillors, the Act provides for the election at the annual

1. S. 23 (a)
2. S. 23 (b)
3. S. 24 (1) (a)
4. S. 24 (1) (b)
5. S. 24 (1) (d)

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community conference of a Resident Advisory Group comprised of residents of the community elected by those members of the community attending the Community Conference.<sup>1</sup>

### Public Hearings

The Act provides that public meetings (hearings) will be convened to consider:

- 1) zoning applications<sup>2</sup> including variance and conditional use.
- 2) development plan amendments<sup>3</sup>
- 3) district plans<sup>4</sup> and action area plan amendments<sup>5</sup>
- 4) subdivision applications<sup>6</sup>

Moreover, it is required that the Community Committee be consulted in the formulation and review of district and development plans<sup>7</sup>. Appeals of the original decision by either the Community Committee or the Environment Committee of Council (depending on the type of application) can be turned over by the Minister of Urban Affairs to the Municipal Board which must conduct another public hearing<sup>8</sup>.

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1. S. 21 (1) and (4)
  2. S. 609 (2)
  3. S. 575 (2)
  4. S. 583 (2)
  5. S. 588 (1)
  6. S. 637 (17)
  7. S. 582 and S. 572
  8. S. 617 (2), S. 578 (2) and S. 595 (2)

Statutory Provisions Mandating the Free Flow of Information

S. 78 of the Act commands the City clerk to

- a) produce certain documents to any persons for the purposes of examination;
- b) furnish copies of by-laws, resolutions, or orders of the City;
- c) allow any person to inspect election documents; and
- d) if council approves, produce any other type of document to any person for inspection.

Under this section, all documents are secret unless exempted under the section or by council. It is our submission that all documents should be public unless exempted by this section or other statute.

The rules governing the flow of information to participants at zoning hearings are set out in section 609 (3). By virtue of S. 609 (1) an applicant for a zoning by-law must file such supporting material as the council deems advisable and S. 609 (3) requires the clerk to make available for inspection by any person a copy of the application and supporting material. In practice, an applicant does not furnish supporting material of any substance with the application. The reports on the effects and repercussions of the zoning change are prepared and compiled by the administration. These disclosure requirements are basically the same for other types of public hearings.

Impediments to Participatory Democracy under the Act

Without doubt, one of the major shortcomings of the participation mechanism established by the City of Winnipeg Act is that citizens are not entitled to receive the information necessary to render their participation substantive and efficient. In fact, it is true to state that lack of access to information is a major complaint of citizens levelled not only at municipal bodies but at the Provincial and Federal Governments.

Specifically, Resident Advisory Groups have been plagued by this problem. Nearly three years ago, after surveying the City's Resident Advisory Groups, the Institute of Urban Studies identified their basic deficiencies<sup>1</sup>:

Lack of adequate information on questions and issues: not enough back ground information on zoning variations, sub-divisions plans and rezonings; not enough information on activities and decisions being made by council, council committees, other Resident Advisory Groups and the administration; lack of information as to who does what at City Hall and how to reach them for complaints or information.

Lack of consumable information: reports are sometimes too long and too technical for lay, volunteer advisors; not enough background on local government issues such as planning, housing, transportation, health and social services, taxation.

<sup>1</sup>. Axworthy et al, Meeting the Problems and Needs of Resident Advisory Groups, March 1973, p. 20.

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Despite some improvements, the very same problems of information are with us today.

The Urban Institute report recommended that a central organization of Resident Advisory Groups be established to perform services including:

- 1) assistance in improving communication and information sharing between Resident Advisory Groups;
- 2) assistance in improving communications between individual Resident Advisory Groups and their respective communities;
- 3) providing a steady flow of information emanating from City council, council committees, the administration and individual community council in the form of reports, recommendations and decisions . . . digest existing reports into summaries, prepare interpretations and critiques.<sup>1</sup>

Despite the attempts of such a central organization to acquire the capability of performing these services, no resources have been given and no delivery system established.

The effort of citizens to participate in a meaningful way at public hearings convened pursuant to provisions of the Act has similarly been stifled by arbitrary restrictions placed on the flow of information. As described earlier, the Act mandates that a zoning application and supporting material be made available for inspection by

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1. Supra p. 46

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any person. However, substantive and evaluative material regarding the zoning (or similar type application) and its effects is prepared by the administration and there is no legislative requirement mandating disclosure of this material. Furthermore, it is the policy of administration not to furnish the material to interested parties, including the applicant until the latter stages of the hearing. Thus, no-one sees the administration report until it is presented at the hearing, immediately after which the Community Committee typically makes its decision. It is suggested that the effect of this policy is to convert the hearings held at Community Committee level from a forum for reasoned debate to a convenient place for concerned but largely uninformed objectors to unleash their frustrations.

It is submitted that the release of substantive information sufficiently prior to the hearings would lead to less time-consuming hearings of higher quality and would result in fewer appeals being initiated. Thus the procedure for processing zoning and subdivision applications will be streamlined at the point of initial decision.<sup>1</sup>

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1. Delays in processing zoning and subdivision applications has been a major complaint of many development companies. See "Building Sites - A Prime Component of Housing" 1973, Underwood McLellan and Associates Ltd.

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Problems encountered by Residents in obtaining Information

During the fall of 1975, we interviewed a number of Winnipeg citizens active in municipal affairs. These interviews reveal that significant weaknesses exist in the City of Winnipeg Act concerning information flow and that they in fact create a substantial impediment to effective and informed participation. Persons interviewed are active in City affairs, either as members of Resident Advisory Groups, Public Interest Groups or because of the nature of their employment.

Persons who have constant contact with the City admitted they are able to obtain information by circumventing the normal route prescribed by statute. They chose to remain anonymous and silent about their methods, however, from fear that their information sources would "dry up" if these methods were publicized.

Some of the Resident Advisory Groups chairpersons interviewed were satisfied with the information they were receiving from the City. Others, however, pointed out problems they had encountered in this regard. One expressed the view that the information could be obtained if one persevered but complained that it was im-



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possible to obtain the agenda of council and committee meetings in sufficient time to be able to prepare one's self to attend and perhaps put forth a brief on a specific issue. It was suggested that the agendas of the committee and council meetings be made available to the public a few days prior to the meeting in question. Another expressed the view that the information often was received too late to be of maximum utility while still another chairperson stated that while she had never approached the City personally for information other members of the Resident Advisory Group as well as

students employed by the Resident Advisory Group had expressed to her frustration in attempting to obtain certain desired documents.

The chairman of the Lord Selkirk Resident Advisory Group, who was active in trying to develop a district plan for the area stated that he was unable to obtain certain information required for the formulation of the plan. Specifically he was frustrated in attempting to ascertain what property in the area was owned by the City.

The chairperson of the Ft. Rouge Resident Advisory Group was most vehement in expressing her

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dissatisfaction with City procedures. She stated that:

- a) In her experience, information that is supposed to be available pursuant to S. 78 (1) is never available merely for the asking. She has always been asked who she was and why she wanted the information, and was often subjected to long waiting periods before being allowed to see a particular document and, in fact, on one occasion she was forced to have her lawyer call the City in order to obtain minutes of a certain Executive Policy Committee meeting.
- b) The prohibition against copying documents is a major impediment to obtaining information and using it effectively.
- c) On one occasion, she attended at the office of the City Clerk to obtain a copy of the capital estimates. On being told they were not available she proceeded to the budget bureau and saw numerous copies of the estimates.
- d) Information and documents relating to the budget have not been made available as mandated by S. 27 (1) and councillors for the area have not been able to provide it.

Persons working on specific projects seemed to encounter much more difficulty in obtaining required documents than did Resident Advisory Group persons. Perhaps this can be attributed to the nature of the information requested.

Mr. A. Little, formerly co-ordinator of the City Plans and What do You Think Shop stated that he had, on a number of occasions, been unsuccessful in his endeavours to learn about specific projects. On one occasion, he inquired

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as to the nature of a construction project at a specific location but was given only the height of the building and the number of suites in the building (this after much perserverance) and was told that no other information could be released until one year after the date of the permit application.

On another occasion, while aiding a resident who was opposing a zoning variance, he was refused permission to inspect the building permit in question. On numerous occasions, he had asked for photocopies of certain documents, at his own expense, but was consistently refused and was forced to waste much time copying documents and photographs by hand.

John Hockman, who worked at the Environmental Advisory Office, related his experience in trying to obtain copies of drawings of certain capital works project - documents which had already been presented to council and, therefore, should have been made public. He was told in the first instance that copies of the drawings were not available because the drawings were too large for the City to copy. Mr. Hockman then requested that the documents be sent out to be copied at his expense. He was told that the

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City could not afford to have someone in the office take them out to be copied. Mr. Hockman volunteered to do this on his own time but this suggestion was not acceptable. Finally the City Clerk's office stated that the drawings were in the office of the Board of Commissioners. Mr. Hockman attended at that office and went through the same routine. Eventually the drawings were obtained.

Mr. Edward LaBoucaine of the North End Community Organization is of the opinion that the individual taxpayer has limited ability to influence government departments and he partially attributes this to the fact that the taxpayer has little ability to obtain information from those departments. Specifically, members of his organization have been unable to obtain copies of health and building inspection reports from the City. These documents were classified - i.e. not available. Thus the community was unable to hold officials accountable for their interpretation of by-laws or for not enforcing the by-laws. The organization was told that the Commissioner of Environment had instructed Health Department officials not to release any information to individuals. All requests had to be channelled through Community Committees.

Mr. LaBoucaine stated that in his opinion secrecy had been a contributing factor to the poor housing

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that exists in portions of Winnipeg's north end. Secrecy, in his view, has protected City departments in their lack of enforcement of housing by-laws and standards.

A former employee of the Provincial Planning Secretariat, who wished to remain anonymous, was denied information by the City Planning Department which was relevant to a study of core area parking, on which he was working. Specifically, statistics relating to parking in the central business district possessed by the City from a 1968 report were not made available to this person. The request was never denied outright but the statistics were never forthcoming. This employee expressed the view that other departments have in the past been much more cooperative and helpful, but that throughout his entire experience it can be said that the City never really volunteers information. One must satisfy the City personnel that you know what you are calling about and then ask the right questions directly. In his view, a citizen off the street would get no guidance or assistance in his search for information but just polite, evasive replies.

Another person who wished to remain nameless expressed the view that the policy adopted by the City with regard to minutes of in camera meetings was cumbersome and

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unworkable. On one occasion, he attended at the City Clerk's office to obtain minutes of certain council and committee meetings. He was originally advised that he could not inspect the minutes in question because included in these minutes were minutes of in camera meetings. He pressed the issue by showing to the City official the relevant sections of the City of Winnipeg Act. He was then advised that he could inspect the minutes with someone from the Clerk's office watching over him to ensure that he did not read the confidential parts. Copies could not be provided. This procedure was not satisfactory to the citizen so he did not proceed.<sup>1</sup>

After analyzing the relevant provisions of the City of Winnipeg Act and speaking with persons who have had experiences pursuant to the Act, one can only conclude as follows:

- a) Much perseverance is often necessary in order to be allowed access to information which by law is to be made available.
- b) Too many categories of documents can be classified as secret.
- c) The prohibition against copying documents is an unnecessary impediment.
- d) The policy regarding the separation of minutes of in camera meetings from other meetings is unsatisfactory.

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1. Subsequent to the interview, the City Clerk confirmed the policy outlined.

Recommendation

S. 78 should be amended to facilitate the freer flow of information with the aim of overcoming the existing communication problems encountered by Resident Advisory Groups, Community Committees and individual citizens. Those sections dealing with the furnishing of information to persons interested in subdivisions, development plans, district plans, action area plans or zoning hearings (including variance and conditional use) should be amended to ensure a freer flow of information.

Freedom of Information in Other Jurisdictions

Canada: In general, our country is far behind others in adopting progressive freedom of information legislation. However, in the province of Ontario a private member's bill has been introduced "to provide the public access to Government documents without cost."<sup>1</sup> The bill has received virtually no opposition from any party. By virtue of Bill 97 any identifiable official document shall be made available to any person upon request and without cost. An official document is defined as a document (document, opinion, record, proceeding, map, drawing or picture regardless of form or characteristic) kept by a Ministry of the Government or a board, agency, commission of the Government, whether received or prepared by such ministry, etc., and includes any document which is prepared as a result of the spending of public money.

The Bill provides for thirteen exemptions to the principle of unlimited access. The exemptions which are

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1. Bill 97

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relevant to a discussion of information flows at a municipal level are as follows:

1. Legal opinions or advice provided for the use of the Government.
2. Documents, the release of which would result in direct personal financial gain or loss by a person or group of persons.
3. Documents reflecting on the personal competence or character of an individual.
4. Documents relating to negotiations leading up to a contract until the contract has been executed or the negotiations have been concluded.
5. Documents relating to policy decisions under consideration but not yet finalized.
6. Any proceedings before a court of justice or a judicial inquiry.
7. Documents excluded from disclosure by other statutes or regulations under the Act.

Bill 97 provides that an exempt document may be released by order of the Lieutenant Governor in Council where its release is in the public interest and provides that a person who has been refused access to a document because it has been declared exempt, may apply to the Ombudsman for a review and public report on the validity of the reasons given for refusing access to the document.

Commenting on the need for the legislation, Mr. D. C. MacDonald, representative for York South, stated to the House:

The traditional attitude is that public affairs are the personal property of those who happen to hold an office at any given time whether it be



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an elected office or a bureaucratic position within the civil service. It's a fascinating study the extent to which people, when they get into a public office, very quickly begin to assume a proprietary interest and approach to whatever they are doing. They think it's their business, and anybody who intervenes is really sticking his nose in, so to speak.

I want to suggest Mr. Speaker that our objective can be rather simply stated: Now everything is secret unless there happens to be good reason, in the view of the government, to make it public; what the approach in fact should be is that everything should be public unless there happens to be good reason for it being kept secret.<sup>1</sup>

In fact, a perusal of the debate reveals no difference of opinion as to the necessity and principle of such legislation. In fact, the debate focused on the question of whether or not the exemptions were too wide and whether appeals should be directed to the Ombudsman or the courts.

United States:

State and local laws: Of the 50 states, only 6 have no law at all pertaining to freedom of information. Three states have enactments affecting only state governments while the remaining 40 have passed legislation of one type or another dealing with the flow of information at both the state and local level.

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1. Speech to the House, June 9, 1975, 5th Session, 29 Legislature Ontario.

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Federal Act: The Federal Freedom of Information Act is the piece of legislation most often referred to in discussions pertaining to access to government documents and files. It has been the subject of debate, controversy and litigation. The initial Act, passed in 1966, contained loopholes of such a nature that circumvention of the Act by uncooperative federal agencies became a routine procedure. In fact, these loopholes led to the enactment of amendments in 1974.

The Act requires each federal agency to maintain and make available for public inspection and copying indexes providing identifying information for the public as to documents possessed by the agency. The agency, on request from any person, must provide to that person, at cost of search and duplication only, all documents requested and reasonably identified by that person. The agency has the authority to waive the costs if it determines that the information is primarily benefiting the general public.

As in Bill 97 of the Ontario legislature certain types of documents are exempt from disclosure but appeals under the American Act are to the courts, which are empowered to inspect the documents, in camera, and decide whether or not they fall within an exempt category. Moreover,

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documents may be classified as partly exempt and the agency is obliged to furnish those parts which are not deemed to be exempt.

Until the Act was amended in 1974, it contained no clause ordering an agency to comply within a specified time limit. This deficiency, which led to abuse by some agencies,<sup>1</sup> was cured by the 1974 amendments. Now an agency has ten days to comply with or refuse a request. If a refusal is appealed to the head of the agency, it must be disposed of within twenty days. Provision is made for extending the time allowed to an agency under "unusual circumstances".<sup>2</sup> Moreover, the courts are directed to expedite proceedings by giving cases under the Freedom of Information Act priority over most other types of cases.

The 1974 amendments to the Act attempted to close another often used agency method of thwarting the intention of the Act. Chargeable fees are limited to direct cost of actual search and duplication, thereby preventing an agency from charging exorbitant fees for providing requested information, as they were wont to do.<sup>3</sup>

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1. Nader, Ralph - address to Federal Bar Association Conference, Washington, D.C. May 22, 1975.

2. Unusual circumstances occur if there is a voluminous amount of material requested or if material must be searched for or if consultation with another agency is required.

3. Nader, Ralph, supra.

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As pointed out by Nader<sup>1</sup>, however, ingenious lawyers have found new ways to thwart the will of Congress, but, he goes on to say:

The citizens of this country are determined to know how their government works and no amount of ingenious lawyering is going to stop the public's demand for its right to know. A secretive bureaucracy is not the currency of democracy, Freedom of information is.

### Conclusion

The implementation of procedures to facilitate a freer flow of information will cost little and reap large dividends, both in the long run and short run. In the short run, the Community Committee system will be strengthened; development applications streamlined; the spirit of cooperation and trust between all facets of the structure will be developed. In the long run, private citizens will be able to better inform themselves as to the rationale and merits of city policies. This can only lead to an improved functioning of our democratic system and concomitantly an increase in efficiency.

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1. Ibid

Release: Friday, November 21, 1975, 2 p.m.

To: Media, Resident Advisory Groups, Community Committees, Interest  
Groups

From: INSTITUTE OF URBAN STUDIES:

Contact: David Miles  
786-7811 ext. 409

The Institute of Urban Studies today submitted a brief on the subject of public access to information to the committee reviewing the City of Winnipeg Act. The intent of the brief is to ensure that information becomes more readily accessible to the public than it has in the past.

The City of Winnipeg Act in its present form takes the approach that any document of the City is secret unless it is expressly deemed a "public" one. Documents envisaged by the Act as "public" include, among others, electoral lists, auditors' reports, council minutes, by-laws or resolutions of council, and other documents- - if council so approves. The Institute brief recommends that the Act's provisions regarding disclosure be fundamentally revised. All City documents are to be designated as public unless specifically exempt from disclosure by the Act. Documents should only be exempt from public disclosure if, and only if,

- a) the release of the document would result in direct personal or financial loss or gain by a person or persons, or the City;
- b) it pertains to personnel matters;
- c) it is to be used in imminent legal proceedings;
- d) it is specifically exempt by another Act of the Legislature;
- e) it is merely a preliminary, non-factual, inter-departmental memorandum.

The Institute of Urban Studies' paper suggests electors have knowledge and information about the policies and programs of its elected representatives. Only if information is available can the public scrutinize the achievements of elected officials. This fact is well recognized in other jurisdictions such as Sweden and the U.S. In the latter country, only six states are without Freedom of Information Acts operating at state and/or municipal levels of government. The Ontario government is currently considering an Act to facilitate the flow of information.

Under the City of Winnipeg Act access to information is even more crucial than in other jurisdictions because citizens of Winnipeg are charged with the responsibility of participating in the formulation of policy. This mandate cannot be fulfilled properly without guaranteeing to these citizens information relevant to the formulation of any policy.

A brief survey of Resident Advisory Groups, officials and public interest groups has revealed that some people have been frustrated in their attempts to acquire various documents from the City. Agendas of committee meetings have not been distributed, zoning reports prepared by the administration typically are not available to participants in zoning hearings until the hearing has commenced, inspections rather than duplication of public documents is the rule rather than the exception, and all too many documents are not available for public scrutiny. The most recent example of this is the "secret" Trizec Report which only became public because of administrative leaks.

The object of the Institute of Urban Studies' proposals is to ensure that in the future more information is available to the public at large rather than only to individuals who have exceptional perseverance or administrative contacts.

The brief recommends to the Review Committee that a person desiring a copy of any document need only present a request for a copy of that document to the City Clerk. Within ten days the clerk must either provide a copy of that document, at the cost of duplication, or notify the requestor that the document is

exempt from disclosure. The requestor may appeal to the Executive Policy Committee and then to the Attorney-General and finally to the courts, if necessary.

The brief also suggests amendments to improve information access with regard to development plans, district plans, action area plans, zoning applications and subdivision proposals. The revisions would ensure prior receipt of information to enable more substantial participation in public hearings and to ensure universality and fairness in basic information.