

Sent via email to counsel

September 20, 2013

[REDACTED]
Winnipeg, (MB)
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Mr. Paul R. McKenna
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Mr. Devin Johnston
Manitoba Justice – Civil Legal Services
730 – 405 Broadway
Winnipeg, (MB) R3C 3L6

Dear Ms [REDACTED] and Messrs. McKenna and Johnston:

Re: L.E.R.A. Complaint No. 2012/142

I wrote to all of you on June 11, 2013 and asked for a response from each of you with respect to two matters. Since then I have received the following:

1. A letter from Paul McKenna, dated July 4, 2013;
2. A letter from Devin Johnson, dated July 5, 2013;
3. Emails from [REDACTED] sent June 24, July 15, and July 18, 2013.

I thank you for the extra time all of you spent in sending me replies. I have now had the opportunity to review all of the additional information and re-read the initial letters, documents and decision.

This Court has come to the conclusion that [REDACTED] has not satisfied this Court that the Commissioner erred in declining to take further action in this complaint.

I have come to this decision for the following reasons:

1. The Commissioner's detailed letter, dated October 25, 2012, sets out the complaint and statement, the LERA investigation, the witness interviews and the Commissioner's analysis and conclusions. His conclusion is that the evidence supporting [REDACTED] complaint is insufficient in justifying a public hearing; therefore he declined to take further action. Some of his findings include that:

- a. [REDACTED] evidence on how or if the officer was rude in his contact with her or inappropriate in how he spoke to her at her door is inconsistent; and,
- b. The evidence of the officer damaging the door is inconclusive.

The most significant concern the Court has found is the discrepancy in the evidence about whether the officer told [REDACTED] that the reason they ended up at her place was because [REDACTED] had given him the wrong name or because he recorded the information wrongly at first. As well, what did he tell [REDACTED] about this when he called her? While the court finds that the Commissioner, in his decision, did not explain this discrepancy, it does appear that this whole area of confusion has to do with an officer who simply made a mistake, in one form or another. There is NO evidence that the officer made this mistake in bad faith or that he was abusing his authority. As a result, this Court has come to the conclusion that the Commissioner's decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

2. While the Court has expressed some concern over the possibility that photos of the door were taken by a LERA investigator, there is no evidence, other than [REDACTED] assertion, that photos were taken. The Commissioner's decision to take no further action was based on all of the evidence it had available and this did not include any photographic evidence. The Commissioner had a lot of information to base his decision on, with or without any photos, and it is that decision which the Court is reviewing, not the actions of the investigator involved in this complaint (who is no longer employed by LERA.)

Pursuant to section 13 of the Law Enforcement Review Act, this Court finds that the Commissioner did not err in declining to take further action on the complaint. The application is dismissed and pursuant to subsection (4.1) the ban on publication of the respondent's name is to continue in effect.

Yours truly,

R. Heinrichs,
Provincial Court Judge

RH/ac
cc: Law Enforcement Review Agency (e-mail)