

MANITOBA OMBUDSMAN PRACTICE NOTE

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COLLECTION AND PROVIDING NOTICE OF COLLECTION OF PERSONAL INFORMATION UNDER FIPPA

OVERVIEW

Collection is the initial consideration in handling personal information. Once a public sector body collects personal information privacy considerations and responsibilities under FIPPA relating to use, disclosure, retention, security and destruction will apply.

Under FIPPA, the collection of personal information requires consideration of the following factors:

- purpose of collection
- limit on amount of collection
- manner of collection (distinguishing between “direct” and “indirect” collection)
- notice of collection (in the situation of “direct collection” only)

Although the terms “direct collection” and “indirect collection” are not found in FIPPA, they are used by the access and privacy community for collection concepts described in the Act. Direct collection refers to collecting personal information directly from the individual the information is about. Indirect collection refers to collecting personal information from a source other than the individual it is about, as listed in subsection 37(1) of FIPPA. The distinction between direct and indirect collection is relevant to the manner of collection and notice of collection.

PURPOSE OF COLLECTION

Under subsection 36(1) a public sector body can only collect personal information when:

- the collection of the information is authorized by or under an enactment of Manitoba or of Canada; or
- the information relates directly to and is necessary for an existing program or activity of the public body; or
- the information is collected for law enforcement purposes or crime prevention.

At least one of these situations must apply to a collection of personal information for the collection to be compliant with FIPPA.

LIMIT ON AMOUNT OF COLLECTION

When a public sector body collects personal information, it must only collect as much information about an individual as is reasonably necessary to accomplish the purpose for which the information is being collected (subsection 36(2)). The collection of more personal information than is necessary for the purpose (commonly referred to as “over collection”) would not be compliant with FIPPA.

MANNER OF COLLECTION

FIPPA requires the collection of personal information to be made directly from the individual unless another manner of collection is permitted under subsection 37(1) the Act. Subsection 37(1) includes approximately 20 situations where an indirect collection of personal information can be made.

NOTICE OF COLLECTION

When a public sector body collects personal information directly from the individual the information is about, it must inform the individual of:

- the purpose for which the information is collected; and
- the legal authority for the collection; and
- the title, business address and telephone number of an officer or employee of the public body who can answer the individual's questions about the collection (subsection 37(2)).

It is important to note that the “legal authority for the collection” is not FIPPA. Rather, FIPPA sets out the requirement and contents for the notice for direct collection.

While FIPPA sets out the contents of the notice for direct collection, it does not require that the notice be in a particular form. The form of notice should be appropriate to the situation. It is a good practice to provide notice in writing. The notice could, for example, be on a public sign or be contained in an information brochure handed to the individual or be set out on an application form where personal information is being collected directly from the individual. If notice is given verbally, it is suggested that the public sector body document its providing of notice to the individual and consider having the individual initial the file entry.

Notice is not required if the public sector body has recently provided the individual with notice concerning the collection of the same or similar personal information for the same or a related purpose (subsection 37(3)).

SAMPLE NOTICE OF COLLECTION

A useful notification statement, consistent with the provisions set out in subsection 37(2), is contained on the Manitoba FIPPA web site, under “Collection of Personal Information under FIPPA”, <http://www.gov.mb.ca/chc/fippa/manuals/guide/managing.html> and under “Sample Letters and Notices”, <http://www.gov.mb.ca/chc/fippa/formsletters/letters/cpi4.html>.

In both entries, the sample notification statement reads:

This personal information is being collected under the authority of [identify the Act, regulation, program or activity] and it will be used for [state the purposes for which the information is being collected].

*It is protected by the Protection of Privacy provisions of The Freedom of Information and Protection of Information Act. If you have any questions about the collection, contact **[provide title, business address and telephone number of responsible official or employee]**.*