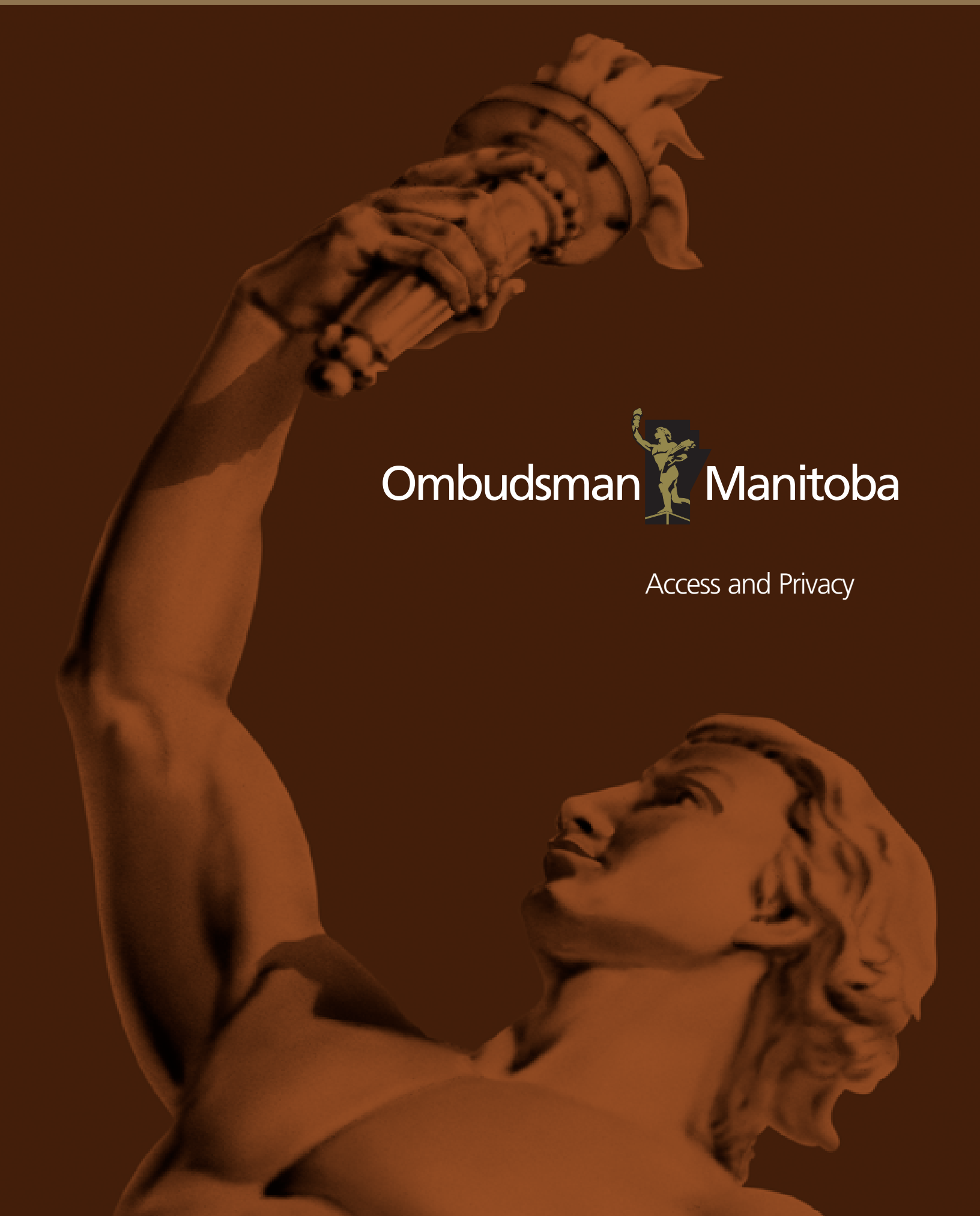
2002 Annual Report



Ombudsman Manitoba

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March 2004

Honourable George Hickes
Speaker of the Legislative Assembly
Province of Manitoba
Room 244 Legislative Building
Winnipeg, MB
R3C 0V8

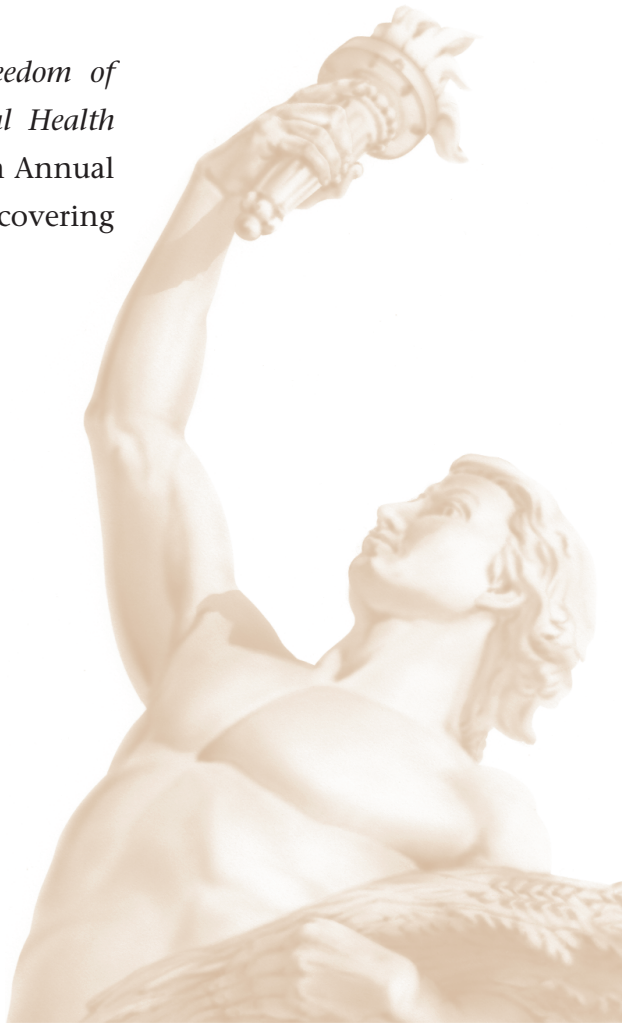
Dear Mr. Speaker:

In accordance with section 58(1) and 37(1) of *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act* respectively, I am pleased to submit the fifth Annual Report of the Manitoba Ombudsman under these statutes, covering the calendar year January 1, 2002 to December 31, 2002.

Yours very truly,

Original signed by

Barry E. Tuckett
Manitoba Ombudsman



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Personnel at December 2002

Access & Privacy Division:

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Executive Director

Gail Perry
Manager, Compliance Review

Nancy Love
Manager, Compliance Investigation

Patricia Cox
Compliance Investigator

Valerie Gural
Compliance Investigator

Carol Markusoff
Compliance Investigator

Darren Osadchuk
Compliance Investigator

Kim Riddell
Compliance Investigator

Candace Russell
Compliance Investigator

Aurele Teffaine
Compliance Investigator

Ombudsman Division:

Donna M. Drever
Deputy Ombudsman

Corinne Caron
Senior Investigator

Cheryl Ritlbauer
Senior Investigator

Linda Barker
Investigator

Robert W. Gates
Investigator

Kris Ramchandar
Investigator

John Restall
Investigator

Wanda Slomiany
Investigator

Jack Mercredi
Intake Office/Investigator

Brandon Office:

Janet Wood
Senior Investigator

Mel Holley
Investigator

Sharon Krakowka
Intake/Office Manager

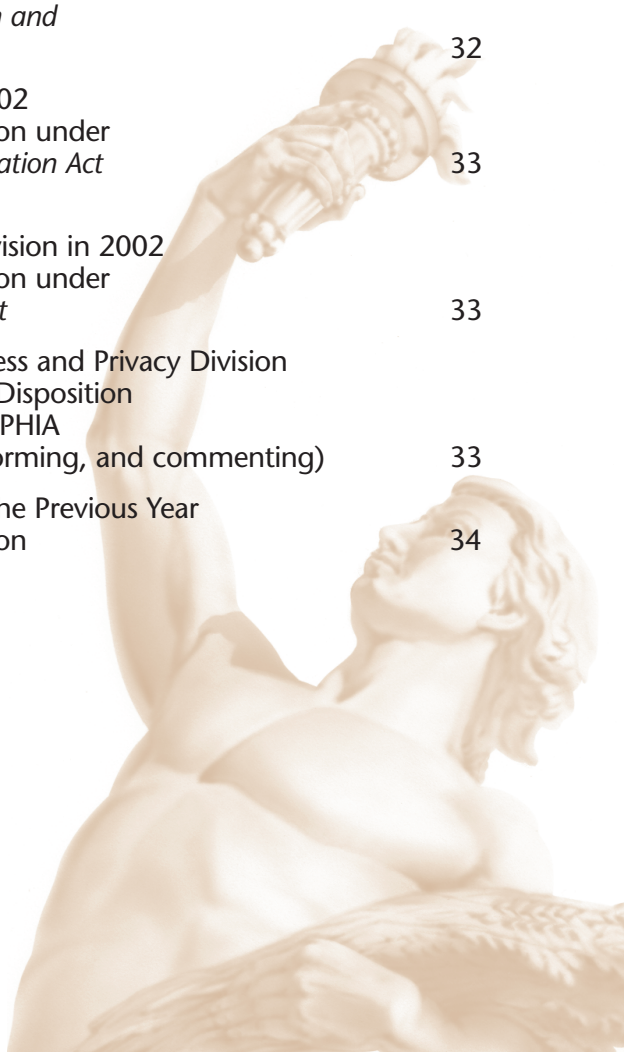
Administration:

Laura Foster
Office Manager

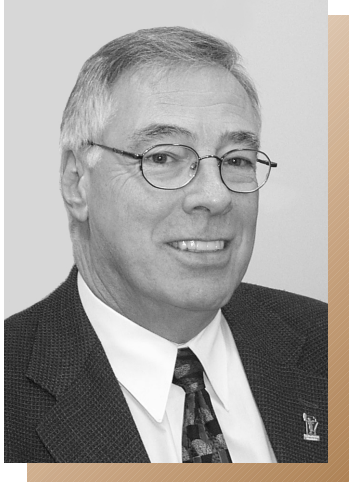
Helen Hicks
Administrative Support Clerk

Jacquie Laberge
Intake Assistant

Felicia Palmer
Administrative Support Clerk



A Message from the Manitoba Ombudsman



Barry E. Tuckett
Manitoba Ombudsman

Information privacy rights and rights to access information held by public bodies are built on democratic principles of openness, accountability, fairness and respect. Manitoba's access and privacy legislation, *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act* embrace and uphold these principles.

Provisions in the Manitoba access legislation establish the rules for accessing records held by public bodies and private sector trustees of personal health information. Provisions in Manitoba's privacy legislation conform with internationally accepted principles of fair information practice that speak to collection, use and disclosure of personal information, as well as its protection and retention. Simply put, privacy legislation respects your right to control the collection, use and disclosure of your personal information.

It is important to recognize, however, that access and privacy rights are not absolute. There are exceptions to one's right to access information as there are in terms of preserving one's absolute right to privacy including exceptions that recognize public health and safety, the greater public interest and the legitimate need for confidentiality.

The challenge rests with finding the equilibrium among individual access and privacy rights and the collective rights to live in and enjoy a free, safe and secure society. "Doing it right" requires a commitment to the principles upon which the legislation is based, a common sense approach and the fortitude to stick to the principles when adherence may have some adverse effects in terms of time, cost, debate and the criticism that sometimes accompanies openness, transparency and accountability.

Generally speaking, I believe there is a genuine commitment to the principles of access and privacy legislation by many who play a role in the administration of FIPPA and PHIA. Unfortunately, this is not always evident especially when the process is subject to delays, questionable denials of access or breaches of personal information privacy when due diligence has not been done.

Such circumstances have a tendency to erode the credibility of the commitment by governing bodies to the principles embodied in access and privacy legislation. Credibility is critical in obtaining and maintaining public trust and confidence that access and privacy rights are respected.

Integral to the legislation is the role for an independent oversight agency to give assurance to the public that, in fact, the legislation is being respected both in letter and spirit, and that policies put in place are being administered fairly and reasonably. I believe that the majority of the public anticipate that there will be delays at times, misunderstandings or mistakes. It is not a perfect world. The fact that sometimes things go wrong should not be alarming. It is how one deals with the problem situations that is the measure of the degree of

commitment to the principles. Our office has been given the powers to investigate, audit, monitor and report with recommendations, publicly if necessary, to bring resolution to disputes and to assist in assuring the public that government is committed to principles of openness, transparency and accountability.

This year's annual report highlights some of the issues challenging government and private personal health information trustees, as well as cases in which formal recommendations were required. It was a very busy year and one in which there were many complex issues. As in the past, we have not been able to respond to complainants in as timely a manner as we would wish.

We are continuing to look for ways to be more timely within the resources approved by the Legislative Assembly. We are also reviewing our Strategic Plan which identifies our mission, goals and objectives for the coming years which will assist our office in serving the Legislative Assembly, the public and the government.

We are faced with many challenges and opportunities presented by modern information and communication technologies that have a substantial effect on access and privacy rights. In addition, increased public awareness of questionable ethical behaviour in the public and private sector has generated more demand for openness, transparency and accountability. Access and privacy rights are part of this landscape.

Sincerely

Original signed by

Barry E. Tuckett

2002 Year In Review

INTRODUCTION

The Personal Health Information Act (PHIA) and *The Freedom of Information and Protection of Privacy Act* (FIPPA) were passed by the Manitoba Legislature in June 1997 and brought into force on December 11, 1997, and May 4, 1998, respectively. Both statutes contain the provision that within five years of their proclamation, the minister responsible

> *shall undertake a comprehensive review of the operation of…[the] Act that involves public representations and shall, within one year after the review is undertaken or within such further time as the Legislative Assembly may allow, submit a report on the review to the Assembly. (PHIA section 67, FIPPA section 98)*

Drafted at the same time, the statutes are complementary, but PHIA deals only with personal health information while FIPPA covers all other personal information and recorded information in general. A second particularly important distinction between the two Acts is their scope. The coverage of the Acts is the same in their application to public bodies and other entities designated by regulation,[1] but PHIA also encompasses licensed, registered or designated health professionals, facilities, and agencies identified by the legislation as trustees that collect and maintain personal health information.[2] Certain entities that collect and maintain personal health information are not covered by PHIA including professional associations, regulatory bodies, and private sector employers.

The protection of personal and personal health information purposes of the two statutes are based on a shared set of information privacy principles that deal with, among other things, accountability for and the authorized and limited collection, use, disclosure, retention, and security of the information. Independent oversight of compliance with the requirements of the Acts is provided by the Manitoba Ombudsman's Office. Notwithstanding the oversight provisions, the Acts unambiguously place the duty to comply on the public bodies and trustees that fall under the statutes, which, by their provisions, also seek proactively to prevent breaches of an individual's information privacy rights.

Of particular importance, both statutes place the duty on public bodies and trustees to make every reasonable effort to assist an applicant or individual making a request for access "and to respond without delay, openly, accurately and completely." (FIPPA section 9, PHIA section 6[2])

Given the volume and sensitivity of personal information employed by the institutions of our society in providing goods and services, and the increasingly pervasive use of information and communication technologies, it is evident that public bodies and trustees must adhere to the very best practices in all aspects of their management of information to minimize the possibility of doing harm to those they serve. Differently put, the protection

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[1] Public bodies include provincial government departments, offices of the ministers of government, the Executive Council Office (Cabinet), and agencies including certain boards, commissions or other bodies; local government bodies such as the City of Winnipeg, municipalities, local government districts, planning districts and conservation districts; educational bodies such as school divisions, universities and colleges; and, health care bodies such as hospitals and regional health authorities.

[2] Trustees include health professionals such as doctors, dentists, physiotherapists and chiropractors; health care facilities such as hospitals, medical clinics, personal care homes, community health centres, and laboratories; health services agencies that provide health care under an agreement with a trustee; and, public bodies as defined under FIPPA.

of information privacy must become part of their organizational culture and an everyday part of doing business.

The performance of public bodies and trustees in complying with Manitoba's information privacy schemes is difficult to measure collectively, but, more importantly, once a breach has occurred, any comfort to the subject involved is probably cold. There are few statistics available -- and perhaps even reasonably obtainable -- which can underpin an unequivocal generalized assessment. Violations of the Acts that result in complaints either to the public body or trustee involved or to the oversight agency do help identify some practices that need to be improved, but this is one step too late no matter how one looks at it. For this reason, our office has been developing a long overdue analytical and administrative tool that may be used by public bodies and trustees to assess their compliance with FIPPA and PHIA as an act of due diligence to identify circumstances and practices that need attention before breaches occur.

PRIVACY MATTERS

During the course of the year 2002, we noted that one of the most common general questions posed to our office from outside Manitoba had to do with the phased introduction of the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA). The question was, in effect: "Will the Manitoba Government be introducing 'substantially similar' legislation to cover the provincially regulated private sector?"

PIPEDA was passed in the year 2000. Broadly speaking, Part 1 of the Act was designed to protect the collection, use, and disclosure of recorded and non-recorded personal information by private sector organizations in the course of commercial activities. On January 1, 2001, the legislation applied to personal information in the federally regulated private sector; on January 1, 2002, personal health information was drawn into the ambit of the Act; and on January 1, 2004, it was to be extended to all organizations collecting, using, or disclosing personal information in the course of commercial activities within or over a province's jurisdictional boundaries. A province deemed by the federal government to have introduced "substantially similar" legislation could be exempted in considerable measure from the application of PIPEDA within the province.

The introduction of PIPEDA will assure the public of a more seamless protection of information privacy rights across the country, but there is growing concern that the federal and the provincial legislation will not mesh perfectly, leaving jurisdictional applications uncertain or at issue.

Nevertheless, we did have a clear and substantive response for the many enterprises that sought answers to their questions about the Manitoba Government's intentions. In effect, we told them there was certainty that they would be dealing with privacy requirements based on well-established principles of fair information practices, which underlie Canadian information privacy legislation, and that this was a solid basis from which to begin preparing to comply with whatever statutory regime came into place. We also gave our opinion that good privacy practices are good business practices in relation to clients, customers, and employees.

Complying with Information Privacy Requirements

As we have indicated in our last four annual reports, compliance with the information privacy requirements of FIPPA and PHIA by entities that fall within their scope could be significantly enhanced by conducting privacy impact assessments as a routine practice in the course of conducting public business. Since we first mentioned the importance of these fact-finding and analytical processes in 1998, their utility has been underlined by the adoption of them by numerous Canadian government jurisdictions and a growing number of private enterprises that seek to protect personal information.

There is no question that analysing any organization's personal information collection, use, disclosure, and management practices can be complex in relation to legislative requirements. Conducting a privacy impact assessment offers a structured and systematic approach of value to organizations of all sizes that simplifies the task of bringing personal information practices in line with both legal obligations and best practices. Undertaking such a process, however, is probably critical for a large or complex entity that wants or needs to ensure that its constituent parts manage personal information well and consistently in an environment where sharing it in some fashion beyond the original purpose of collection is a consideration in support of better and more efficient services.

During 2002, we completed most of our work on such an instrument specifically designed for use under Manitoba's laws. This Privacy Compliance Tool, as we have named it, is in two major parts: a "Checklist" that offers a step-by-step self-assessment process covering the basic requirements for good information privacy practices, and a "Guide" that serves to remind users of legal requirements and identifies some best practices. We have also developed a "Checklist at a Glance" as a summary form and overview of the "Checklist" that may also be used to tally the key results of completing the privacy impact assessment.

The organization of the Privacy Compliance Tool (PCT) reflects the key principles on which PHIA and FIPPA are based and, indeed, the widely accepted principles of fair information practices which form the foundation of similar statutes throughout Canada. The "Guide" and "Checklist" are built on the following fundamentals:

- **Element 1** – identifying purposes and limiting collection of personal and personal health information;
- **Element 2** – limiting use, disclosure and retention of personal and personal health information;
- **Element 3** – ensuring accuracy of personal and personal health information;
- **Element 4** – safeguarding personal and personal health information;
- **Element 5** – ensuring individual access to personal and personal health information;
- **Element 6** – challenging compliance;
- **Element 7** – accountability and openness of policies and practices; and,
- **Element 8** – assessing privacy risks in electronic service delivery.

The "Guide" also provides a list of common terms and definitions used throughout the PCT and guidelines for considering the elements of meaningful consent in relation to personal and personal health information.

The PCT will be released in 2003 to assist public bodies and trustees in assessing their compliance with FIPPA and PHIA. We are convinced that its use would represent a major

advance in protecting the personal and personal health information of the public. Manitoba public bodies and trustees necessarily collect personal information to provide services that are not ordinarily available through other channels. Unlike the marketplace where people can usually make meaningful choices about the source of goods and services they are seeking, this option is generally constrained or non-existent from the public sector. Consequently, personal information must be maintained at the highest level of trusteeship in order to maintain the confidence of the public.

Use of a complete privacy impact assessment process is not a requirement under FIPPA and PHIA, nor is the Privacy Compliance Tool intended to replace or limit any comparable process that a public body or trustee may already be employing. While the use of the PCT is entirely voluntary, it nevertheless remains the obligation of public bodies and personal health information trustees to comply with privacy laws. In the end, it is up to the Manitoba Government to determine the value of conducting privacy impact assessments as a matter of policy or law. The pending statutory review of PHIA and FIPPA should provide an opportunity to consider this matter.

ACCESS MATTERS

Standards for responding to requests for access to information under FIPPA

Making a decision to grant access to a record within statutory requirements can be challenging for government departments and agencies under Canadian access and privacy laws according to the results of an independent Canadian study published in 1998.[3] The frequency with which the standards are met is a generally accepted performance indicator in relation to compliance with the law. Of the six jurisdictions that reported on this indicator, the study showed that the average 30-day response standard was met 62% of the time while 15% took 31-60 days, and 21% took more than 61 days.

Both FIPPA and PHIA establish time limits for responding to requests for access to information. These legislative requirements are similar to those laid out in comparable federal and provincial statutes. Presumably they reflect what lawmakers have believed to be a practicable balance between the public's right to know in an open and accountable democracy and a government's ability to provide lawful access within in a reasonable period of time.

Public bodies are required to make every reasonable effort to respond in writing to a request for access to information within 30 calendar days of receiving the request. The public body has the discretion to invoke an extension of this time limit by up to an additional 30 days only if:

- insufficient information is provided by the applicant to enable the public body to identify a requested record;
- the large number of records that has been requested or that must be searched within the 30-day limit would interfere unreasonably with the public body's operations;
- time is needed to consult with a third party or another public body before deciding whether or not to grant access in whole or in part; or,
- a third party has made a complaint on being given notice of the public body's intention to give access to a record, the disclosure of which might be harmful to a third party's privacy or a third party's business interests.

[3] Alasdair Roberts, Limited Access: assessing the health of Canada's Freedom of Information Laws, Kingston, Queen's University School of Policy Studies, 1998. The report is available at http://faculty.maxwell.syr.edu/asroberts/documents/limitedaccess.pdf. No more recent national study exists to allow a more up-to-date comparison.

Claiming a extension for up to 30 days under section 15(2) of FIPPA requires the public body to send a written notice to the applicant setting out the reason for the extension, when the response can be expected, and informing the applicant that a complaint may be made to the Ombudsman about the extension. It is important to recognise that a legitimately issued notice of extension means that a public body may well be in compliance with the statutory standards but, by way of a complaint, it remains a matter the Ombudsman may investigate.

Where a public body believes that the 30-day extension available to it will not be sufficient, a longer period may be taken if the Ombudsman agrees. The decision to follow either of these approaches for an extension should be made as early as possible within the 30-day period following receipt of the request for access.

Provincial Government Departments and Agencies

Since 1999, we have observed in our annual reports that, overall, the departments and agencies of the Manitoba government have consistently maintained a high standard of meeting the statutory time requirements for responding to access requests. Since 1993, the average response rates have been 89% within 30 days, 10% within 60 days, and 1% for more than 60 days (see Appendix 1, Chart 1). In 2002, the figures changed respectively to 74%, 18%, and 8%. These were significant variances.[4]

An obvious factor was a remarkable increase in the number of access requests made to government departments and government agencies in 2002: 1,188 requests compared with an average of 538 over the preceding 10 years, during which time the highest number of requests received was 712 in 1996. Eighteen government departments completed 721 of the 959 access requests received and carried into 2002. Of the 721 access requests processed during the year by the 18 departments, slightly more than 35% or 257 of them were requests to five departments from two news reporters regarding three matters they were covering. These requests brought the total from news media to 318 for the year, or about five times the average number from this general source for the preceding five years.[5]

Given that these 257 requests represented a major part of the changes in the statistical patterns, we factored the five departments out of the figures and found that the response rates of the remaining departments were 82% within 30 days, 15% within 60, and 3% more than 60 days. Bearing in mind that time extensions to 60 days may be in compliance with legislative standards, these response rates are fairly close to the historical levels of commendable overall performance.

Local Public Bodies under FIPPA

Local public bodies, with the exception of the City of Winnipeg, have operated under FIPPA since April 3, 2000. Winnipeg came under the Act on August 31, 1998. Local public bodies include local governments such as the City of Winnipeg, municipalities, local government districts, planning districts and conservation districts; educational bodies such as school divisions, universities and colleges; and health care bodies such as hospitals and regional health

[4] The source of these and various other statistics used in our report relating to applications for information under FIPPA derive from the annual reports published by Manitoba Culture, Heritage and Tourism. These reports are available from 1998 on the department's web site: http://www.gov.mb.ca/chc/fippa/index.html.

[5] The clustering of the 257 requests was characterised by the applications for information being submitted to the departments covering separate but continuous time periods in an apparent attempt by the reporters to contain the amount of fees that could be assessed. FIPPA allows two hours of search and preparation time before a fee of $15.00 for each half-hour thereafter is applied. One complaint was made to our office in relation to these access requests, but it was resolved by the department involved issuing a revised estimate of costs.

authorities. There were about 380 local public bodies under the legislation in 2002, of which 201 were municipal governments. Public bodies, including local public bodies, that collect or maintain personal health information are also subject to *The Personal Health Information Act*.

Local public bodies received a total of 491 requests for access to information in 2002. This was an 11% decrease from 2001 when 542 requests were received, but a 69% increase from 2000 when 291 requests were received during the nine-month period that FIPPA was in force for local public bodies other than Winnipeg.

The overall response time in 2002 by all local public bodies to requests for access to information under FIPPA was 83% within 30 days, 15% within 60, and 2% for more than 60 days. The total of response times for 30 and 60 days at 98% was notably consistent with the figures for the preceding two years. Bearing in mind that responses within 60 days may be permitted under the legislation, a major change in 2002 was the decline from the nearly 90% average of the two preceding years for responses within 30 days. Much of this statistical change is attributable to response times reported for the Winnipeg Regional Health Authority (WRHA) which received 110 (63%) of the access requests directed at health care bodies.[6] The WRHA responded to 49% of the access requests within 30 days, 49% within 60, and 2% took more than 60 days. Our office did not receive any complaints against the WRHA about a failure to respond within 30 days or any extended period.[7]

Access Decisions under FIPPA

The right of access is subject to limited and specific exceptions to disclosure. The practice of severance, which involves removing information that falls within an exception to disclosure from a copy of the record to be released, provides a means of releasing as much information as possible. There are two types of exceptions to disclosure in FIPPA: mandatory and discretionary.

A mandatory exception requires the head of a public body to refuse to disclose the information. The mandatory exceptions, in Division 3 of Part 2 of FIPPA, are:

- Privacy of a Third Party (section 17)
- Business Interests of Third Parties (section 18)
- Cabinet Confidences (section 19)
- Information Provided by Another Government (section 20)
- No Disclosure of a Law Enforcement Record if Prohibited by an Enactment of Canada (section 25[2])
- Solicitor-Client Privilege of a Third Party (section 27[2])

A discretionary exception permits the head of a public body to disclose information in a record, even though it falls within the exception. The head must consider all relevant factors and the particular circumstances of the case in determining whether it is appropriate to disclose the information, unless an exception in another section of FIPPA applies. The main discretionary exceptions, in Division 4 of Part 2 of FIPPA are:

- Relations Between Manitoba and Other Governments (section 21)
- Local Public Body Confidences (section 22)

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[6] The high proportion of access requests reflects the size and scope of its operations in relation to other health care bodies.

[7] Statistical information carried over from previous years by our office may be found on pages 30 - 35.

- Advice to a Public Body (section 23)
- Individual or Public Safety (section 24)
- Law Enforcement and Legal Proceedings (section 25[1])
- Security of Property (section 26)
- Solicitor-Client Privilege of a Public Body (section 27[1])
- Economic and Other Interests of a Public Body (section 28)
- Testing Procedures, Tests and Audits (section 29)
- Confidential Evaluations (section 30)
- Preservation of Heritage Resources and Life Forms (section 31)
- Information that is or will be Available to the Public (section 32)

As noted earlier in this report, provincial government departments and agencies received a record number of access requests in 2002. The 954 requests completed during the year were also at a record level, and was 57% higher than in 2001. Decisions to grant access in full or in part rose 5% to 73% from the previous year, continuing an upward trend from 1999 when the rate was 55%. (See Appendix 1, Chart 2)

Access decisions in 2002 by local public bodies (educational, health care, and local government bodies) remained consistent overall with those of the preceding year with 75% compared to 78% of requests being granted in full or in part.

COMPLIANCE MATTERS

The broad oversight responsibilities and powers of the Office of the Ombudsman under PHIA and FIPPA are set out in Parts 4 and 5 of the Acts. They include duties to initiate or respond to complaints about the compliance of public bodies and personal health information trustees with the legislation. In addition, the Ombudsman may

- conduct investigations and audits and make recommendations to monitor and ensure compliance with the Acts, including requirements relating to the retention and security of personal or personal health information;
- inform the public about the Acts;
- receive comments from the public about the administration of the Acts;
- comment on the implications for access to information or protection of privacy of proposed legislative schemes or programs of public bodies or practices of trustees;
- comment on the implications for protection of privacy of using or disclosing personal information for record linkage, or of using information technology in the collection, storage, use or transfer of personal information;
- bring to the attention of the head of a public body any failure to fulfil the duty under FIPPA to assist applicants;
- where personal health information is involved, refer a matter to a body with authority to regulate health professionals;
- recommend that a public body or trustee
  - cease or modify a specified practice of collecting, using or disclosing information that contravenes the Acts, or
  - destroy a collection of personal or personal information that was not collected in compliance with the Acts;
- make recommendations to the head of a public body or the responsible minister about the administration FIPPA;

- consult with any person with experience or expertise in any matter related to the purposes of the Acts; and,
- engage in or commission research into anything relating to the purposes of the Acts.

Where an informal resolution of a matter is not reached, the Ombudsman may make recommendations to a public body or trustee who must respond to this action. A person who has received a report from the Ombudsman about a complaint of refused access may appeal the decision to the Court of Queen's Bench. Under certain circumstances, the Ombudsman may intervene as a party to an appeal or appeal to court. Information on the Ombudsman's recommendations and recent court decisions are provided under separate headings below.

Investigating Refusal of Access Complaints

Applicants have a right of access under FIPPA to any record in the custody or under the control of a public body unless the information falls squarely within a specific and narrowly interpreted exception to disclosure. The onus is on the public body to justify withholding information under the Act. Accordingly, when investigating a complaint concerning a public body's decision to refuse access, our office considers what information was withheld, which exceptions to disclosure were applied to the information, and why the public body determined that the cited exceptions applied. Additionally, where there are provisions which limit the application of the exceptions, these need to be considered. For discretionary exceptions, where a public body may refuse access, consideration is given to the public body's exercise of discretion.

In our 2001 Annual Report, we observed that when refusing access, the response letters of public bodies often did not provide the applicant with the reasons for the refusal and the specific provisions of the Act on which the refusal was based, as required under section 12(1)(c)(ii) of FIPPA. In the course of investigating refusal of access complaints, which constitute the majority of FIPPA complaints, we have noted that decisions to refuse access, particularly the rationale for determining that exceptions to disclosure apply, are not well-documented by public bodies when responding to access requests. In these situations, when there is an investigation of a complaint, a public body must reconstruct how it arrived at the decision to refuse access. This can be a time-consuming process for both the public body and our office, which hinders the timeliness of completing investigations.

To assist public bodies and our office in meeting respective responsibilities in the course of an investigation of access denied complaints under FIPPA, our office has prepared the document Suggested Format for Providing Records to the Ombudsman's Office in an Investigation of a Refused Access Complaint under FIPPA. We have made this document available to public bodies in an effort to streamline investigations and conclude investigations in a timely manner. It forms Appendix 2 of this Annual Report.

Distribution and Types of Cases

There were no particularly dramatic changes in the overall distribution or types of cases handled under FIPPA and PHIA in 2002. Of the 243 cases opened in this year, 78% concerned access issues (no change from 2001), 12% privacy (down 6%), and the remainder were non-jurisdictional or involved the provision of information or other assistance relating to access and privacy matters. The number involving access to information issues under FIPPA declined to 69% from 73% of the total in 2001. Cases relating to privacy matters under this Act declined to 5% of the total from 8% in 2001, and 11% in 2000. Access cases under PHIA represented 9% of the total, up from 2% in 2001, but down from 10% in 2000. (See *Appendix 1*, Chart 3)

In 2002, the most notable change in the distribution of cases was the 15% decline from 40% in the previous year of those involving local public bodies. In 2000, local public bodies were involved in 21% of the cases. Cases concerning provincial departments and agencies rose by about 11%, following a 15% decline in 2001 from 2000 when 65% of the cases concerned these public bodies. Cases relating to health care facilities increased to 7% from 2% in 2001 representing a return to approximately the 2000 level of 6%. Cases involving health professionals stood at 2% of the total in 2002, continuing a decline from 7% in 2000 and 4% in 2001. (See Appendix 1, Chart 4)

Steady Improvement

For the second year in a row, the rate of complaints declined in relation to the number of access requests made to provincial government departments and agencies. Measured against the figures for 2000, the rates were virtually halved at 13% and 23% respectively for complaints as a percentage of access requests and as a percentage of requests denied or partly granted. Somewhat offsetting this very positive direction was an 8% decline from 53% in 2001 in the number of instances where we supported the decisions of provincial government public bodies. Nevertheless this is still 11% better than the equivalent figure for 1999. (See Appendix 1, Charts 5 and 6)

Complaints and Backlogs

The number of access and privacy cases opened under PHIA and FIPPA declined for the first time since the statutes were proclaimed in 1997 and 1998 respectively. The 6.5% decrease from 2001 was undoubtedly a factor contributing to an 11% increase in file closings for the same period. The backlog (cases open and opened during the year) continued to climb, but the relative number of files carried over from one year to the next was reduced considerably even though it still rose from 2001. All told, we were gratified by the improvements even though we remain concerned about the substantial backlog and its implications for the public, public bodies, and trustees seeking timely resolution of their issues. (See Appendix 1, Chart 7)

Information and Educational Activities

The Ombudsman has statutory responsibilities to inform the Legislature and public about the office's access and privacy work.

The Ombudsman and staff participated in a wide variety of presentations and panels that involved workshops, lectures, and addresses on personal and personal health information, security of information, access to information, recordkeeping and information management, the role and function of the Office, and human rights. These activities involved attendees from the Legislative Internship program, Management Interns in the Civil Service, access and privacy specialists in and outside the Province, university students, schools, access and privacy coordinators, and various special interest groups.

The Ombudsman gave numerous interviews to broadcast and print news media, more often than not about privacy issues and cases that had become a matter of public interest.

During 2002, staff responded to approximately 425 inquiries from the public relating to access and privacy questions or concerns. In responding, we provided information about the application of FIPPA and PHIA, how to exercise access and complaint rights under the Acts, and referred non-jurisdictional issues to appropriate organizations.

OMBUDSMAN'S RECOMMENDATIONS MADE IN 2002

As noted in our 2001 annual report, the Ombudsman made recommendations under PHIA in a case that was closed in 2002 and would be addressed here. The Ombudsman also made recommendations in 2002 concerning three files under FIPPA.

MORDEN MEDICAL CENTRE

[Case 2001-034]

It came to our attention that the Morden Medical Centre did not have written policies and procedures addressing security provisions relating to the collection, use, disclosure, storage and destruction of personal health information under PHIA and the Personal Health Information Regulation MR 245/97. Our Office met with the Centre at which time we noted that trustees are also obliged by the Act to provide staff with orientation and ongoing training about the trustee's written policies and procedures under PHIA. Trustees are further required to have all employees and agents sign a pledge of confidentiality acknowledging that they are bound by the policies and the Act, and that they are aware of the consequences of breaching them.

The Ombudsman provided recommendations to the Centre. The Centre responded by indicating that it accepted, and would be fully implementing, the recommendations. Specifically, the Centre advised our Office that an audit of its facility had been conducted and that deficiencies in the Centre's compliance with PHIA had been identified and were being addressed. Our Office was supplied with a policy and procedure manual for the Centre as well as its newly drafted pledge of confidentiality under PHIA. We were also advised that there would be a staff meeting regarding these developments and that a PHIA presentation had been booked with Manitoba Health's Legislative Unit to provide additional training about the legislation.

Our Office reviewed the policy and procedure manual and determined that, according to PHIA, some deficiencies still remained. After a further meeting and telephone contacts with the Centre, the Centre made revisions to its manual. Based on our examination of the revisions, it was our view that the Centre was in substantive compliance with the requirements of PHIA and its regulation.

MANITOBA CONSERVATION

[Cases 2002-108, 2002-109 and 2002-132]

These three cases concerned complaints that the Department had not responded to applications made under FIPPA.

Section 11(1) of FIPPA requires a public body to respond to an application in writing within 30 days after receiving it unless the time limit for responding is extended under section 15 or the request has been transferred under section 16 to another public body. In case 2002-108, the Department had extended the time limit for responding.

In each of the cases we found that the Department had not complied with the time limits for responding within 30 days or within the extended time limit as in the case of 2002-108. Our investigations of these cases determined that delays ranging from three to six months had occurred and responses to the applications had not been provided.

Accordingly, the Ombudsman made recommendations to Manitoba Conservation that it respond to these applications forthwith and that a copy of the responses be provided to our office.

The Department subsequently advised our office that it accepted the Ombudsman's recommendations. The Department also informed our office that it intended to minimize similar delays in responding to applications in the future and that it would be reviewing its process of tracking applications and considering the deployment of additional resources.

The Department responded to the applicant concerning the first two cases. In case 2002-132, the Department wrote to the applicant to clarify his request. Subsequently, the applicant contacted our office concerning the Department's delay in responding to the application after he provided clarification. Given concerns about the Department's compliance with time limits and the delays in responding to this application, the Ombudsman initiated a complaint under Part 5 of FIPPA concerning the delay in responding. This case in still ongoing.

RECENT COURT DECISIONS

To date, Manitoba's Court of Queen's Bench has made four determinations relating to access under FIPPA:

- Jaslowski v. The Minster of Justice (August 20, 1999; Suit No. CI 98-01-10175)
- Kattenburg v. The Minister of Industry, Trade and Tourism (November 19, 1999; Suit No. CI 98-01-08704)
- Heber v. The Director of Animal Servcies, City of Winnipeg (February 9, 2001; Suit No. CI 00-01-21102)
- Sigurdson v. The Minister of Conservation (September 30, 2002; Suit No. CI 01-01-25052)

Additionally, on May 17, 2002, the Provincial Court of Manitoba considered argument on three counts relating to alleged privacy offences, laid pursuant to The *Personal Health Information Act* (PHIA), in the matter of The Queen v. Keith Mondesir.

The two access to information cases heard by Manitoba Courts in 2002 are summarized below. Discussion on previous cases can be found in the Ombudsman's Annual Report on Access and Privacy for the years 1999 and 2001.

■ **Sigurdson v. The Minister of Conservation (Suit No. CI 01-01-25052)**

The applicant's FIPPA complaint of refused access was investigated by our Office in 2001. He had requested access to documents about himself in the custody or control of particular offices during specified dates. The department identified 85 pages coming under the request and 76 pages were fully disclosed to the applicant. Nine pages were withheld in whole or in part on the basis of two exemptions of FIPPA: section 23 (1)(a), that release could reasonably be expected to reveal advice to a public body; and section 27(1)(a)(b) and (c), that the information is subject to solicitor-client privilege.

Based on our review of the records, the cited exceptions, and information from the department, we found that sections 23(1) and 27(1) applied to the withheld information. As these are discretionary exceptions to disclosure, we made enquiries with the department about its use of discretion to withhold the information subject to these exceptions. Based on the department's explanation for exercising its decision not to release, we were of the view that the exercise of discretion was reasonable in this case. Accordingly, the Ombudsman could not recommend that the department release the withheld information.

Where the Ombudsman does not support an access complaint under FIPPA or PHIA, or if a public body or trustee does not act on the Ombudsman's recommendation to release, an applicant can proceed to the Manitoba Court of Queen's Bench to seek release. Under both pieces of legislation, the Ombudsman can appeal a refusal of access to the Court in the place of the applicant and with the applicant's consent. However, in appealing under FIPPA, the Ombudsman must be of the opinion that the decision raises a significant issue of statutory interpretation or an appeal is otherwise clearly in the public interest. Under FIPPA, the Court considers an appeal as a new matter and may hear evidence by sworn written statements.

The applicant in this matter appealed the refusal of access to the Court of Queen's Bench. During the course of argument in this matter, the Court informed the applicant that the excepted material did not disclose any personal or negative information concerning him, but did contain legal advice and policy recommendations concerning his prosecution under the *Freshwater Fish Marketing Act*, a proceeding the applicant had invited. The Court also suggested that counsel for the department consider obtaining instructions to reveal to the applicant a synopsis of the nature of the excepted material in an attempt to satisfy him. The Court reserved its decision in the hope that the applicant could be satisfied. Subsequently, the applicant requested a ruling on his appeal.

The Court concluded that the department was entitled to refuse to disclose the exepted information because the disclosure could reasonably be expected to reveal advice, opinions, proposals, recommendations, analyses or policy options developed by or for the department or Minister (section 23(1)). The Court also concluded that the department was within its right to refuse to disclose the information claimed to be subject to solicitor-client privilege on that basis (section 27(1)). The applicant's appeal was dismissed with costs to the department if it chose to demand them.

■ **The Queen v. Keith Mondesir (May 17, 2002)**

As briefly noted in the Ombudsman's annual access and privacy report for the year 2000, an alleged breach of privacy complaint received by our office and investigated during that year was the subject of prosecution under PHIA. This was, in fact, the first case to be prosecuted under either of Manitoba's information privacy laws. We did not elaborate on the matter at the time because it was before the Court. The legal matter has now been disposed of, being heard by the Provincial Court of Manitoba on May 17, 2002.

As background, in February 2000, our Office received a complaint that Dr. Keith Mondesir, a Winnipeg optometrist and therefore a trustee under PHIA, sold and disclosed his patient list (personal health information) to LensCrafters International Inc., contrary to the Act. As a result of information that came to our attention during the investigation, we had reason to believe that the trustee had committed offences under PHIA. As permitted by section 34(3) of PHIA, the Ombudsman disclosed that information to the Crown:

Information about offences

34(3) The Ombudsman may disclose to the Minister of Justice and Attorney General information relating to the commission of an offence under this or any other enactment of Manitoba or Canada if the Ombudsman considers there is reason to believe an offence has been committed, except that personal health information must not be disclosed without the consent of the individual the information is about.

In May 2001, charges were laid relating to the disclosure and sale of the trustee's patient list. Specifically, the counts were that, contrary to PHIA, Dr. Mondesir 1) allegedly disclosed per-

sonal health information to LensCrafters International, Inc., 2) allegedly sold or otherwise disposed of or disclosed personal health information for consideration to LensCrafters International, Inc. and 3) allegedly disclosed personal health information to DPD Software Ltd. While LensCrafters International, Inc. and DPD Software Ltd. had involvement in matters related to the case, they are not trustees under PHIA and therefore not the subject of the proceedings before the Ombudsman or the Court.

On May 17, 2002, the trustee pleaded guilty in the Provincial Court of Manitoba to disclosing personal health information to DPD Software Ltd., contrary to section 20(1) of PHIA and received an unconditional discharge. This disposition was recommended jointly by the Crown and defence counsel. The Crown issued a stay of proceedings for the remaining charges that alleged the unlawful disclosure and sale of personal health information to LensCrafters International, Inc.

Our Office is not prepared to comment on the merits of the plea bargain that resulted in the unconditional discharge. We also cannot speculate whether charges were dropped due to insufficient evidence, a defence of due diligence, or some other reason. The role of our Office in prosecutions is limited to providing information. All further decisions concerning the conduct of trial, plea bargain and sentencing processes are solely within the discretion of Manitoba Justice.

The investigation of the PHIA complaint to the Ombudsman, which is a legislated process separate and distinct from prosecution, was not concluded in 2002.

FINAL WORDS

"Balancing" Access and Privacy Rights

Sometimes our understanding of intricate matters can be well served by stepping back from the welter of circumstance and detail to reflect on the general principles upon which complex legislation is based. Considering that FIPPA and PHIA are due to be reviewed by the public and the Manitoba Legislature to find out how they've been working, it is timely to look at the relationship of information access and privacy rights embodied in these statutes.

The phrase "balancing access and privacy rights" is used quite frequently to refer to the process of determining a person's rights under information access and privacy legislation. This may leave the impression that these rights are competing with each other in some way. This can deflect attention from the real issues facing the application of such laws. A better way of looking at these legal rights is that they are based on complementary values or principles.

In the "real world" of applying them in an operational setting, there is no doubt that access and privacy rights mingle, interplay, and work with each other. But they do not "compete". Nor does one "trump" the other.

Access Rights

Access to information simply means the right to have access to any information, usually a record, held by public bodies for whatever purpose a person wishes subject to a number of specific and limited mandatory or discretionary exemptions that must be strictly and narrowly applied. Access is the bias. The right of access also embodies principles of openness, accountability, and fairness. It is by far the most heavily exercised right under the access and privacy laws.

These rights include access to one's own personal or personal health information (i.e. a record). Again, access is the bias. From this right flow a number of other important ones including personal information correction and appeal for independent review where access appears to have been improperly limited in some fashion.

Privacy Rights

These rights generally draw on internationally accepted principles of fair information practice that engage accountability and critical limitations on the collection, use, and disclosure of personal information, as well as its protection and retention. Broadly speaking, the underlying principle is that people should be able to control their own personal information and not have this information disclosed to anyone else unless by their own meaningful consent or under a limited number of authorized means or circumstances.

While third-party privacy is statistically the most frequently reported exception to access in Manitoba, it is important to note that most applicants requesting access to personal information want access to their own information, not that of others. It would be a mistake to presume from the statistics that privacy rights are competing with rather than complementing access rights.

When our office reviews personal information collection, use, and disclosure issues, we often incorporate the following considerations into our analysis of an action taken or contemplated:

- the measure must have a lawful purpose connected to the trustee's function or activity;
- it must be necessary and effective to achieve the intended purpose;
- it must limit the information to the minimum amount reasonably necessary to accomplish the intended purpose, and include consideration of other less privacy-invasive measures.

In short, the collection, use and disclosure of personal information should be lawful, necessary, effective and limited.

Back to the Real World

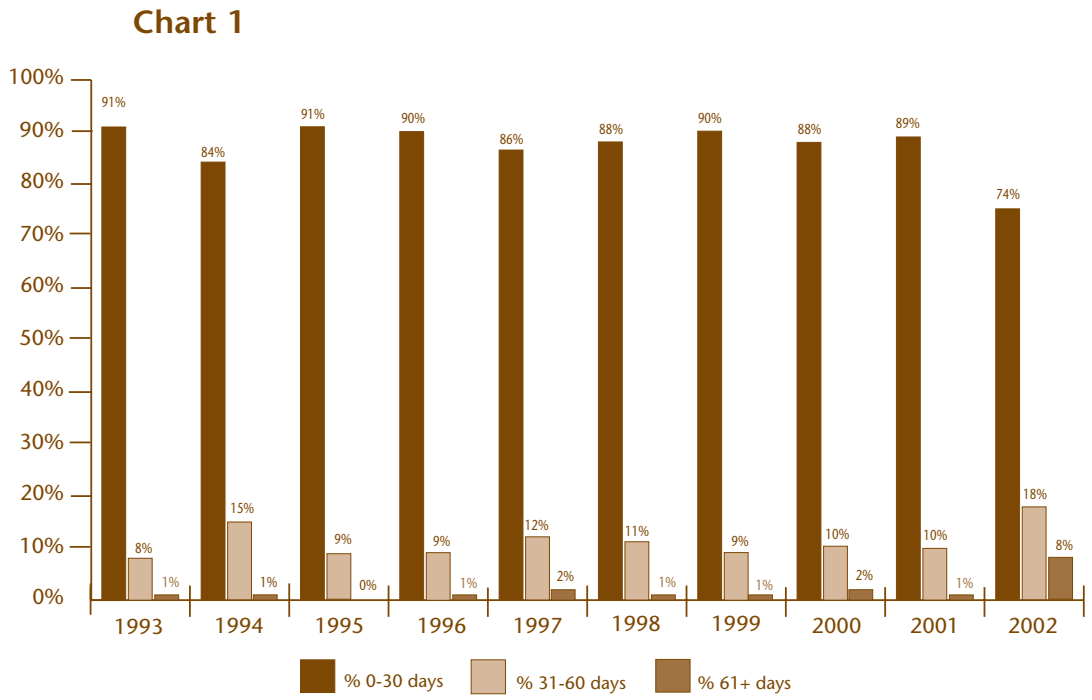
Whatever balancing is done with respect to access and privacy rights is more aptly thought of as being done within the parameters of each set of rights. The issues raised in this deliberative process pertain to deciding to provide or not to provide access, or to protect privacy or not – but not to a balancing between access and privacy rights.

Leaving aside relatively rare situations where the law leaves little or no room for the exercise of discretion in making a decision, the deliberative process is better portrayed as deriving the proportionality between the adverse affects, on the one hand, and the benefits, on the other, likely to be the outcome of the decision rather than as a balancing of competing rights.

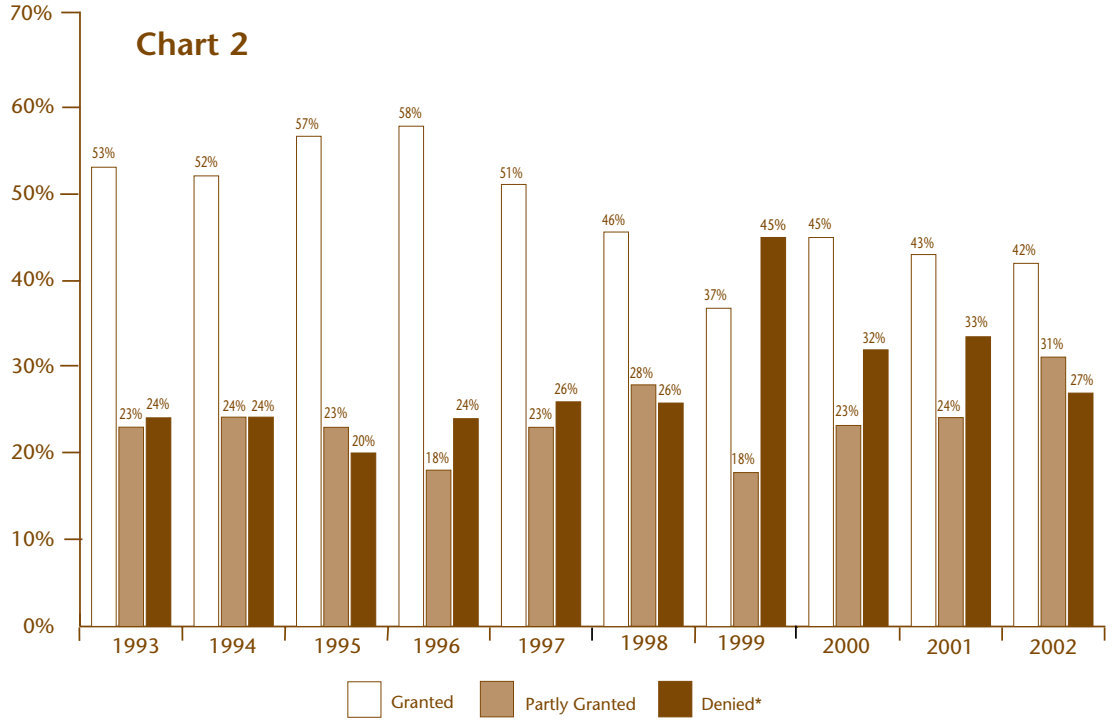
In other words, the objective of the process is to make a considered decision that a reasonable person would under the circumstances of the situation. This, in effect, fittingly closes the loop between the general and the specific, and brings us back to the welter of detail where we have to operate in the end, but perhaps with a greater sense of clarity about what has to be done.

Response Times for Access Requests
Provincial Departments and Agencies

APPENDIX 1



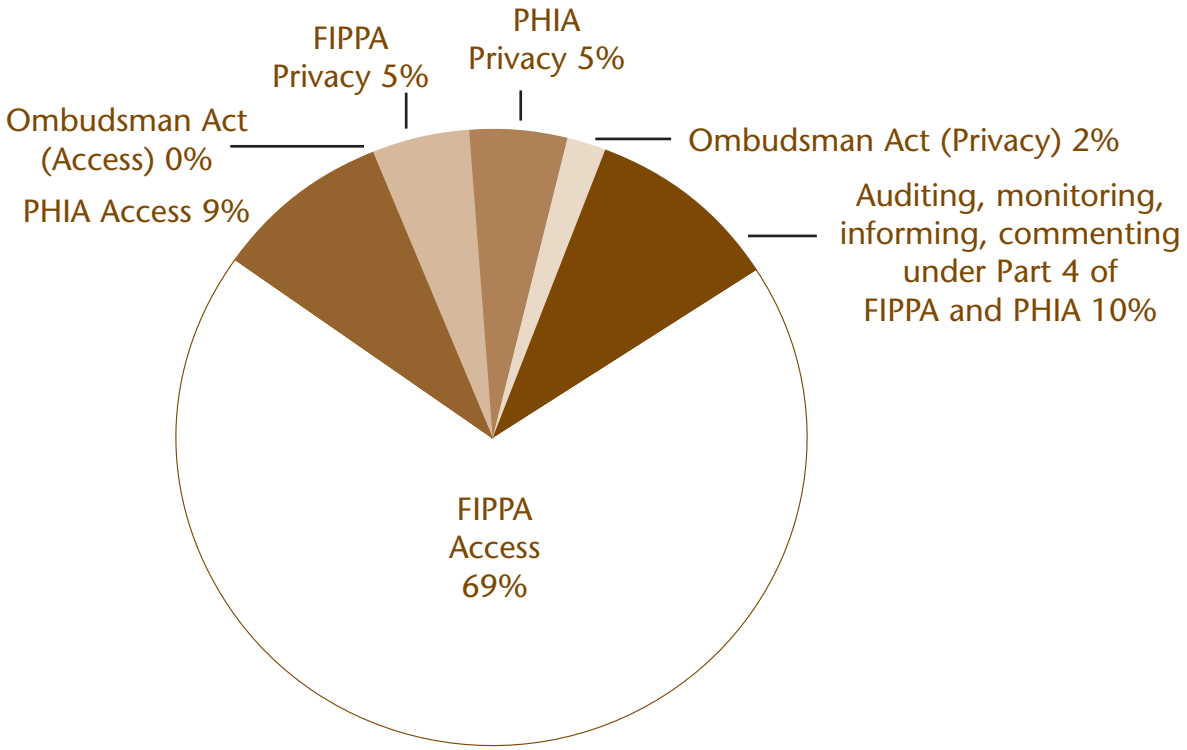
Access Decisions under FOI/FIPPA
Provincial Departments and Agencies



***Note:** This figure includes any requests denied because the applicant was informed the record did not exist, or the request was repetitive, or its existence could be neither confirmed or denied.

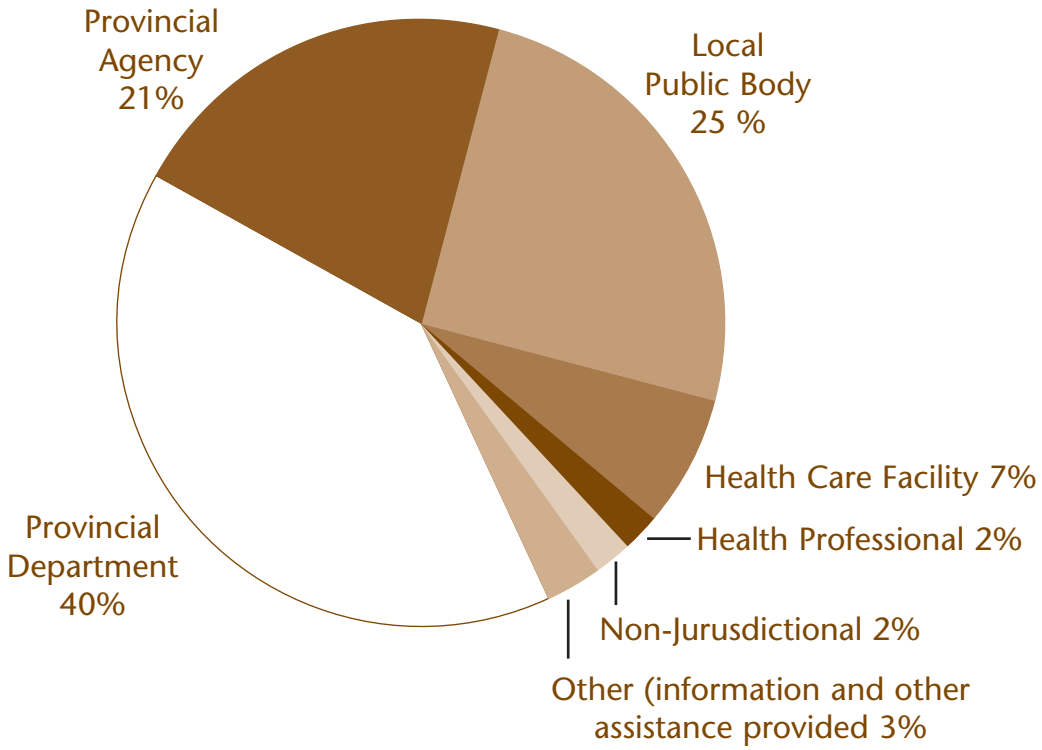
Types of Cases in 2002

Chart 3



Distribution of Cases in 2002

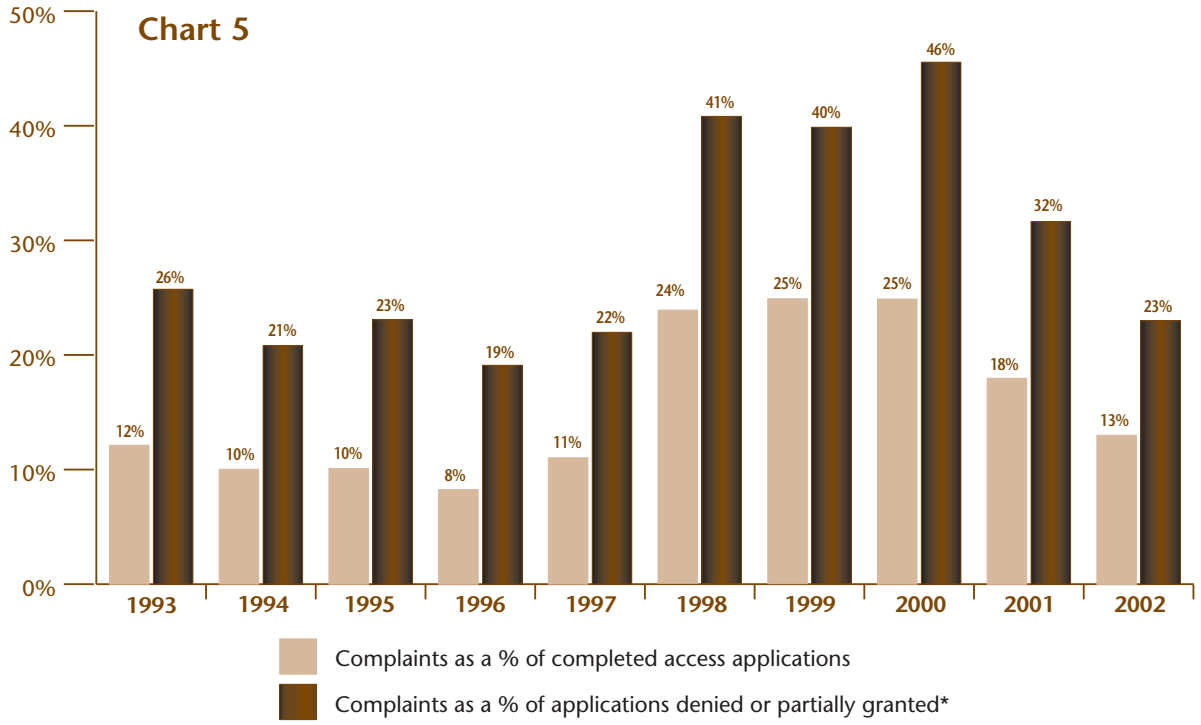
Chart 4



Rates of Complaint in Relation to Access Requests under FIPPA

Provincial Departments and Agencies

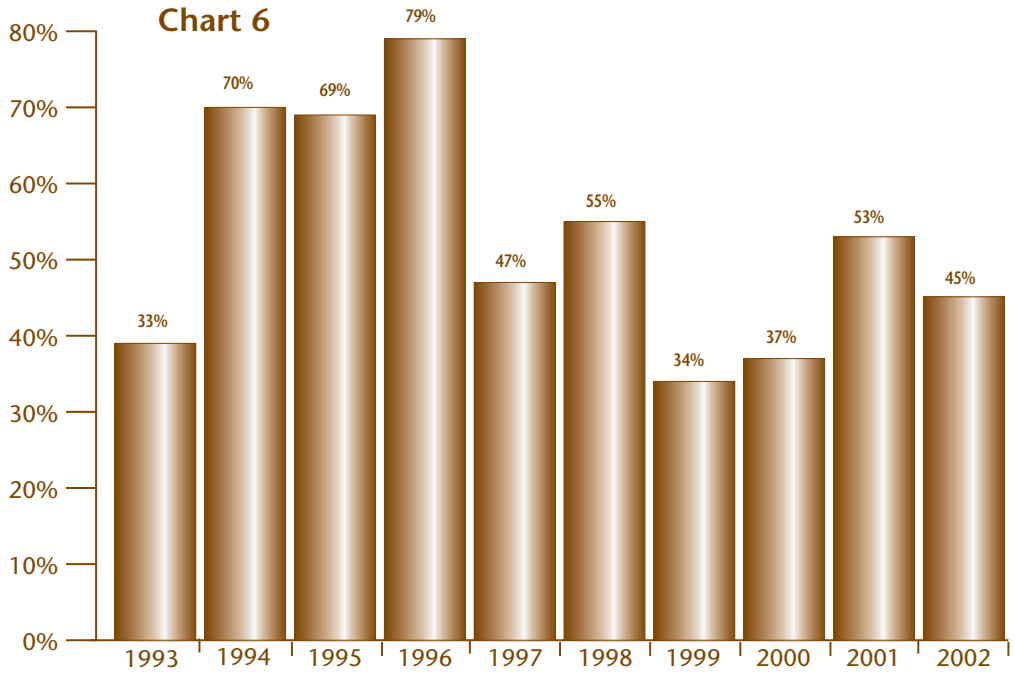
APPENDIX 1



***Note:** This figure includes any requests denied because the applicant was informed the record did not exist, or the request was repetitive, or its existence could be neither confirmed or denied.

Case Reviews Supporting Public Bodies

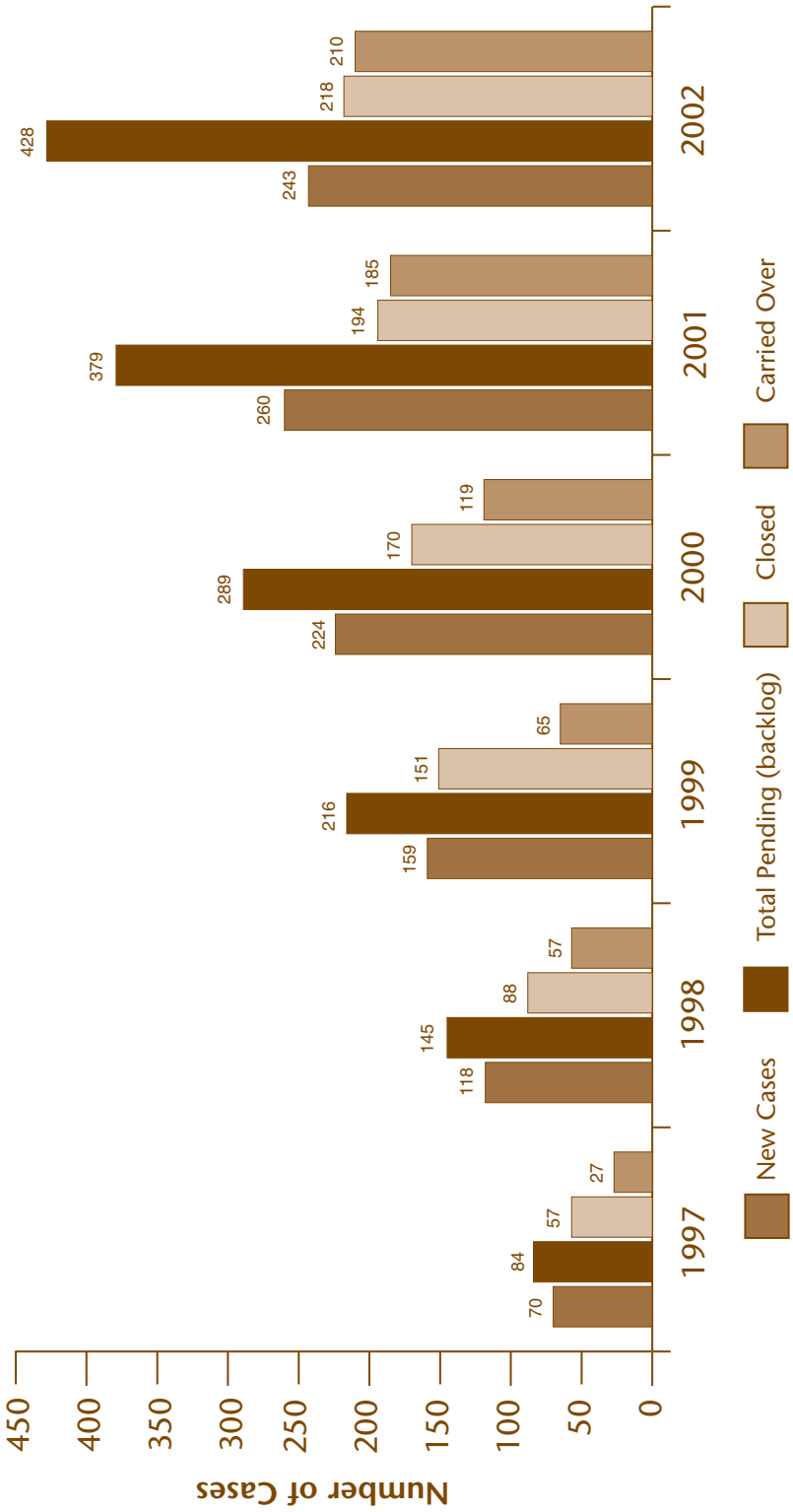
(Provincial Government Departments and Agencies)



APPENDIX 1

Backlog Chart
Access and Privacy Division

Chart 7



APPENDIX 2

Suggested Format for Providing Records to the Ombudsman's Office in an Investigation of a Refused Access Complaint Under FIPPA

Introduction

These suggestions are provided to assist in preparing a package of records for review by our office in an investigation of a refusal of access complaint.

A well-organized records package is essential to ensure that our review can fully consider the public body's decision to refuse access and to facilitate any discussions that may take place between our offices concerning particular records.

A standard records package consists of photocopies of the withheld records at issue and the reasons for the refusal. It is not necessary to send records that have been released in full, unless there is a particular reason for doing so.

Occasionally there may be special circumstances that may not be conducive to preparing a standard records package, such as in the case of voluminous or fragile records. In these situations, other arrangements can be made with our office such as conducting an on-site review of the records. This can be discussed when the Compliance Investigator contacts the Access and Privacy Coordinator at the outset of an investigation.

Preparing the Records

In a case where no records were released with severing and records were fully withheld, our office would need only one photocopy of the records, with the exceptions indicated in the margin beside the information to which they apply.

If records have been released with severing, our office would require two sets of photocopies of the records that are at issue: one set being the unsevered records and the second set being records with the severed parts blacked or whited out.

- All pages should be numbered consecutively and the page numbers on the first set should match those on the second set.
- Each exception on the severed set of records should be noted with a complete citation, for example "18(1)(c)(i)". The citation should be placed adjacent to the severed information either in the whited-out space or in the margin nearby. If more than one exception applies to the same piece of information, all of the exceptions should be clearly noted near the withheld information.
- If a page is withheld in full, this should be represented in the severed set by inserting a copy of the unsevered page, indicating on the page that it was withheld in full. The exception(s) being relied upon should be noted using the process described in the point above.
- Photocopies should be legible and complete, on a standard paper size.

Example of a Prepared Record

March 5, 2002

[redacted] ***17(1), 17(2)(c)***

Dear [redacted] ***17(1), 17(2)(c)***

Thank you for your letter of February 28, 2002, regarding the project to develop [redacted] In your letter you advised that you have concerns about the project. ***18(1)(c)(i)***

18(1)(c)(i)

We will be reviewing your concerns, specifically, [redacted] and how this would affect your property located at [redacted]

17(1), 17(2)(c)

I have enclosed a copy of the report that was mentioned in our news release. Should you have any further questions, please contact me at 123-4567.

Sincerely,

8

Enclosure

Providing Reasons for the Refusal of Access

In addition to the cited exception(s), section 12(1) of the Act requires that the public body provide the applicant with reasons for the refusal of access. Providing our office with information concerning these reasons is necessary because a reading of the withheld information together with the cited exception may not establish the applicability of the exception.

In providing our office with the public body's reasons to support its decision to refuse access, the following should be considered:

- For both mandatory and discretionary exceptions, reasons should be provided in support of the public body's view that the exception applies to the withheld information. For example, the exception 18(1)(c)(i) reads: "The…public body shall refuse to disclose… information that would reveal commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to harm the competitive position of a third party." Information to support reliance on this exception should include an explanation of which type of information would be revealed by disclosure and how or why disclosure would be expected to harm the third party's competitive position.

- For discretionary exceptions, a public body may decide to withhold rather than to release the information. In order to establish that the exercise of discretion was reasonable, we need to consider the public body's reasons for deciding to withhold. Therefore, an explanation of the reasons for exercising discretion to withhold the information should be provided.
- For both mandatory and discretionary exceptions, where there are also exceptions that limit the application of the exception to disclosure, we need to consider whether any such exceptions could apply, thereby providing for the release of the information. An explanation of the public body's consideration of whether any would apply should be provided. For example, if the public body has cited section 18(1)(c)(i) the public body's consideration of the applicability of section 18(3) should be explained.

Preparing an Index

In some circumstances, such as with voluminous records or where multiple exceptions have been applied to records with significant severing, an index would be helpful in providing an overview of the records at issue. If an index of the records has been prepared in the course of processing the access request, it could be provided to our office to assist in our review of the records.

In situations where it may be helpful to prepare an index to accompany a records package, please consider:

- Including the following headings: Page Number, Description and Exception.
- Giving the page number with the corresponding exception(s), including the section/subsection/clause/paragraph, that applies to the severed information on that page. Depending on the complexity of the severing, this may involve numbering the lines on the page and indicating the exceptions by line number on the page.

The following is a sample index that could be used to prepare an index for a records package.

Page #	Description	Exception
1-2 3 4	Memo to file about third party	17(1), 17(2)(c) 17(1), 17(3)(e) 23(1)(a)
5-6	Letter from federal department	20(1)(a)
7-8	Briefing note	23(1)(a), 19(1)(e)
9-13	Letter to legal counsel	27(1)(a)
14	Letter from ABC company	18(1)(b), 18(1)(c)(i) & (iii)
15-20	Report (withheld in full)	23(1)(a), 28(1)(c)(ii)

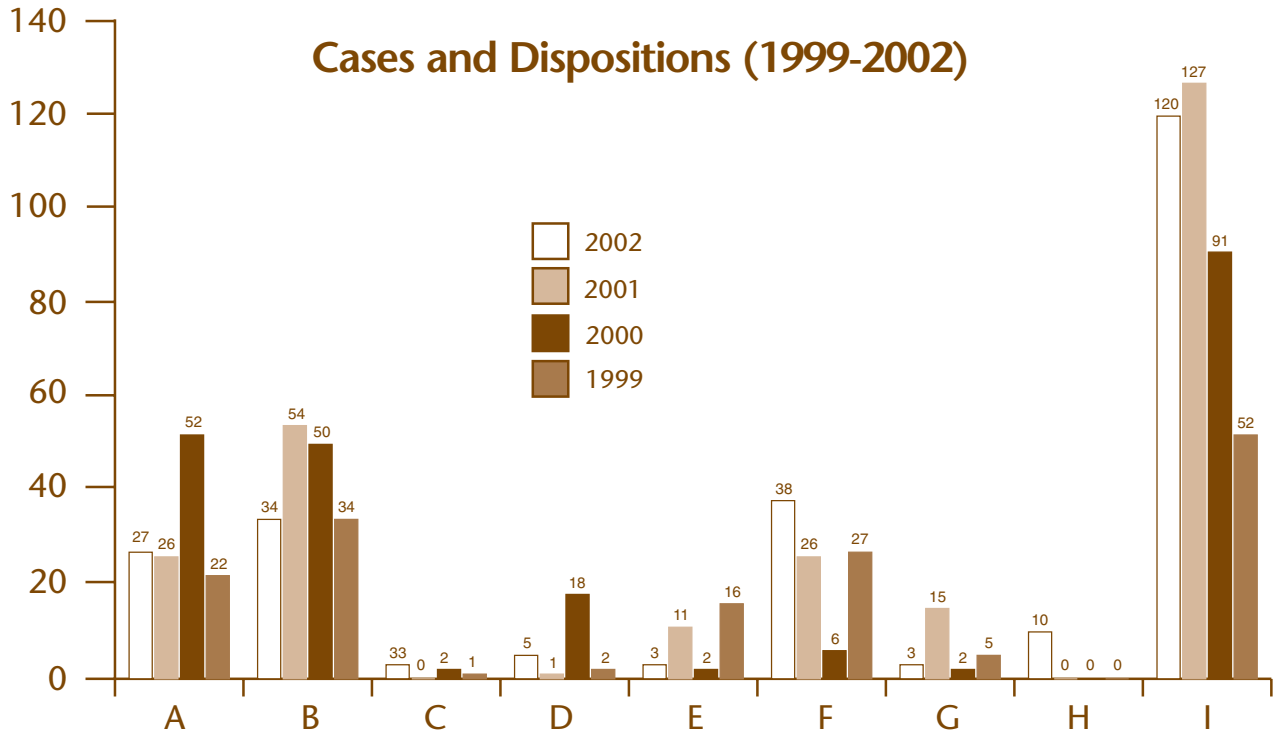
2002

Statistical Information

Cases and Dispositions in 2002

Two hundred and forty-three access and privacy cases were opened by our office in 2002. Of these, 123 were closed and 120 were carried forward to 2003. Our office also closed five cases carried over from 1998, eight from 1999, 20 from 2000 and 63 cases carried over from 2001. In total, 219 cases were closed in 2002.

The disposition of the 243 access and privacy cases received in 2002 is shown below. The categories of disposition, labeled A to I on the bar graph and used throughout this Annual Report, are also explained below.



A = Supported or Partially Supported

Complaint fully/partially supported and, in the case of access complaints, access granted through informal procedures.

B = Not Supported

Complaint not supported at all.

C = Recommendation Made

All or part of complaint supported and recommendation made after informal procedures prove unsuccessful.

D = Discontinued by Ombudsman

Investigation of complaint stopped before finding is made.

E = Discontinued by Client

Investigation of complaint stopped before finding is made.

F = Declined

Upon making enquiries, complaint not accepted for investigation by Ombudsman, usually for reason of non-jurisdiction or premature complaint.

G = Assistance Rendered/Information Supplied

Cases conducted under *The Ombudsman Act* or Part 4 of *The Freedom of Information and Protection of Privacy Act* or *The Personal Health Information Act* which resulted in assistance or information (not requested records) being provided.

H = Completed

Cases conducted since 2002, under Part 4 of *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act* where the task of auditing, monitoring, informing, or commenting has been concluded.

I = Pending

Complaint still under investigation as of January 1, 2003.

Source of Complaints

Community	Number
Alexander	2
Altamont	1
Beausejour	1
Birtle	1
Brandon	5
Cross Lake	1
Dunrea	3
Garland	1
Headingley	1
Ile des Chenes	14
Miniota	1
Portage la Prairie	1
St. Norbert	1
Stonewall	1
Strathclair	1
The Pas	1
Thompson	1
Virden	1
Winkler	1
Winnipeg	171
Winnipegosis	1
Calgary (Alberta)	1
Vancouver (British Columbia)	1
Ottawa (Ontario)	3
Toronto (Ontario)	1
Baltimore (Maryland)	2
TOTAL	**219***

*This statistic concerns access and privacy complaints received or initiated by the Ombudsman under Part 5 of *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act* and also *The Ombudsman Act*. It does not include the 24 cases initiated in 2002 by the Ombudsman under Part 4 of FIPPA and PHIA.

Cases Opened in 2002 by Category and Disposition Under *The Freedom of Information and Protection of Privacy Act*

Department or Catagory	Total	Declined	Discont'd (Client)	Discont'd (Omb)	Not Supported	Supported or Partially Supported	Recomen-dation	Pending
Public Body								
Agriculture and Food	**4**	1	-	-	-	3	-	-
Conservation	**12**	-	-	-	1	4	3	4
Consumer and Corporate Affairs	**2**	-	-	-	1	-	-	1
Culture, Heritage and Tourism	**1**	-	-	-	1	-	-	-
Education, Training and Youth	**2**	-	-	-	1	-	-	1
Energy Science and Technology	**1**	-	-	-	-	-	-	1
Executive Council	**2**	-	-	-	1	-	-	1
Family Services and Housing	**7**	1	-	-	1	-	-	5
Finance	**5**	-	-	-	2	1	-	2
Health	**5**	-	-	-	1	1	-	3
Industry Trade and Mines	**2**	-	-	-	-	-	-	2
Justice	**26**	4	-	2	7	-	-	13
Labour and Immigration	**5**	1	-	-	1	1	-	2
Manitoba Hydro	**6**	-	-	1	-	-	-	5
Manitoba Lotteries	**1**	-	-	-	-	1	-	-
Manitoba Public Insurance	**15**	-	-	-	-	1	-	14
Transportation and Government Services	**7**	1	2	-	1	-	-	3
Workers Compensation Board	**28**	21	-	1	-	1	-	5
Local Public Body								
City of Winnipeg	**17**	1	1	-	4	4	-	7
R.M. of Ethelbert	**1**	-	-	-	1	-	-	-
R.M. of Harrison	**1**	-	-	-	-	-	-	1
R.M. of Miniota	**1**	-	-	-	-	-	-	1
R.M. of Tache	**14**	-	-	-	6	1	-	7
Brandon School Division	**1**	-	-	-	-	-	-	1
Interlake School Division	**1**	-	-	-	-	-	-	1
Morris MacDonald School Division	**1**	-	-	-	-	-	-	1
University of Manitoba	**2**	-	-	-	-	-	-	2
Misericordia Hospital	**1**	-	-	-	-	-	-	1
Brandon Regional Health Authority	**1**	-	-	-	-	-	-	1
Nor-Man Regional Health Authority	**1**	-	-	-	-	-	-	1
Winnipeg Regional Health Authority	**4**	-	-	-	1	1	-	2
Not a Public Body	**2**	2	-	-	-	-	-	-
Total	**179**	**32**	**3**	**4**	**30**	**19**	**3**	**88**

Complaints Opened in 2002 by Category and Disposition Under *The Personal Health Information Act*

Department or Catagory	Total	Declined	Discont'd (Client)	Discont'd (Omb)	Not Supported	Supported or Partially Supported	Recomen-dation	Pending
Public Body								
Health	1	-	-	-	-	-	-	1
Justice	1	-	-	-	-	-	-	1
Manitoba Public Insurance	1	-	-	-	-	-	-	1
Local Public Body								
University of Manitoba	7	1	-	-	-	6	-	-
Brandon Regional Health Authority	1	-	-	-	-	-	-	1
Interlake Regional Health Authority	1	-	-	-	-	-	-	1
Winnipeg Regional Health Authority	2	1	-	-	1	-	-	-
Health Care Facility								
Assiniboine Clinic	1	-	-	-	-	-	-	1
Deer Lodge Centre	1	-	-	-	-	-	-	1
Health Sciences Centre	3	-	-	-	1	-	-	2
McPhillips Medical Group	1	-	-	-	-	1	-	-
Pan Am Clinic	1	1	-	-	-	-	-	-
Riverview Health Centre	2	-	-	1	1	-	-	-
Seven Oaks General Hospital	2	1	-	-	-	-	-	1
Souris Medical Associates	1	-	-	-	-	-	-	1
St. Boniface General Hospital	1	-	-	-	-	-	-	1
Health Professional								
Medical Doctor	5	2	-	-	1	1	-	1
Psychologist	1	-	-	-	-	-	-	1
Health Service Agency								
Victoria Order of Nurses	1	-	-	-	-	-	-	1
Total	34	6	-	1	4	8	-	15

Complaints Opened by the Access and Privacy Division in 2002 by Category and Disposition Under *The Ombudsman Act*

Department or Catagory	Total	Assist Rendered	Declined	Discont'd (Client)	Discont'd (Omb)	Infor-mation Supplied	Not Supported	Supported or Partially Supported	Recomen-dation	Pending
Education Training and Youth	1	-	-	-	-	-	-	-	-	1
Family Services and Housing	1	-	-	-	-	1	-	-	-	-
Workers Compensation Board	1	-	-	-	-	-	-	-	-	1
Not a Public Body	3	-	-	-	-	2	-	-	-	1
Total	6	-	-	-	-	3	-	-	-	3

Cases Opened by the Access and Privacy Division in 2002 by Category and Disposition Under *Part 4 of FIPPA and PHIA (auditing, monitoring, informing and commenting)*

Department or Catagory	Total	Discont'd (Omb)	Completed	Recomen-dation	Pending
Education Training and Youth	1	-	1	-	-
Garden Valley School Division	1	-	-	-	1
Health Sciences Centre	1	-	-	-	1
Souris Medical Associates	1	-	-	-	1
Transportation and Government Services	1	-	-	-	1
University of Manitoba	1	-	1	-	-
Comment	5	-	-	-	5
Informing the Public	13	-	8	-	5
Total	24	-	10	-	14

Complaints Carried Over from Previous Years by Category and Disposition

There were 127 access and privacy complaints carried over to 2002 from 2001, 34 from 2000, 18 from 1999 and 6 from 1998. Of these 185 complaints, 89 were carried over to 2003 and 96 were concluded as follows.

Department or Catagory	Total	Declined	Discont. (Client)	Discont. (Omb.)	Not Supported	Supported or Part Supported	Recomm	Completed	Assist. Rendered /Info. Sup.	Pending
The Freedom of Information and Protection of Privacy Act										
Public Body										
(1998) Civil Service Commission	2	-	1	-	1	-	-	-		-
Conservation	3	-	-	-	-	1	-	-	-	2
(2000) Conservation	7	-	-	-	6	1	-	-	-	-
Consumer and Corporate Affairs	2	-	-	-	1	-	-	-	-	1
(2000) Consumer and Corporate Affairs	1	-	1	-	-	-	-	-	-	-
(1998) Consumer and Corporate Affairs	1	-	-	-	-	-	-	-	-	1
Culture, Heritage and Tourism	1	-	-	-	-	-	-	-	-	1
(2000) Culture Heritage and Tourism	2	-	-	-	2	-	-	-	-	-
Education,Training and Youth	2	-	-	-	1	-	-	-	-	1
(2000) Education and Training*	1	-	-	1	-	-	-	-	-	-
(1999) Environment	1	-	-	-	-	-	-	-	-	1
Family Services and Housing	5	-	-	-	2	-	-	-	-	3
(2000) Family Services and Housing	3	-	-	-	-	-	-	-	-	3
(1999) Family Services and Housing	3	-	-	-	-	-	-	-	-	3
(2000) Child and Family Services (Unidentified Region)	1	1	-	-	-	-	-	-	-	-
(1998) Finance	2	-	-	-	2	-	-	-	-	-
(1999) Government Services	2	-	-	2	-	-	-	-	-	-
Health	1	-	-	-	-	-	-	-	-	1
(1999) Highways and Transportation	1	-	-	-	-	-	-	-	-	1
Industry Trade and Mines	2	-	-	-	-	-	-	-	-	2
(2000) Industry Trade and Mines	1	-	-	-	-	1	-	-	-	-
(2000) Intergovernmental Affairs	3	-	-	-	1	-	-	-	-	2
Justice	6	2	-	-	2	-	-	-	-	2
(2000) Justice	3	-	-	-	1	-	-	-	-	2
(1999) Justice	3	-	-	1	-	-	-	-	-	2
Labour and Immigration	3	-	-	-	-	-	-	-	-	3
Manitoba Hazardous Waste Corporation	1	-	1	-	-	-	-	-	-	-
Manitoba Human Rights Commission	1	-	-	-	1	-	-	-	-	-
Manitoba Hydro	2	-	-	-	-	-	-	-	-	2
Manitoba Liquor Control Commission	2	-	1	-	-	-	-	-	-	1
Manitoba Lotteries Corporation	1	-	-	-	-	-	-	-	-	1
(2000) Manitoba Public Insurance	1	-	-	-	-	-	-	1	-	-
(1999) Natural Resources	2	-	-	-	-	-	-	-	-	2
Transportation and Government Services	2	-	-	-	-	-	-	-	-	2
Workers Compensation Board	24	11	-	1	4	-	-	-	-	8
(2000) Workers Compensation Board	2	-	-	-	-	-	-	-	-	2
Local Public Body								-		
City of Brandon	2	-	-	-	-	1	-	-	-	1
City of Portage La Prairie	1	-	-	-	-	1	-	-	-	-
City of Winnipeg	15	2	-	-	2	4	-	-	-	7
(2000) City of Winnipeg	3	-	-	-	-	3	-	-	-	-
(1998) City of Winnipeg	1	-	1		-	-	-	-	-	-
R.M. of Ethelbert	1	-	-	-	-	1	-	-	-	-
R.M. of Ritchot	1	-	-	-	1	-	-	-	-	-
(2000) Seven Oaks General Hospital	1	-	-	-	-	-	-	-	-	1
Evergreen School Division	1	-	-	-	-	-	-	-	-	1
Brandon University	3	-	-	-	-	3	-	-	-	-
University of Manitoba	15	-	-	-	1	1	-	-	-	13
Winnipeg Regional Health Authority	2	-	-	1	-	-	-	-	-	1
Not a Public Body	1	1	-	-	-	-	-	-	-	-
The Personal Health Information Act										
Family Services and Housing	1	-	-	-	-	-	-	-	-	1
Health	6	-	-	-	-	6	-	-	-	-
(1999) Manitoba Justice**	1	-	-	-	1	-	-	-	-	-
Addictions Foundation of Manitoba	1	-	1	-	-	-	-	-	-	-
Manitoba Public Insurance	1	-	-	-	-	-	-	-	-	1
(1999) Manitoba Public Insurance	1	-	-	-	1	-	-	-	-	-
Workers Compensation Board	1	-	-	-	1	-	-	-	-	-
Local Public Body										
Interlake Regional Health Authority	2	-	-	-	1	-	-	-	-	1
(1999) City of Winnipeg	1	-	-	-	-	-	-	-	-	1
Health Care Facility								-		
Assiniboine Clinic	1	-	-	-	-	1	-	-	-	-
(1999) Assiniboine Clinic	1	-	-	-	-	1	-	-	-	-
(2000) Grace General Hospital	1	-	-	-	-	1	-	-	-	-
Health Sciences Centre	1	-	-	-	-	-	-	-	-	1
(1999) Health Sciences Centre	1	-	-	-	1	-	-	-	-	-
Morden Medical Centre	1	-	-	-	-	-	1	-	-	-
Seven Oaks General Hospital	2	-	-	-	-	-	-	-	-	2
Health Professional										
(2000) Chiropractor	3	-	-	-	-	-	-	-	-	3
Medical Doctor	6	-	-	1	3	-	-	-	-	2
(2000) Mondesir, Keith, (Optometrist)***	1	-	-	-	-	-	-	-	-	1
Psychologist	1	-	-	-	-	-	-	-	-	1
Unknown Trustee	1	1	-	-	-	-	-	-	-	-
Part 4 of FIPPA and PHIA										
Public Body										
Informing the Public	1	-	-	-	-	-	-	-	1	-
Consumer and Corporate Affairs	1	-	-	-	-	-	-	-	-	1
Finance	1	-	-	-	-	-	-	-	-	1
Total	**185**	**18**	**6**	**7**	**36**	**26**	**1**	**1**	**1**	**89**

Note: *This file was originally recorded in the 2000 Annual Report as a PHIA complaint, however, it is FIPPA complaint.
**This file was originally recorded in the 1999 and 2000 Annual Report as a FIPPA complaint, however, it is a PHIA complaint.
***This trustee was the subject of proceedings for alleged offences under section 63(3)(a) and (c) of PHIA.

Legislation

The purpose of the Ombudsman's Office is to promote fairness, equity and administrative accountability through independent and impartial investigation of complaints and legislative compliance reviews. The structure of the office reflects its two operational divisions:

- **Access and Privacy Division**, which investigates complaints and reviews compliance under *The Freedom of Information and Protection of Privacy Act and The Personal Health Information Act*.
- **Ombudsman's Division**, which investigates complaints under *The Ombudsman Act* concerning any act, decision, recommendation or omission related to a matter of administration, by any department or agency of the provincial government or a municipal government.

A copy of the Acts mentioned above can be found on our web site at www.ombudsman.mb.ca