

NEWS RELEASE

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Manitoba Ombudsman releases FIPPA investigation report on withheld records about legal services in the upcoming inquest into the death of Brian Sinclair

Manitoba Ombudsman Irene Hamilton today publicly issued her investigation report under *The Freedom of Information and Protection of Privacy Act* (FIPPA) about the refusal by the Winnipeg Regional Health Authority to release records regarding its fees for legal counsel in the upcoming inquest into the death of Brian Sinclair. The investigation report can be found at <http://www.ombudsman.mb.ca/whatsnew.htm>.

“I believe the public should have the investigation report available to them, because the report sets out both the facts considered and the legal provisions applied.” said Hamilton.

FIPPA provides that generally a person has a right of access to any record held by the WRHA, a public body. However, FIPPA then lists particular situations where a public body must withhold the information applied for (mandatory exception) or where a public body can withhold the information (discretionary exception).

The WRHA relied on mandatory exceptions in FIPPA and refused to disclose information that would reveal information supplied by a third party in confidence. The WRHA also relied on discretionary exceptions in FIPPA and refused to disclose information that is subject to solicitor-client privilege.

When a complaint of refused access is made, the Ombudsman's Office reviews the records and considers whether the decision to refuse access was in compliance with FIPPA.

In this case, the Ombudsman found that in one set of records, information concerning the rates paid by the WRHA for external legal counsel was, as FIPPA sets out, commercial and financial information supplied by a third party explicitly on a confidential basis and treated consistently as confidential by the third party. Therefore the WRHA's decision that the record was not releasable was in compliance with the Act.

The Ombudsman also found, with another set of records, that the information concerning rates, total amounts paid, number of hours and number of counsel was, as FIPPA sets out, information prepared by a lawyer for the public body in relation to the provision of legal advice and legal

services. The WRHA chose not to exercise its discretion to release the information covered by this discretionary exception, as FIPPA permits.

"Where a discretionary exception applies, a public body may choose to release the information," said Hamilton. "As well, a public body can proactively disclose information outside of the application for access process, as long as that disclosure is not prohibited by law."

The investigation report provides the full details of the Ombudsman's findings.

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