

MANITOBA OMBUDSMAN PRACTICE NOTE

Practice Notes are prepared by Manitoba Ombudsman to assist persons using the legislation. They are intended as advice only and are not a substitute for the legislation.

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DOCUMENTING ACCESS DECISIONS UNDER *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)* AND *THE PERSONAL HEALTH INFORMATION ACT (PHIA)*

Thorough documentation during the decision-making process is critical to keeping track of how, why and by whom a decision was made. Generally, upon receipt of an access request, a file is created and a request number is assigned for identification purposes. This assists in tracking the request from start to finish.

Having well-documented decisions enables a public body or trustee to properly:

- support the basis for access decisions internally
- explain the basis for decisions to a requester
- provide information to support those decisions when responding to complaints being investigated by Manitoba Ombudsman
- prepare evidence for court if an appeal is made of a refusal of access decision
- complete quarterly reports under FIPPA for the Minister of Culture, Heritage and Tourism
- maintain the access request file so that any absences (e.g. vacation, illness) by the coordinator or other key staff, will not affect any action that needs to be taken

Documenting decisions during the processing of a request is important in order to accurately recall the details of how, why and by whom specific decisions were made about a particular request. Processing an access request occurs over the course of up to 30 days (or 60 days if an extension is taken under FIPPA) and often occurs in incremental steps, in the midst of doing other work. During the decision-making process, other employees, third-parties, public bodies or trustees may be consulted. Documenting this contact and the determinations made at the time can help to keep track of the decisions and assist in explaining the basis for decisions at a later time.

A complaint about an access decision may be made to the Ombudsman several weeks after the decision was made. In responding to inquiries by Manitoba Ombudsman about a complaint, a public body or trustee would need to be able to recall and explain the basis for a decision and be able to provide information about the decision.

Additionally, the documenting of access decisions can be helpful in developing standard practices which, in turn, can be useful for future decisions. For example, documented decisions could provide guidance for interpreting provisions of FIPPA and PHIA.

TIPS FOR DOCUMENTING ACCESS DECISIONS

The following are provided as best practices to follow in documenting access decisions:

- Log the receipt of the request, assign a request/identification number and create a file to hold all of the request-related documentation.
- Keep a detailed record of any consultations with the requester, third-parties, another public body or trustee, employees of your public body or trustee, or with legal counsel. Indicate the date, type of contact and substance of the consultations.
- Retain in the file:
 - copies of any correspondence including attachments/enclosures that are sent or received relating to the request.
 - copies of fax transmission reports in addition to fax cover sheets, when correspondence relating to the request is sent by fax
 - print-outs of all emails relating to the request.
- Document the details relating to the search for responsive records, indicating the locations being searched. Retain copies of file lists or indexes, records schedules and other documentation used to identify the potential locations of responsive records.
- If fees are being applied, keep a record of how the fees were calculated, indicating the activities for which a fee is being charged and amount of the fee. For fee estimates under FIPPA, keep a record of how much time is estimated for each chargeable activity and indicate the basis for deciding that these amounts of time are reasonable in relation to the request.
- If an extension is taken under FIPPA, document the reasons why a specific provision under section 15 of FIPPA applies to the specific request.
- In preparation for reviewing the responsive records, number the records and/or number the pages of each record and create an index or worksheet on which to note any exceptions applied or considered.
- In applying exceptions, document the reasons to indicate why each exception applies. For discretionary exceptions, be sure to document the reasons why the public body or trustee chooses not to release. Keep a copy of the records that indicates where on each record an exception is being applied. Indicate by whom the decisions were made in the event that further explanation is required at a later date.