

Ombudsman  Manitoba

EVALUATION OF COMPLIANCE
WITH SECTION 12 OF FIPPA:
THE REQUIRED CONTENTS OF
RESPONSES TO ACCESS REQUESTS

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EXECUTIVE SUMMARY

The role of the Ombudsman under *The Freedom of Information and Protection of Privacy Act* (FIPPA) is to provide oversight for compliance with the Act by investigating complaints made by the public and initiating reviews of access and privacy practices of public bodies. We undertook this evaluation to measure the compliance of public bodies' response letters with the required contents of a response set out in section 12(1)(c) of FIPPA when access is refused in whole or in part. This evaluation was conducted on 268 response letters we had received in the course of investigations of refusal of access complaints in 2002, 2003, and the first half of 2004. The rates of compliance identify strengths and also areas where improvements can be made.

OVERALL COMPLIANCE

Our evaluation of 268 response letters by public bodies where access was refused in whole or in part determined that 44 letters or 16.42% contained all of the mandatory elements required by section 12(1)(c) of FIPPA.

The following shows the rates of compliance with the requirements in each refusal of access scenario: when records do not exist or cannot be located and when exceptions to disclosure are applied to existing records.

WHEN RECORDS DO NOT EXIST OR CANNOT BE LOCATED

When the refusal of access is based on a determination that the record does not exist or cannot be located, the Act requires that the public body's response letter inform the applicant of four elements of information. There were 72 response letters in this category. Of these, 19 letters or 26.39% complied with the requirement to include the four elements of information. The following indicates the rates of compliance with informing the applicant of each of the four required elements:

- that the record does not exist or cannot be located, 100%
- the title of an officer or employee of the public body who can answer the applicant's questions about the refusal, 30.56%
- the business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, 30.56%
- that the applicant may make a complaint to the Ombudsman about the refusal, 81.94%

WHEN EXCEPTIONS TO DISCLOSURE ARE APPLIED TO EXISTING RECORDS

When the decision to refuse access is based on a determination that exceptions to disclosure apply to the existing record, the Act requires that the public body's response letter inform the applicant of five elements of information. There were 196 response letters in this category. Of these, 25 letters or 12.76% complied with the requirement to include the five elements of information. The following indicates the rates of compliance with informing the applicant of each of the five required elements:

- the reasons for the refusal, 34.18%
- the specific provision of FIPPA on which the refusal is based, 87.76%
- the title of an officer or employee of the public body who can answer the applicant's questions about the refusal, 39.80%
- the business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, 39.80%
- that the applicant may make a complaint to the Ombudsman about the refusal, 96.43%

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INTRODUCTION

The role of the Ombudsman under *The Freedom of Information and Protection of Privacy Act* (FIPPA) is to provide oversight for compliance with the Act by investigating complaints made by the public and initiating reviews of access and privacy practices of public bodies. Provincial departments and agencies have been subject to FIPPA since May 1998. The Act was extended to local public bodies in April 2000, with the exception of the City of Winnipeg to which the Act has applied since August 1998.

The majority of complaints made to the Ombudsman under FIPPA concern the decisions of public bodies to refuse access. In reviewing the public bodies' response letters to applicants in the course of investigating these complaints, we have observed that public bodies often do not include all of the contents required by FIPPA for a lawful response. In particular, we have noted that response letters frequently do not provide reasons for the decision to refuse access.

THE REQUIREMENTS OF SECTION 12

In Part 2 of FIPPA, Access to Information, section 12 sets out the mandatory contents of a public body's written response to an applicant for access. A public body must inform the applicant whether access to the requested record is granted or refused, and if access is refused in whole or in part, the response letter must contain other elements of information, as follows:

Contents of response

12(1) *In a response under section 11, the head of the public body shall inform the applicant*

- (a) whether access to the record or part of the record is granted or refused;*
- (b) if access to the record or part of the record is granted, where, when and how access will be given; and*
- (c) if access to the record or part of the record is refused,*
 - (i) in the case of a record that does not exist or cannot be located, that the record does not exist or cannot be located,*
 - (ii) in the case of a record that exists and can be located, the reasons for the refusal and the specific provision of this Act on which the refusal is based,*
 - (iii) of the title and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and*
 - (iv) that the applicant may make a complaint to the Ombudsman about the refusal.*

WHY COMPLIANCE MATTERS

The value of complying with the requirements set out in section 12 extends beyond fulfilling the legal obligation for public bodies to do so. Compliance matters to all parties to the access to information process under FIPPA: public bodies, applicants and our office.

WHY IT MATTERS TO PUBLIC BODIES

Providing a complete response to an applicant demonstrates transparency and accountability for access decisions. A complete response, which includes the reasons for the refusal and the specific provision on which the refusal is based, shows that the decision to refuse access was made in consideration of the records in relation to the provisions of the Act. When response letters of public bodies inform applicants whom they may contact if they have questions about the decisions, this indicates openness to explaining the decisions. Where applicants act on

these offers to contact, there is an opportunity for public bodies to resolve the concerns of the applicants and reduce the likelihood of a complaint being made to the Ombudsman or narrow the focus of the complaint, saving time for the public body during a complaint investigation by our office.

WHY IT MATTERS TO APPLICANTS

Fully compliant response letters would assist applicants in understanding the decisions to refuse access. This, in turn, may reduce the complaints made about those decisions or may assist applicants to narrow the focus of their complaints to particular types of information or records. Applicants may feel more satisfied that a public body has carefully considered their access request when they receive a complete response from the public body. An applicant may be more likely to contact a public body with any questions they may have about the decision when a response letter invites them to do so and provides contact information for the employee or officer who can answer their questions.

WHY IT MATTERS TO OUR OFFICE

Applicants who have a good understanding of the decisions made by public bodies may be more satisfied that those decisions were made in accordance with FIPPA, which may result in fewer or more narrowly focussed complaints to our office. If the response letter explains why the public body determined that certain exceptions to disclosure apply, this would be known at the outset of a complaint investigation, reducing the time required of our office and of public bodies in sorting this out during an investigation.

WHY WE CONDUCTED THIS EVALUATION

Our office has had long-standing concerns about public bodies' compliance with section 12. In May 2001, we developed a *Checklist: Contents of a Complete Response under Section 12 of FIPPA* to facilitate compliance. This document was provided to many public bodies and was included in our 2001 Annual Report on Access and Privacy. Subsequent Annual Reports have also highlighted the requirements to comply with section 12 and we have reinforced our message concerning compliance in meetings with access and privacy personnel in various public bodies.

Our 2003 Annual Report noted that we would continue our efforts to address the issue of non-compliance with section 12. As part of these efforts, we undertook an evaluation of response letters we had received in the course of investigating complaints about public bodies' decisions to refuse access.

The purpose of this evaluation is to provide a measurement of compliance with the various requirements of section 12 when access is refused in whole or in part. Additionally, the evaluation is intended to identify areas of strengths and areas where improvements can be made. We hope this will have an educative function for public bodies.

COMPLIANCE INDICATORS: THE REQUIRED CONTENTS OF RESPONSE WHEN ACCESS IS REFUSED

The indicators of compliance were based on section 12(1)(c) of FIPPA, which sets out the required contents of a public body's response letter when access is refused in whole or in part. The following indicates the requirements in each refusal of access scenario: when records do not exist or cannot be located and when exceptions to disclosure are applied to existing records.

WHEN RECORDS DO NOT EXIST OR CANNOT BE LOCATED

When the refusal of access is based on a determination that the record does not exist or cannot be located, the Act requires that the public body's response letter inform the applicant of the following four elements of information:

- that the record does not exist or cannot be located,
- the title of an officer or employee of the public body who can answer the applicant's questions about the refusal,
- the business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
- that the applicant may make a complaint to the Ombudsman about the refusal.

WHEN EXCEPTIONS TO DISCLOSURE ARE APPLIED TO EXISTING RECORDS

When the refusal of access is made to a record that exists and can be located, the Act requires that the public body's response letter inform the applicant of the following five elements of information:

- the reasons for the refusal,
- the specific provision of FIPPA on which the refusal is based,
- the title of an officer or employee of the public body who can answer the applicant's questions about the refusal,
- the business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
- that the applicant may make a complaint to the Ombudsman about the refusal.

HOW COMPLIANCE WAS EVALUATED

The response letters of public bodies were reviewed in relation to each of the required elements listed in section 12(1)(c) of FIPPA. We noted circumstances where including additional information was helpful in assisting the applicant, although the information was not required by FIPPA. This was reviewed on the basis of it being a good practice rather than an indicator of compliance and was not factored into the rates of compliance that were calculated.

The following describes how compliance was assessed for each of the required elements of information in a response letter.

INFORMING THE APPLICANT THAT THE RECORD DOES NOT EXIST OR CANNOT BE LOCATED

When the refusal of access is based on a determination that the record does not exist or cannot be located, FIPPA requires that the written response inform the applicant of this. The Act does not require that section 12(1)(c)(i) be cited. Although it would be a good practice to reference the legislative provision, the threshold for meeting this required element was for the response letter to simply state that the record does not exist or cannot be located.

INFORMING THE APPLICANT OF THE SPECIFIC PROVISION OF FIPPA ON WHICH THE REFUSAL IS BASED

When a public body determines that exceptions to disclosure apply to the requested record, the response letter must inform the applicant of the specific provision of FIPPA on which the refusal is based. Accordingly, we considered if the specific provision was included in the response letter. For example, section 18(1)(b) would be considered a specific provision, but simply referencing 18(1) would be a general provision because it does not indicate which of the seven specific provisions coming under section 18(1) was applied.

If multiple exceptions to disclosure were referenced in a response, each one would have to be a specific provision in order to be compliant. For example, a letter informing of section 18(1)(b) and 23(1)(a) was considered to be compliant while one that mixed the general 18(1) with the specific 23(1)(a) was not considered compliant.

When the response letter did not include the specific provision, we then reviewed whether the response contained at least a partial or general provision on which the refusal was based versus no provision at all.

INFORMING THE APPLICANT OF THE REASONS FOR THE REFUSAL

In addition to providing the specific provision on which the refusal is based, FIPPA requires that a public body's response inform the applicant of the reasons for the refusal. An explanation about why the specific provision applies was considered to be a reason for the refusal. For example, section 18(1)(c)(i) states: "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." A reason for the refusal of access could include an explanation of which type of information would be revealed by disclosure and why disclosure would be expected to harm the third party's competitive position. An example of a reason could be:

The information you requested reveals the commercial and financial information of a third party. The disclosure of this information could harm the third party's competitive

position because the details of the third party's plans for expansion could provide a competitive advantage to other similar businesses. Therefore, section 18(1)(c)(i) of FIPPA requires that access to this information must be refused. This section of FIPPA states....

When reasons for the refusal were not provided, we considered whether public bodies made efforts to provide any additional information about the provision, versus just providing the specific provision.

INFORMING THE APPLICANT OF THE TITLE OF AN EMPLOYEE OR OFFICER WHO CAN ANSWER QUESTIONS ABOUT THE REFUSAL

The requirement to include the title of an employee or officer who can answer questions about the refusal was satisfied if:

- the writer indicated he or she can be contacted if the applicant has any questions and their title appeared anywhere on the letter, including on the letterhead, or
- the letter indicated the title of another person who can answer questions.

INFORMING THE APPLICANT OF THE BUSINESS TELEPHONE NUMBER OF AN EMPLOYEE OR OFFICER WHO CAN ANSWER QUESTIONS ABOUT THE REFUSAL

Similarly, the requirement to provide the business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal was satisfied if:

- the writer indicated that he or she can be contacted and their telephone number appears anywhere on the letter, including on the letterhead, or
- the letter indicated the telephone number of another person who can answer questions.

INFORMING THAT THE APPLICANT MAY MAKE A COMPLAINT TO THE OMBUDSMAN ABOUT THE REFUSAL

The requirement to inform the applicant of the right to make a complaint about the refusal to the Ombudsman was met by simply stating this in the response letter.

ADDITIONAL INFORMATION: INFORMING THE APPLICANT OF THE TIME LIMIT FOR MAKING A COMPLAINT

Section 60(2) of FIPPA states that a complaint about the refusal must be delivered to the Ombudsman within 60 days after the person complaining is notified of the public body's decision. FIPPA does not require that the response inform the applicant of the time limit in which a complaint may be made about the refusal. Accordingly, we evaluated this as a good practice rather than an indicator of compliance because including this information in a response is helpful to an applicant.

THE SAMPLE

This evaluation included all public bodies under FIPPA where complaints about refused access were made in 2002, 2003 and the first half of 2004. These time frames were selected because FIPPA was extended to all local public bodies in 2000 and because we began the evaluation in the fall of 2004.

The total sample consisted of 268 response letters we had received in the course of investigations of complaints where public bodies had refused access to the requested record(s) in whole or in part. These access decisions by public bodies included both refusal of access scenarios: when records do not exist or cannot be located (72 letters) and when exceptions to disclosure had been applied to existing records (196 letters). Of the 268 response letters, 183 were by provincial departments and agencies (PDAs) and 85 were by local public bodies (LPBs).

THE RESULTS OF THE EVALUATION

OVERALL COMPLIANCE

For a response letter to be compliant with section 12(1)(c), it must contain four specific elements of information when the decision to refuse access is based on a determination that records do not exist or cannot be located, and five specific elements of information when the refusal is based on a determination that exceptions to disclosure apply to the record in question. We evaluated 268 response letters in relation to the requirements to determine how many responses contained all of the mandatory elements. Of the 268 letters, 44 contained the required elements of information. Accordingly, the overall rate of compliance with section 12(1)(c) was 16.42%.

We compared the rate of compliance by provincial departments and agencies (PDAs) to that of local public bodies (LPBs). There were 183 letters by PDAs and 33 of those letters or 18.03% complied with section 12(1)(c). Of the 85 letters by LPBs, 11 letters or 12.94% were compliant.

REFUSALS OF ACCESS WHEN RECORDS DO NOT EXIST OR CANNOT BE LOCATED

There were 72 response letters from the sample where the decision to refuse access was based on a determination that records do not exist or cannot be located. Of these, 19 letters or 26.39% complied with the requirement to include the four elements of information.

All but one of the 19 compliant responses also informed the applicant of the time period in which a complaint may be made.

The rate of compliance did not differ significantly between PDAs and LPBs. There were 58 letters by PDAs and 15 of these letters or 25.86% were compliant. Of the 14 letters by LPBs, 4 letters or 28.57% were compliant.

All of the 72 letters informed the applicant that records do not exist or cannot be located. We further reviewed these letters to evaluate compliance with the remaining three required elements.

INFORMING THE APPLICANT OF THE TITLE OF AN EMPLOYEE OR OFFICER WHO CAN ANSWER QUESTIONS ABOUT THE REFUSAL

Of the 72 response letters refusing access where records do not exist or cannot be located, 22 letters or 30.56% provided the title of an officer or employee who can answer the applicant's questions about the refusal.

Concerning PDAs, 18 of their 58 letters were compliant or 31.03%. For LPBs, 4 of their 14 letters were compliant or 28.57%.

INFORMING THE APPLICANT OF THE BUSINESS TELEPHONE NUMBER OF AN EMPLOYEE OR OFFICER WHO CAN ANSWER QUESTIONS ABOUT THE REFUSAL

The rate of compliance was the same as the previous required element. Of the 72 response letters refusing access where records do not exist or cannot be located, 22 letters or 30.56% provided the business telephone number of an officer or employee who can answer the applicant's questions about the refusal.

For PDAs, 18 of their 58 letters were compliant or 31.03%. For LPBs, 4 of their 14 letters were compliant or 28.57%.

INFORMING THAT THE APPLICANT MAY MAKE A COMPLAINT TO THE OMBUDSMAN ABOUT THE REFUSAL

Of the 72 response letters refusing access where records do not exist or cannot be located, 59 letters or 81.94% informed the applicant that a complaint may be made to the Ombudsman about the refusal. 58 of these 59 letters also provided additional information about the time limit in which a complaint may be made.

For PDAs, 53 of their 58 letters were compliant or 91.38%. For LPBs, 6 of their 14 letters were compliant or 42.86%.

REFUSALS OF ACCESS WHEN EXCEPTIONS TO DISCLOSURE ARE APPLIED TO EXISTING RECORDS

There were 196 response letters where the decision to refuse access was based on a determination that exceptions to disclosure apply to the requested record. Of the 196 letters, 25 letters or 12.76% complied with the requirement to include the five elements of information. All of these response letters also informed the applicant of the time period in which a complaint may be made.

We also compared the rate of compliance between PDAs and LPBs. There were 125 letters by PDAs and 18 of these letters or 14.40% were compliant. Of the 71 letters by LPBs, 7 letters or 9.86% were compliant.

INFORMING THE APPLICANT OF THE REASONS FOR THE REFUSAL

Of the 196 response letters, 67 letters or 34.18% provided reasons for the refusal.

For PDAs, 36 of their 125 letters were compliant or 28.80%. Of the 71 letters by LPBs, 31 were compliant or 43.66%.

We further compared the remaining 129 response letters that did not provide reasons for the refusal. Of these letters, 114 did not attempt to go beyond stating that access was refused and providing the exception to disclosure under FIPPA. Of the 114 letters that made no effort to provide reasons, 82 were by PDAs and 32 were by LPBs. There were 15 letters in which some additional information about the exception was provided. Of these, 7 were by PDAs and 8 were by LPBs.

INFORMING THE APPLICANT OF THE SPECIFIC PROVISION OF FIPPA ON WHICH THE REFUSAL IS BASED

Of the 196 response letters refusing access to existing records, 172 letters or 87.76% provided specific provisions on which the refusal was based.

For PDAs, 108 of their 125 letters were compliant or 86.40%. For LPBs, 64 of their 71 letters were compliant or 90.14%.

We further compared the remaining 24 letters that did not provide the specific provision on which the refusal was based. Of these letters, 11 did not contain any provision while 13 contained general rather than specific provisions.

INFORMING THE APPLICANT OF THE TITLE OF AN EMPLOYEE OR OFFICER WHO CAN ANSWER QUESTIONS ABOUT THE REFUSAL

Of the 196 response letters, 78 letters or 39.80% provided the name of an officer or employee who can answer the applicant's questions about the refusal.

For PDAs, 74 of their 125 letters were compliant or 59.20%. For LPBs, 4 of their 71 letters were compliant or 5.63%.

INFORMING THE APPLICANT OF THE BUSINESS TELEPHONE NUMBER OF AN EMPLOYEE OR OFFICER WHO CAN ANSWER QUESTIONS ABOUT THE REFUSAL

The rate of compliance was the same as for the previous required element. Of the 196 response letters, 78 letters or 39.80% provided the business telephone number of an officer or employee who can answer the applicant's questions about the refusal.

The compliance rate for PDAs was again 59.20% and for LPBs it was 5.63%.

INFORMING THAT THE APPLICANT MAY MAKE A COMPLAINT TO THE OMBUDSMAN ABOUT THE REFUSAL

Of the 196 response letters, 189 letters or 96.43% informed the applicant that a complaint may be made to the Ombudsman about the refusal. 172 of these 189 letters also provided additional information about the time limit in which a complaint may be made.

For PDAs, 120 of their 125 letters were compliant or 96.00%. For LPBs, 69 of their 71 letters were compliant or 97.18%.

CONCLUSION

WHAT THE NUMBERS TELL US

The numbers indicate where public bodies' response letters are compliant and where improvements can be made. Our evaluation of 268 response letters by public bodies where access was refused in whole or in part determined that 16.42% of these letters complied with the requirements of section 12(1)(c) of FIPPA.

The rates of compliance varied significantly between the two refusal of access categories: 26.39% provided the four required elements of information when records do not exist or cannot be located, and 12.76% provided the five required elements when exceptions to disclosure apply to the requested record.

When exceptions were applied to existing records, the required element of information that had the lowest rate of compliance, 34.18%, was providing reasons for the refusal. Public bodies frequently, 87.76%, provided the specific provisions of FIPPA on which the refusals were based but did not explain why these provisions applied.

The rate of compliance with the requirement to inform applicants of the title and business telephone number of an officer or employee who can answer the applicant's questions about the refusal was surprisingly low: 30.56% when records do not exist or cannot be located, and 39.80% when exceptions to disclosure were applied to existing records.

In contrast, the rate of compliance with the requirement to inform applicants that a complaint may be made to the Ombudsman about the refusal was high: 81.94% when records do not exist or cannot be located, and 96.43% when exceptions to disclosure were applied to existing records.

BEYOND THE NUMBERS

The rates of compliance identify strengths and also areas where improvements can be made. As we noted in the Introduction, providing thorough response letters can have a positive impact on public bodies, applicants and our office. Improvements should be made to ensure that response letters contain all of the required information.

If response letters invite applicants to call if they have any questions about the refusals of access and provide the telephone number of a particular employee, applicants' initial step may be to try to resolve their questions or concerns with the public bodies. Then, if they still are not satisfied after doing so, they could make a complaint to the Ombudsman.

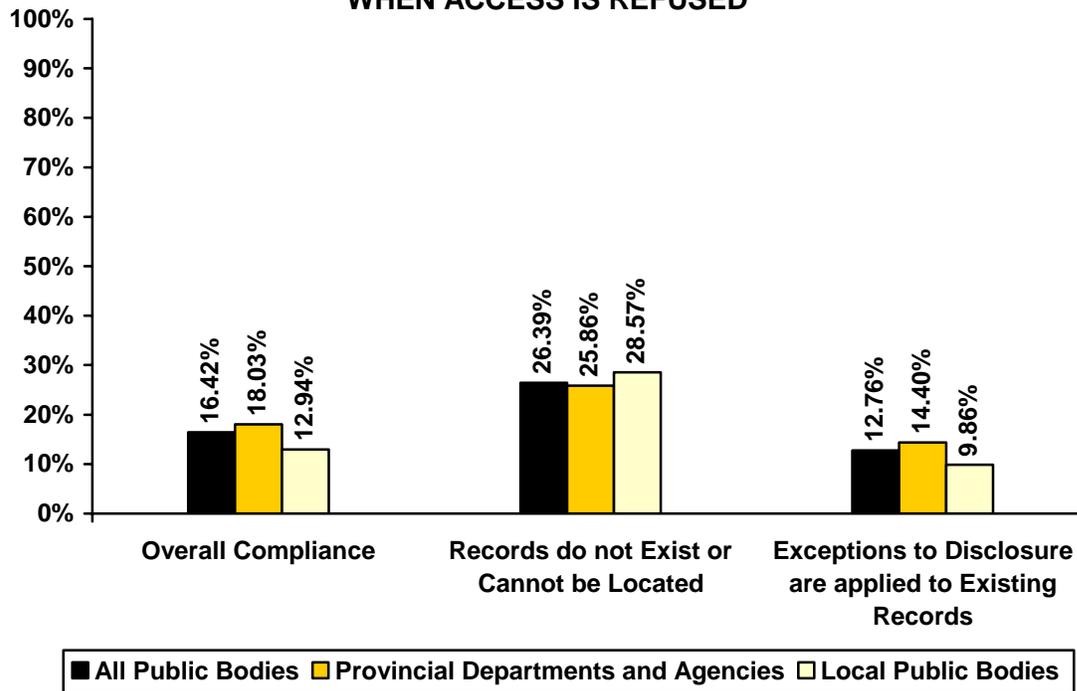
Of particular note is the low rate of compliance with the requirement to provide reasons for the refusal of access. Aside from the legal obligation to provide reasons, doing so assists an applicant to understand why the exceptions to disclosure apply to the requested records.

PRACTICE NOTE TO ASSIST PUBLIC BODIES IN PROVIDING REASONS

We also intended this evaluation to have an educative function for public bodies. To assist public bodies in complying with the requirement to provide reasons for the refusal of access, we have prepared a *Practice Note: Providing Reasons to an Applicant when Refusing Access under FIPPA*, which is Appendix 3 of this report.

CHART 1

**COMPLIANCE WITH THE REQUIRED CONTENTS OF
RESPONSE UNDER SECTION 12 OF FIPPA:
WHEN ACCESS IS REFUSED**



Overall Compliance shows the rate of compliance with informing the applicant of all of the required elements of information, including both refusal of access scenarios: when records do not exist or cannot be located and when exceptions to disclosure are applied to existing records. There were 268 response letters by public bodies that were evaluated for full compliance with the contents required in each scenario.

Records do not Exist or cannot be Located is based on an evaluation of 72 response letters for full compliance with informing the applicant of all four required elements of information, which are:

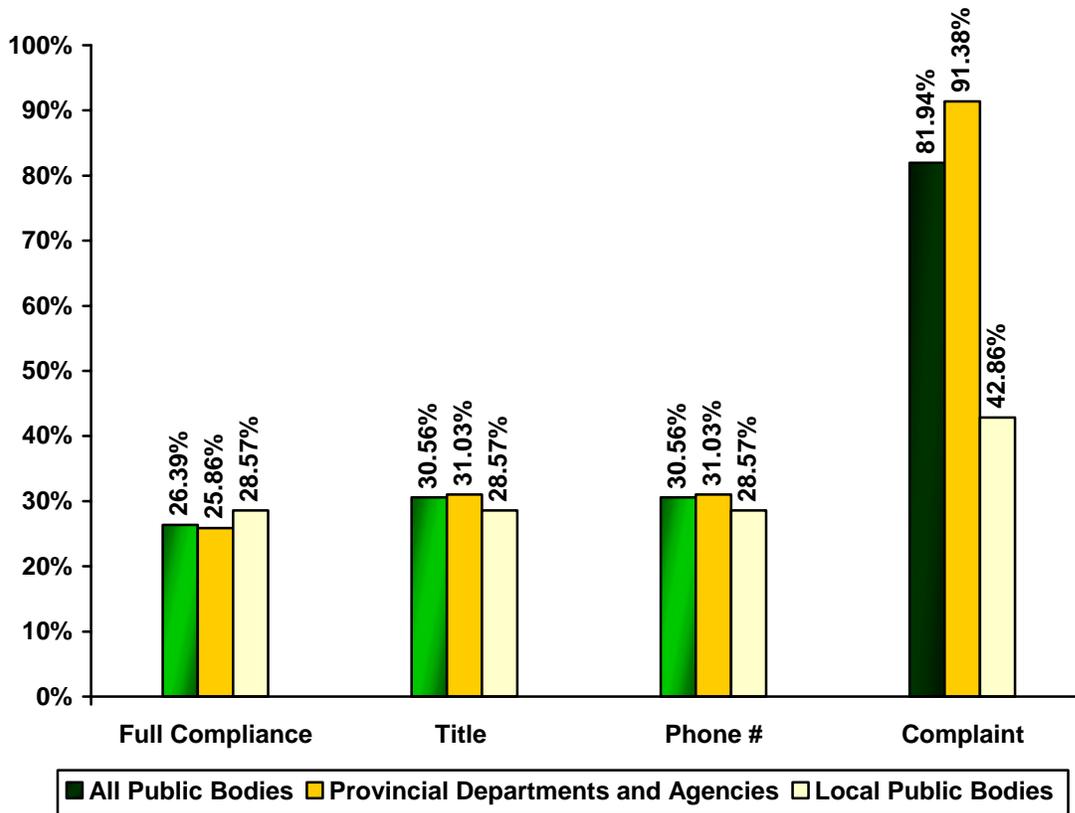
- that the record does not exist or cannot be located,
- the title of an officer or employee of the public body who can answer the applicant's questions about the refusal,
- the business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
- that the applicant may make a complaint to the Ombudsman about the refusal.

Exceptions to Disclosure are applied to Existing Records is based on an evaluation of 196 response letters for full compliance with informing the applicant of all five required elements of information, which are:

- the reasons for the refusal,
- the specific provision of FIPPA on which the refusal is based,
- the title of an officer or employee of the public body who can answer the applicant's questions about the refusal,
- the business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
- that the applicant may make a complaint to the Ombudsman about the refusal.

CHART 2

COMPLIANCE WITH THE REQUIRED CONTENTS OF
RESPONSE UNDER SECTION 12 OF FIPPA:
WHEN RECORDS DO NOT EXIST OR CANNOT BE LOCATED



Full compliance is based on an evaluation of 72 response letters to determine the rate of compliance with informing the applicant of all four required elements of information, which are:

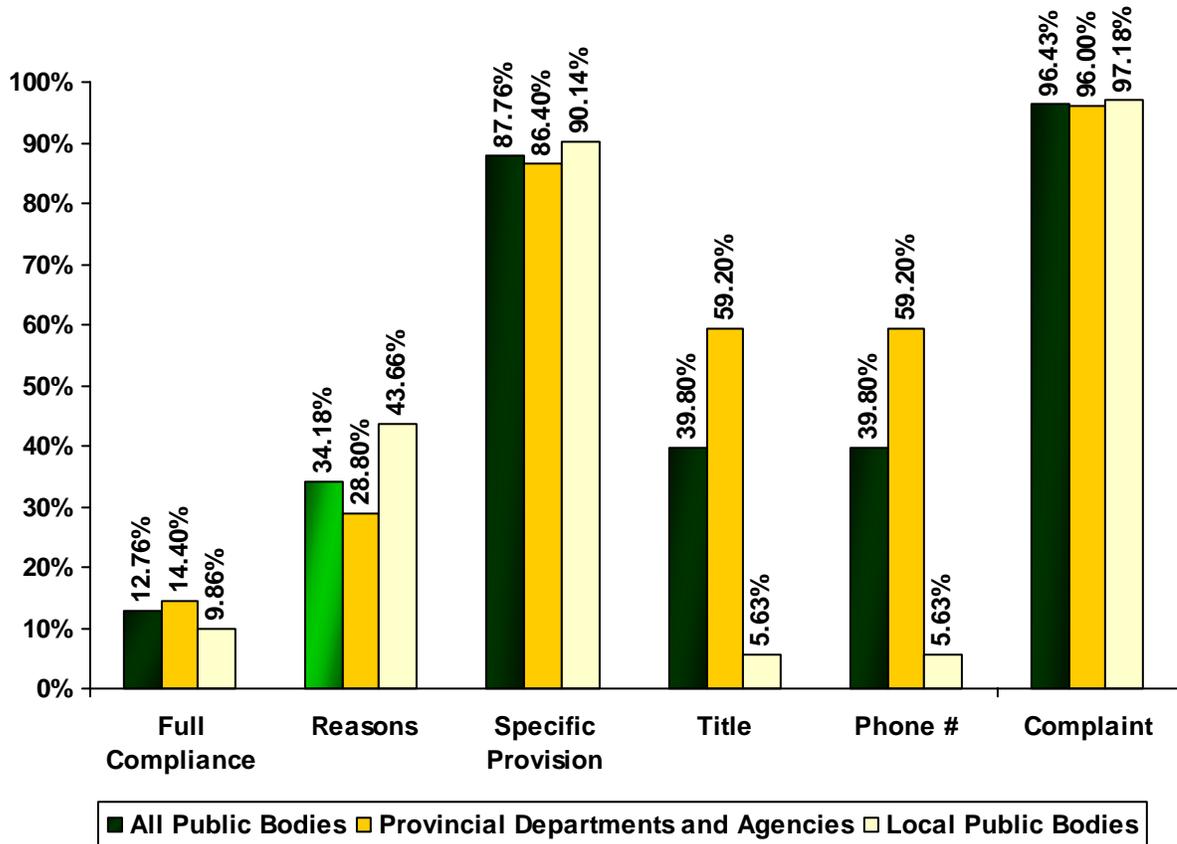
- that the record does not exist or cannot be located,
- the title of an officer or employee of the public body who can answer the applicant's questions about the refusal,
- the business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
- that the applicant may make a complaint to the Ombudsman about the refusal.

Title, Phone #, Complaint

All 72 letters stated that records do not exist or cannot be located and we evaluated the letters to determine the rates of compliance with each of the remaining three elements noted above.

CHART 3

COMPLIANCE WITH THE REQUIRED CONTENTS OF RESPONSE UNDER SECTION 12 OF FIPPA: WHEN EXCEPTIONS TO DISCLOSURE ARE APPLIED TO EXISTING RECORDS



Full compliance is based on an evaluation of 196 response letters to determine the rate of compliance with informing the applicant of all five required elements of information, which are:

- the reasons for the refusal,
- the specific provision of FIPPA on which the refusal is based,
- the title of an officer or employee of the public body who can answer the applicant's questions about the refusal,
- the business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
- that the applicant may make a complaint to the Ombudsman about the refusal.

Reasons, Specific Provision, Title, Phone #, Complaint

We evaluated the 196 letters to determine the rates of compliance with each of the five elements noted above.

Ombudsman Manitoba



CHECKLIST: CONTENTS OF A COMPLETE RESPONSE UNDER SECTION 12 OF FIPPA

- Date of response letter**
- Date access request was received**
- Reiteration of the access request**

Inform the applicant whether:

- Access is granted in full; and
- Where, when and how access will be given.

OR

- Access is granted in part; and
- Where, when and how access will be given.

OR

- Access is refused in full.

Where access to the record or part of the record is refused:

▪ Inform the applicant:

- In the case of a record that does not exist or cannot be located:
- Inform that the record does not exist or cannot be located quoting this provision; and
- Provide a brief explanation.

OR

- In the case of a record that exists and can be located:
- Explain the reasons for the refusal; and
- Quote the specific provision(s) of FIPPA on which the refusal is based.

▪ Contact Information

- Provide the title and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal.

▪ Complaint to Ombudsman

- Inform the applicant that a complaint about the refusal may be made to the Ombudsman, on the prescribed form, within 60 days and provide contact information for the Ombudsman.

The *Resource Manual* for the provincial government or the *Handbook* for local public bodies provides further information and sample letters.



Ombudsman Manitoba

PRACTICE NOTE: PROVIDING REASONS TO AN APPLICANT WHEN REFUSING ACCESS UNDER FIPPA

Section 12(1) of FIPPA requires that a public body's response letter to an applicant contain certain information, including reasons for the refusal. In addition to informing the applicant of the specific provision on which the refusal is based, clause (c)(ii) requires that the response inform the applicant of the reasons for the refusal.

Contents of response

12(1) *In a response under section 11, the head of the public body shall inform the applicant*

- (c) if access to the record or part of the record is refused,*
- (ii) in the case of a record that exists and can be located, the reasons for the refusal and the specific provision of this Act on which the refusal is based*

A reason should indicate why the specific provision applies to the withheld information. A reason could consist of indicating which element(s) of the provision are relevant and explaining why they apply to the requested information.

For example, section 18(1)(c)(i) states: "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." A reason for the refusal of access could include an explanation of which type of information would be revealed by disclosure and why disclosure could be expected to harm the third party's competitive position. An example of a reason would be:

The information you requested reveals the commercial and financial information of a third party. The disclosure of this information could harm the third party's competitive position because the details of the third party's business plan for expansion could provide a competitive advantage to other similar businesses. Therefore, section 18(1)(c)(i) of FIPPA requires that access to this information must be refused. This section of FIPPA states....

Some exceptions to disclosure may not require much amplification when providing a reason, such as the application of sections 17(1) and 17(2)(a). An example of a reason would be:

The information you requested is the personal health information of a third party. The disclosure of this information is deemed to be an unreasonable invasion of the third party's privacy under section 17(2)(a) of FIPPA. Therefore, section 17(1) of FIPPA requires that access to this information must be refused. These sections of FIPPA state....