

# 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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## DEALING WITH ACCESS REQUESTS FOR INFORMATION THAT IS AVAILABLE TO THE PUBLIC

FIPPA and PHIA provide a right of access to information held by public sector bodies and trustees, subject to exceptions set out in the Acts. Using the Acts to obtain access to information should be a last resort, when access is not available through other means.

Formal access requests under FIPPA and PHIA are not required where:

- information is publicly available on a web site, in a newsletter or other publication (called active dissemination)
- the public sector body or trustee releases the information in response to an informal verbal or written request, not made under the Acts (called routine disclosure)
- other legislation requires that certain records be available to the public, as in *The Municipal Act* and *The Public Schools Act*

For example, under *The Municipal Act*, by-laws of a municipal government must be publicly available and can be obtained by asking the municipal office for them. Filing a FIPPA application for such records is unnecessary.

FIPPA reinforces informal practices for obtaining information by stating that the Act is “in addition to and does not replace existing procedures for access to records or information normally available to the public, including any requirement to pay fees” (clause 3(a)). It is up to the public sector body to determine how access will be provided and if any fees will be charged.

Under FIPPA, a public sector body may specify records or categories of records that are available to the public without an application for access under the Act, and may require the payment of a fee for the records (subsections 76(1) and 76(2)). For example, land title information is available to the public and may be obtained for a fee.

Personal information and personal health information may be made available to the individual the information is about through an informal verbal request. Individuals should attempt to obtain the information through other means before using FIPPA and PHIA.

## **WHAT PUBLIC SECTOR BODIES AND TRUSTEES CAN DO TO REDUCE FORMAL REQUESTS FOR INFORMATION THAT IS AVAILABLE TO THE PUBLIC**

Public sector bodies and trustees should have an efficient process for providing access to publicly available information. By making the public aware of this process, formal requests for this information could be reduced. We offer the following suggestions:

- Identify the information that can be actively disseminated to the public and release it in a format that is widely available (examples: web site, newsletter, annual report or other publications).
- Specify the types of information or categories of records that can be released in response to informal requests (keep a log or list).
- Ensure that the types of information that can be accessed informally are made known to the public.
- Ensure employees are aware of what information can be released informally to the public.
- Ensure employees are aware of what personal information and personal health information can be released to the individual the information is about or to other authorized persons.

## **DEALING WITH FORMAL ACCESS REQUESTS FOR INFORMATION THAT IS AVAILABLE TO THE PUBLIC**

Public sector bodies or trustees should advise the individual how the information may be obtained without making a formal request. This is in keeping with the duty to assist (section 9 of FIPPA; subsection 6(2) of PHIA).

An individual may choose to withdraw or abandon the formal request if he/she decides to pursue access outside FIPPA or PHIA.

Access to publicly available information should be granted under FIPPA if it is reasonable to do so. If it is unreasonable to provide access under FIPPA, access may be refused to information that is available to the public (subsections 13(1) and 32(1)).

Where a public sector body is permitted or required to refuse access under an exception in FIPPA, there are some limiting provisions which state that the exception does not apply if the information or record is publicly available. These include:

- a third party's personal information where the requested record is publicly available (clause 17(4)(i))
- a third party's business information that is publicly available (clause 18(3)(b))
- information provided by another government if that government makes the information public (clause 20(3)(b))

In these circumstances, the information would have to be released unless it is subject to another exception.