

MANITOBA OMBUDSMAN PRACTICE NOTE

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Manitoba Ombudsman
750 – 500 Portage Avenue
Winnipeg, Manitoba R3C 3X1
Phone: (204) 982-9130 Toll free 1-800-665-0531
Fax: (204) 942-7803
Web site: www.ombudsman.mb.ca

CONSIDERATIONS FOR USE OF PERSONAL INFORMATION UNDER *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT* (FIPPA)

OVERVIEW OF USE UNDER FIPPA

One of the purposes of FIPPA as defined under section 2 is to protect individuals against unauthorized use of recorded personal information by public sector bodies.

Public sector bodies should differentiate between the concepts of use and disclosure. Our office provided working definitions of use and disclosure in our 2005 annual report.

- Use is the treatment and handling of personal information within the public sector body.
- Disclosure is the release of personal information to any person or organization outside the public sector body.

It is important to note that the sharing of personal information between the various programs or divisions of a public sector body is considered as a use. Employees of a public sector body use recorded information when they:

- examine information in order to meet their responsibilities as employees of the public sector body
- share information either verbally, electronically or reproduce it for e-mailing, photocopying or faxing purposes

REQUIREMENTS OF PUBLIC SECTOR BODIES

Section 42 sets out specific responsibilities and restrictions when a public sector body considers using personal information. Public sector bodies are responsible for ensuring:

- that all uses of recorded information are authorized (subsection 42(1))
- that every use must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used (subsection 42(2))

- that use of information by employees of the public sector body is limited to those who need to know (subsection 42(3))

FIPPA requires public sector bodies to take reasonable steps to ensure that personal information is accurate and complete if it is going to be used to make a decision that directly affects the individual whom the information is about (section 38). Public sector bodies must keep personal information for a reasonable period of time so that the individual the information is about has an opportunity to access that information (section 40).

When using personal information, a public sector body is required to ensure that reasonable security arrangements to protect personal information be in place (section 41). Unlike PHIA, FIPPA does not detail minimum security safeguards that a public sector body is required to take.

AUTHORIZED USES

Under clause 43(a), FIPPA authorizes public sector bodies to use information:

- for the purpose for which it was collected under subsection 36(1) where:
 - the collection is authorized by or under an enactment
 - the information relates directly to and is necessary for an existing program or activity of the public sector body
 - the collection is for law enforcement or crime prevention
- for a consistent purpose under section 45, if the use:
 - has a reasonable and direct connection to the purpose for which it was collected
 - is necessary for the public sector body to carry out its duties or activities

In determining whether a use is for a consistent purpose, a public sector body should consider whether an individual, who was not advised of the use of personal information at the time of collection, would expect the information be used in the proposed way.

Under clause 43(b), FIPPA authorizes public sector bodies to use information if the individual the information is about has consented to the use. When an individual provides consent for the use of personal information, the public sector body should keep a record of the consent which includes a description of the personal information to be used, an identification of the use and the date consent was provided.

The following are considerations for obtaining consent:

- a public sector body cannot assume that it is authorized to use the personal information for a purpose which is different from the one for which the information was originally collected.
- where a different use **is anticipated**, consent for the use should be obtained at the time the personal information is collected.
- where a different use is **not anticipated**, then consent should be obtained prior to using the personal information that was collected.

Clause 43(c) of FIPPA authorizes a public sector body to use information that has been disclosed to it by another public sector body in specific circumstances set out in section 44. For example, personal information received for the purpose of law enforcement by one public sector body may be disclosed to another public sector body, (under 44(1)(r)) as long as it will be used for the purpose of law enforcement.

Personal information may be disclosed to another public body under 44(1)(a) for a consistent purpose only if the provisions of section 45 are met. It requires that the public sector body may use personal information that it has received from another public sector body only where the intended use (by the recipient public sector body) has a reasonable and direct connection to its programs and activities and is necessary for that purpose. Section 46 allows a use for linking databases or creating public registries, section 47 allows a use for research purposes and section 48 allows a disclosure where the record is more than 100 years old.