

MANITOBA OMBUDSMAN PRACTICE NOTE

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RESPONDING TO RECOMMENDATIONS MADE BY THE OMBUDSMAN UNDER *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)*

Under FIPPA (sections 49 and 66) the Ombudsman may make recommendations to a public body about access or privacy matters. This Practice Note has been prepared to assist public bodies in responding to recommendations.

Subsection 66(4) sets out a public body's response to the Ombudsman when a report concerning a complaint contains recommendations. Although section 49 does not set out a process for responding, the guidelines contained in this Practice Note should be followed.

Subsection 66(4) states:

Head's response to the report

66(4) If the report contains recommendations, the head of the public body shall, within 15 days after receiving the report, send the Ombudsman a written response indicating

- (a) that the head accepts the recommendations and describing any action the head has taken or proposes to take to implement them; or
- (b) the reasons why the head refuses to take action to implement the recommendations.

Generally, a report containing recommendations would be sent by courier to the public body. As the public body must respond within 15 days of receiving the report, the date by which the response should be received by the Ombudsman will be indicated in the report.

If the report contains more than one recommendation, the recommendations will be numbered. The response should address each recommendation as follows:

1. indicate the recommendation number
2. state whether the recommendation is accepted
3. if the recommendation is accepted, describe any action taken or proposed to be taken to implement the recommendation within the time limits specified in subsection 66(6)
4. if the recommendation is not accepted, provide reasons why the public body refuses to take action to implement the recommendation

The time limits for complying with recommendations are set out in subsection 66(6):

Compliance with recommendations

66(6) When the head of a public body accepts the recommendations in a report, the head shall comply with the recommendations

- (a) within 15 days of acceptance, if the complaint is about access under subsection 59(1), (2) or (4); and
 - (b) within 45 days in any other case;
- or within such additional period as the Ombudsman considers reasonable.

Subsection 66(6) permits an additional period of time to comply if the Ombudsman considers it to be reasonable. In the event that the public body is unable to comply with the time limits, the response should indicate the reasons why and indicate the additional period needed to comply. The Ombudsman will notify the public body if the additional period is considered reasonable.

Subsection 66.1(1) provides that the Ombudsman may ask the Information and Privacy Adjudicator to review a matter if the Ombudsman has given a report containing recommendations to the head of the public body and:

- the head's response indicates that the public body refuses to take action to implement any of the Ombudsman's recommendations;
- the head's response indicates an acceptance of the Ombudsman's recommendations, but action is not taken to implement them within the required time; or
- the head fails to respond as required by subsection 66(4)

Under subsection 66(5), the Ombudsman is required to notify the complainant of the public body's response to the recommendations, as follows:

Notice to the complainant

66(5) The Ombudsman shall notify the complainant about the head's response without delay. In the case of a response that indicates a refusal to take action on any of the Ombudsman's recommendations, the Ombudsman shall also, if the complainant has been refused access to a record or part of a record or is a third party notified under section 33 of a decision by the head of a public body to give access, inform the complainant

- (a) as to whether the Ombudsman intends to ask the adjudicator to review the head's decision under section 66.1; and
- (b) that, if the Ombudsman does not ask for a review, the complainant may appeal the head's decision to the court under section 67 and of the time limit for an appeal.

Generally, notice under subsection 66(5) is provided by letter to the complainant indicating the above-noted information.

(TRANSITIONAL PROVISION - A matter under investigation by the Ombudsman before the Adjudicator's role became effective will be handled according to the earlier version of subsection 66(5). It provides that, in the case of the public body's refusal to take action on any of the Ombudsman's recommendations, and the complainant has been refused access or is a third

party notified under section 33 of a decision to give access, the Ombudsman will advise the complainant that he or she may appeal to Court under FIPPA, the time limit for an appeal and, if the Ombudsman so chooses, that the Ombudsman intends to appeal the decision to the Court.)

The public body should notify the Ombudsman when it has complied with the recommendation(s) and provide information to demonstrate its compliance. For example, if the recommendation was to release withheld records to the complainant, the public body should provide to our office a copy of its letter to the complainant and the released records, if we have requested a copy of them.

FIPPA (subsection 66(7)) requires the Ombudsman to have recommendations made under section 66 available to the public. The Ombudsman will be publishing recommendations on the Ombudsman website at www.ombudsman.mb.ca

Additionally, FIPPA (clause 58(1)(b)) requires the Ombudsman to report annually to the Legislature on recommendations and whether public bodies have complied with the recommendations.