

# MANITOBA OMBUDSNEWS

2010-2

Ombudsman, Access and Privacy Newsletter



## Amendments to *The Personal Health Information Act*

*The Personal Health Information Act* (PHIA) sets out how an individual can obtain access to their own personal health information from persons or organizations called "trustees", and how trustees must or can handle personal health information. Trustees include provincial government departments and agencies, municipalities including the City of Winnipeg, hospitals, regional health authorities, school divisions, universities and certain health professionals (ex. doctors, nurses, pharmacists).

PHIA became law in December 1997. Significant amendments to PHIA came into effect on May 1, 2010. Some of the changes include:

- a means for establishing a representative for an individual who is incapacitated and does not have an available representative to exercise his or her PHIA rights;
- the requirement that a trustee of personal health information provide notice to individuals of their right to see and get a copy of their personal health information, how to exercise that right and their right to authorize another person to see and get a copy of the information;
- new maximum (shorter) timeframes for responding to access requests and sharing personal health information with the individual's family and close friends where the individual is a hospital in-patient, home care

resident, or recipient of care in the community and the information is about care currently being provided; and

- an explanation of "consent" where consent is required in PHIA.

The PHIA amendments also permit trustees to use or disclose (share outside of their organization) personal health information without the individual's consent in 12 new situations (for more information, see our Practice Note, *Overview of PHIA Amendments*).

A new disclosure that will affect many Manitobans allows a hospital where you have been a patient, a personal care home where you are or have been a resident, and certain other trustees who are providing, or have provided, you with services, to share your name and mailing address with an affiliated charitable fundraising foundation, *unless you tell the trustee not to*.

Another new disclosure that will affect many individuals, allows a hospital where you are an in-patient, and a personal care home where you are a resident to share your name, general health status (ex. critical, stable, satisfactory) and your location in the facility with a representative of a religious organization, *unless you tell the trustee not to*.

For more information on trustees sharing personal health information with charitable foundations and religious organizations, see our article, "When Can You Control the Sharing of Your Personal Health Information?" on page 2.

## Introduction to FIPPA Sessions for Local Public Bodies

The Access and Privacy Division of our office is participating in the delivery of introductory sessions to local public bodies, including municipal governments, school divisions, universities

and colleges, about *The Freedom of Information and Protection of Privacy Act* (FIPPA). These sessions are being offered by the Information and Privacy Policy Secretariat of Manitoba Culture, Heritage and Tourism, the department responsible for the administration of FIPPA.

This half-day session will provide information to assist in responding to access to information requests and in protecting personal information under FIPPA. A representative

from the Information and Privacy Policy Secretariat will discuss the main concepts of freedom of information, including the right of access, the application process, applying exceptions to disclosure, and key definitions. The principles of privacy protection and obligations under FIPPA will also be explored. A representative from our Access and Privacy Division will discuss the types of matters we can investigate under FIPPA, the responsibilities of a public body during an investigation, the Ombudsman's proactive role, and resources available to assist in complying with FIPPA.

This session is being offered to Access and Privacy Officers and Coordinators in local public bodies. There are two sessions planned for this year, on June 9 and October 5. Email [Karen.Meelker@gov.mb.ca](mailto:Karen.Meelker@gov.mb.ca) for details or to register.



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## When Can You Control the Sharing of Your Personal Health Information?

A trustee may disclose (share outside of the trustee organization) personal health information only with the consent of the individual the information is about, except where PHIA permits the disclosure without consent. There are a number of situations for disclosure under PHIA where consent of the individual is not needed.

In some situations you are able to control the sharing of your personal health information. First, though, you need to be aware of these situations and what you have to do:

1. *You are to be notified that:* A hospital where you are an in-patient or a personal care home where you are a resident, may share the following personal health information about you with a **representative of a religious organization**, *unless you tell the trustee not to:*

- your name
- your general health status (ex. critical, stable, satisfactory) and
- your location in the facility

This information cannot be shared unless the trustee has clearly notified you either in writing or by a posted notice that the trustee might share your information with a representative of a religious organization and you have been given an opportunity to object to the sharing and you have not done so.

2. *You are to be notified that:* A hospital where you have been a patient, a personal care home where you are or have been a resident, or certain trustees under PHIA who are providing or have provided you with services, may share the following personal health information about you with a **charitable fundraising foundation affiliated with the trustee** *unless you tell the trustee not to:*

- your name and
- your mailing address

This information cannot be shared unless the trustee has clearly notified you either in writing or by a posted notice that the trustee might share your information with a charitable fundraising foundation and you have been given an opportunity to object to the sharing and you have not done so.

3. *You need to know that:* A hospital where you are an in-patient or a personal care home where you are a resident, may share the following personal health information about you with **your family, friends and others on request**, *unless you tell the trustee not to:*

- your name
- your general health status (ex. critical, stable, satisfactory) and
- your location in the facility

4. *You need to know that:* A hospital where you are an in-patient or a personal care home where you are a resident, may share the following personal health information about you with **your family and friends**, *unless you tell the trustee not to:*

- information about the care you are currently receiving, if the sharing is made according to good medical or professional practice and the trustee believes it would be acceptable to you

5. *You need to know that:* A trustee may share your personal health information with **any health care provider who has, is, or will be providing you with health care**. *If you tell the trustee not to share your personal information with a health care provider, your information is not to be shared with the health care provider under this PHIA provision.*

In all these situations, a trustee must only share personal health information as authorized under PHIA and this must be limited to the minimum amount of information necessary to accomplish the purpose for which it is shared.

**For more information on the May 1, 2010 PHIA amendments**, please see the following resources on the Manitoba Ombudsman website:

- brochure co-produced with Manitoba Health titled, *Health Information Access and Privacy: A Guide to The Personal Health Information Act*;
- tip sheet, *10 Points About Controlling and Seeing Your Personal Health Information*; and *Ombudsman's news release on the tip sheet (to be released in mid-June)*; and
- the office's PHIA web pages.





## Report on Manitoba's Employment and Income Assistance Program

Manitoba Ombudsman Irene Hamilton released her report on the province's Employment and Income Assistance Program (EIA). The program, often called the welfare program, is the means by which government provides financial assistance to those of us who lack sufficient resources to meet the cost of basic necessities such as food, clothing, and shelter.

The investigation was undertaken in response to a complaint from twelve community organizations, many of whom have clients who are also participants in the EIA program. The complainants requested a comprehensive review of the program, and also raised specific concerns about the adequacy of the services and benefits provided by the program, and about whether participants in the program are being treated fairly. As a result of the investigation, the Ombudsman made 68 recommendations for administrative improvement to enhance the fairness and efficiency of the program.

In the department's initial response to the report, it thanked the Ombudsman and indicated, *"these reviews help programs*



*determine strengths and identify ways to improve service delivery to increase efficiency and effectiveness."* The department further indicated that the review was *"a collaborative undertaking, which has resulted in a well-balanced and informed report."* Our office would once again like to thank employees around the province who administer the EIA program for speaking with us openly about the EIA program and the work that they do.

The Ombudsman is awaiting a formal response from the department in accordance with subsection 37(1) of *The Ombudsman Act*, which states "Where the Ombudsman makes a recommendation under section 36 he may request the department, agency of the government or municipality to notify him within a specified time of the steps that it has taken or proposes to take to give effect to his recommendations."

The EIA report can be found at <http://www.ombudsman.mb.ca> by clicking on "Reports and Publications" under the Ombudsman Division.

## 2009 Annual Report Released

Manitoba Ombudsman Irene Hamilton released her 2009 Annual Report on May 10, 2010. The annual report has always been one of the primary ways in which the office communicates its activities and outcomes to both the Legislature and the public. Filled with details about the office and the pieces of legislation that give the office its mandate, the report also contains summaries of some of the interesting investigations and reviews that were undertaken in 2009, along with a statistical review of the office's activities.

The 2009 report, for example, highlights continuing concerns with high risk/high needs inmates in provincial correctional facilities - an issue that is mentioned in many of the office's annual reports. With large complex issues such as this one, it is important to acknowledge both the successes that have happened in the past year, as well as areas in which progress may have slowed. The report also mentions a couple of very specific cases where the Ombudsman was able to assist individuals with personal property matters; illustrating that sometimes the Ombudsman's involvement in a dispute can assist

government decision makers in taking a second, and perhaps fresh, look at a situation.

No new investigations under *The Public Interest Disclosure (Whistleblower Protection) Act* were initiated in 2009, although the report contains a brief summary of investigations into two disclosures received in 2008 about the same healthcare facility. There continues to be interest and many

questions regarding the Act. To assist people in understanding how the office deals with disclosures, the 2009 report contains more information about the steps the office takes after a disclosure is received.

Under *The Freedom of Information and Protection of Privacy Act*, the Ombudsman must report on cases in which she made recommendations to public bodies respecting complaints about access and privacy matters. The 2009 Annual Report includes summaries of eight cases in which recommendations were made to a variety of public bodies, including an educational facility (two cases), a government department (2 cases), a government agency (one case), and a municipality (three cases). The report also contains a detailed summary of the office's review of the privacy implications of a school division's proposed voluntary drug testing policy.

The 2009 Annual Report is available in both English and French at <http://www.ombudsman.mb.ca> by clicking on "Reports and Publications" under either the Ombudsman or Access and Privacy Divisions.

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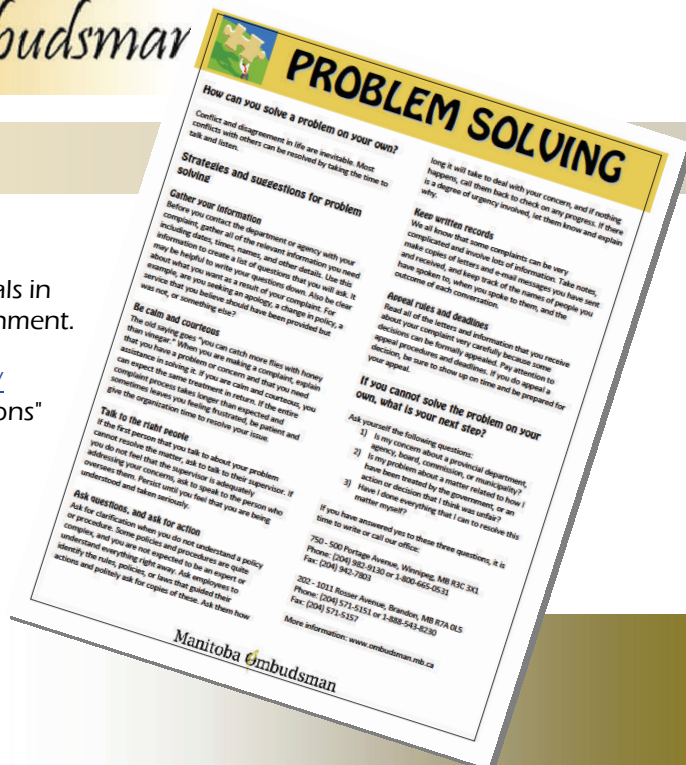
## New Information Sheet

Title: **Problem Solving**

Purpose: Includes strategies and suggestions to assist individuals in solving any problems or concerns they might have with government.

Language: English and French

Format: Print (call 982-9130 for copies) or on the web at <http://www.ombudsman.mb.ca> by clicking on "Reports and Publications" under the Ombudsman Division.



## UPCOMING EVENTS

June 16, 2010

Brown Bag Talk for Access and Privacy Coordinators and Officers, "All about Correction of Personal and Personal Health Information", call 982-9130 for details or to register

June 9 and October 5, 2010

FIPPA: An Introduction for Access and Privacy Coordinators and Officers in Local Public Bodies. Email [Karen.Meelker@gov.mb.ca](mailto:Karen.Meelker@gov.mb.ca) for details or to register.

## Manitoba Ombudsman: Ombudsman and Access and Privacy Divisions

WEB SITE: [www.ombudsman.mb.ca](http://www.ombudsman.mb.ca)

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