

# MANITOBA OMBUDSMAN PRACTICE NOTE

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## DISCLOSURE UNDER *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)*

### INTRODUCTION

One of the purposes of FIPPA is to protect individuals against unauthorized disclosure of personal information by public bodies.

The term "disclosure" is not defined in FIPPA. It is a term, however, that means revealing recorded personal information to someone outside of the public body.

Recorded information may be disclosed in a number of ways:

- providing the record itself or a copy of it
- creating another record, such as a letter or memo, containing the information
- verbally disclosing information from the record

When disclosing personal information, a public body should take precautions appropriate to the circumstances to ensure that the information is revealed only to the intended recipient.

### GENERAL DUTIES OF PUBLIC BODIES UNDER PART 3 OF FIPPA

The privacy protections, including those concerning disclosure, are set out in Part 3 of FIPPA. The general duties of public bodies concerning disclosure are:

- every disclosure must be authorized under the Acts, and
- every disclosure must be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed

### AUTHORIZATION FOR DISCLOSURE

A public body is permitted, or authorized, to disclose personal information if one of the circumstances set out under section 44 of FIPPA applies to the disclosure. It is important to carefully consider the wording of the provision to ensure it applies.

There are very few circumstances where a public body may be required to make a disclosure, such as when complying with another Act or a subpoena, that requires the disclosure. In most situations, the decision to disclose is at the discretion of the public body. This being the case, even where FIPPA permits the public body to disclose, the circumstances should be considered to determine whether it is appropriate to make the disclosure.

### **CONSENT FOR DISCLOSURE**

Consent from the individual is one of the authorizations for disclosure, under clause 44(1)(b) of FIPPA . Consent is not necessary where disclosure is permitted under another clause. In some circumstances, a public body may still wish to obtain consent from the individual even if the disclosure is otherwise authorized.

FIPPA does not specify the form or content of consent. A public body should take whatever steps are necessary to ensure it has the informed consent of the individual. If consent is obtained in writing, the following elements of consent could be considered for inclusion in a consent form:

- a description of the personal information
- the purpose for the disclosure
- the name of the public body to whom consent is being given
- the name of the third party to whom the information is being disclosed
- the date of the consent
- the date the consent expires
- a statement that the consent may be revoked or amended at any time
- the name and signature of the individual

### **CONSIDERATIONS FOR DISCLOSURE**

A public body should analyze each situation and consider the following before making the disclosure:

- the reason for making the disclosure
- whether the purpose for the disclosure is permitted under the Act
- if it is appropriate in the circumstances to obtain consent even if the disclosure is otherwise authorized
- how to limit the disclosure to the minimum amount of information necessary to accomplish the purpose
- the level of sensitivity of the information
- to whom the information is being disclosed
- how the information should be disclosed
- keeping a record of the disclosure to indicate the details of the disclosure, including a description of the information, who disclosed it, to whom it was disclosed, and the reasons for the disclosure