

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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THE INTERACTION BETWEEN FIPPA AND OTHER ACTS

The interaction between FIPPA and other Acts can affect a public body's access and privacy decisions in the following manner:

- certain records may not be subject to FIPPA due to another Act
- provisions of FIPPA may be in conflict with other Acts that prevail
- other Acts may affect whether access can be provided under Part 2 of FIPPA
- other Acts may affect whether a public body is authorized to collect or disclose personal information under FIPPA

OTHER ACTS THAT AFFECT WHETHER FIPPA APPLIES

There are few records to which FIPPA does not apply and these are set out in section 4 of the Act. An example of the interaction between FIPPA and another Act is when the records relate to an inquest under *The Fatality Inquiries Act*. These records are not subject to FIPPA if all proceedings concerning the inquest have not been completed (clause 4(i)).

CONFLICT WITH OTHER ACTS

Where there is a conflict between provisions of FIPPA and those of another Act, the provisions of FIPPA will apply unless the other Act expressly provides otherwise (subsection 5(2)). It is important to remember that the conflict provision of FIPPA applies not only to access requests under Part 2, but also to protection of privacy provisions under Part 3.

Following are some of the Manitoba statutes that prevail over FIPPA or that have sections that prevail over FIPPA:

- *The Adoption Act*
- *The Child and Family Services Act*
- *The Mental Health Act*
- *The Regional Health Authorities Act* (re: certain Critical Incident records)
- *The Securities Act*
- *The Statistics Act*
- *The Testing of Bodily Fluids and Disclosure Act*

- *The Vital Statistics Act*
- *The Witness Security Act*
- *The Workers Compensation Act*
- *The Youth Drug Stabilization Act*

Some federal laws, such as *The Youth Criminal Justice Act*, also prevail over FIPPA.

Some enactments that prevail over FIPPA do set out alternate processes for requesting information or records governed by the particular Act, and may also specify situations in which information can be disclosed and to whom it can be disclosed.

RELATIONSHIP TO *THE PERSONAL HEALTH INFORMATION ACT (PHIA)*

An individual seeking access to his or her own personal health information must request access under *The Personal Health Information Act*, as the provisions of Part 2 of FIPPA do not apply to such a request (subsection 6(1)). Similarly, the privacy provisions of Part 3 of FIPPA do not apply to personal health information to which *The Personal Health Information Act* applies (section 35).

ACCESS CONSIDERATIONS IN PART 2 OF FIPPA

In Part 2 of FIPPA, there are a few provisions that refer specifically to other legislation. For example, the discretionary exception relating to confidential evaluations concerning the FIPPA applicant does not apply to information that the public body would have to provide to the applicant under *The Personal Investigations Act* (subsection 30(2)).

There are other Part 2 provisions that refer to legislation more generally. For example, the mandatory exceptions to disclosure found in section 17 (Privacy of a Third Party) and section 18 (Business Interests of Third Parties) do not apply where an enactment of Manitoba or Canada expressly authorizes or requires the disclosure (clauses 17(4)(c) and 18(3)(c)). Conversely, although section 25 gives a public body the discretion to grant access to information in records concerning law enforcement, the public body is constrained by subsection 25(2) which imposes a mandatory exception to the right of access where the information is in a law enforcement record and the disclosure is prohibited under an enactment of Canada.

Another situation where the provisions of another enactment may become relevant in responding to an access request is found in clause 22(1)(b). This exception may be claimed by a local public body to refuse access to records that would reveal the substance of deliberations of a meeting, where an enactment or by-law authorizes the holding of that meeting *in camera*. For example, subsection 152(3) of *The Municipal Act*, section 76 of *The City of Winnipeg Charter*, and subsection 30(4) of *The Public Schools Act* all authorize *in camera* meetings.

PRIVACY CONSIDERATIONS IN PART 3 OF FIPPA

Part 3 of FIPPA exists to control the manner in which public bodies collect personal information and to protect individuals from the unauthorized use or disclosure of their personal information by a public body (clause 2(d)).

The interaction between Part 3 of FIPPA and other Acts arises out of the public body's considerations in collecting and disclosing personal information in the course of its operations. FIPPA should not be perceived as a barrier to the operation of the public body's existing services, programs or activities, as it authorizes collection or disclosure of personal information

where it is necessary for these purposes (clauses 36(1)(b) and 44(1)(a)). FIPPA also authorizes a public body to collect or disclose personal information where collection or disclosure is authorized or required by another Act (clauses 36(1)(a) and 44(1)(e)).

Personal information can be collected from someone other than the individual in certain circumstances, such as where another method of collection is authorized by an enactment of Manitoba or Canada (clause 37(1)(a)).

FIPPA also authorizes a public body to disclose personal information for the purpose of complying with an enactment of Manitoba or Canada, or with a treaty, arrangement or agreement entered into under an enactment of Manitoba or Canada (clause 44(1)(d)).

Following are some illustrations of how the provisions of other Acts may interact with the privacy considerations of FIPPA:

- Subsection 57.1 of *The Income Tax Act (Manitoba)* authorizes the Minister of Finance for Manitoba to collect some elements of personal information from other provincial government departments or agencies. This same section also authorizes and requires the corresponding departments and agencies to provide the personal information to the Minister of Finance.
- Section 53 of *The City of Winnipeg Charter* authorizes the City of Winnipeg to disclose in limited circumstances, some personal information of professional engineers or architects to their respective professional regulatory bodies.

Regardless of whether another Act authorizes collection or disclosure of personal information, the public body must nonetheless comply with the requirements of FIPPA by limiting the amount of personal information collected or disclosed to the minimum amount necessary to accomplish the purpose for which it is collected or disclosed (subsections 36(2) and 42(2)).

No CONFLICT WITH THE OMBUDSMAN!

Several enactments limit the circumstances in which records and information gathered and produced under the relevant enactment can be disclosed. Some enactments also specify offences for unauthorized disclosures. However it is important to remember that the Ombudsman has the right under section 51 of FIPPA, despite any other enactment or any privilege of the law of evidence, to examine and make copies of any record in the custody of the public body. In addition, subsection 86(1) of FIPPA specifies that a person is not guilty of an offence under another enactment by reason of complying with the Ombudsman's request to produce a record or information.

Note: Provisions of all Acts referred to are current as of February 17, 2010.