

# 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.

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](http://www.ombudsman.mb.ca)

---

## OVERVIEW OF FIPPA AMENDMENTS

Significant amendments to FIPPA came into force on January 1, 2011. This Practice Note refers to some of these changes.

For the complete amendments, see:

- [\*The Freedom of Information and Protection of Privacy Amendment Act\*](#)

For the current updated version of FIPPA that includes the January 1, 2011 changes, refer to:

- [\*The Freedom of Information and Protection of Privacy Act\*](#) (FIPPA)

For more information on FIPPA, visit:

- the Manitoba Ombudsman FIPPA web pages at <http://www.ombudsman.mb.ca>
- the Manitoba Government FIPPA web pages at <http://www.gov.mb.ca/chc/fippa/>

### AMENDMENTS CONCERNING ACCESS AND PRIVACY

#### 1. Ombudsman may request a review by Adjudicator (subsections 66.1(1) - 66.11(2))

FIPPA creates a new officer of the Legislative Assembly, the Information and Privacy Adjudicator. The complaint process under FIPPA (and also PHIA) has been amended to include this additional level of independent review and complaint resolution available to the Ombudsman.

Where a public body has not acted on a recommendation made by the Ombudsman in an access to information or privacy complaint, the Ombudsman may refer the matter to the Adjudicator for review. The Adjudicator has the power to make various orders, including requiring a public body to give the applicant access to requested information, confirming a public body's access decision or requiring a public body to perform a duty imposed by FIPPA. An application can be made to the Manitoba Court of Queen's Bench for judicial review of an order made by the Adjudicator.

An appeal to Court can be made by an individual about a public body's decision concerning a refusal of access only if the person has first made a complaint to the Ombudsman, the Ombudsman has provided a report about the complaint and the Ombudsman has not asked the Adjudicator to review the complaint.

These provisions do not apply to FIPPA complaints under investigation by the Ombudsman at the time the amendments concerning the Adjudicator came into effect.

## **2. Ombudsman to publish recommendations (subsection 66(7))**

Another new provision is that the Ombudsman must make available to the public all recommendations made in FIPPA complaint investigations (FIPPA Part 5 investigations). These recommendations will be published on the Ombudsman website at [www.ombudsman.mb.ca](http://www.ombudsman.mb.ca)

## **AMENDMENTS CONCERNING ACCESS TO INFORMATION**

### **3. Publicly available information is outside the FIPPA access to information process (subsection 6(2))**

FIPPA's access to information provisions no longer apply to information available to the public, free of charge or for purchase. A public body may still refuse to disclose information requested under FIPPA if that information will be made available to the public within 90 days after the applicant's request is received (subsection 32(1)).

### **4. A public body may disregard certain requests (subsection 13(1))**

A public body may disregard a request for access believed to be incomprehensible, frivolous or vexatious, or for information already provided to the applicant, or if the requests -- because of their repetitious or systematic nature -- would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests. While this places an onus on applicants to make requests responsibly, there is also a responsibility on public bodies relying on one of these provisions to justify it. A public body's reliance on any part of subsection 13(1) could be a basis for complaint to the Ombudsman.

### **5. Recognition of organizations that represent governmental interests of a group of aboriginal people (clauses 20(1)(c.1) and 21(1)(c.1))**

In the exceptions where information has been provided by another government (subsection 20(1)) and where disclosure could reasonably be harmful to relations between Manitoba and other governments (subsection 21(1)), FIPPA now includes in the list of government entities "an organization that represents governmental interests of a group of aboriginal people". This includes the council of a band as defined in the *Indian Act* (Canada) and an organization representing one of more bands.

### **6. Public opinion polls are not regarded as advice to a public body (clause 23(2)(f.1))**

There is an additional limitation to the exception where disclosure of information could reasonably be expected to reveal advice to a public body. This exception to release does not apply if the requested information is a public opinion poll.

**7. Interaction between FIPPA and *The Personal Investigations Act* clarified (subsection 30(2))**

FIPPA now has a limitation to the exception where disclosure would reveal confidential evaluations about the applicant's suitability, eligibility or qualifications for employment, or for the purpose of awarding a contract. The limitation clarifies that the exception does not apply to information that the public body is required to provide to the applicant under *The Personal Investigations Act*.

**AMENDMENTS CONCERNING PRIVACY**

**8. A public body may provide personal information to an information manager (subsections 44.1(1) - (5))**

Similar to PHIA, FIPPA now establishes and sets out the requirements for an information manager.

An information manager is a person or body that processes, stores or destroys personal information for a public body, or provides information management or information technology services to a public body. A public body may provide personal information to an information manager for these purposes if it enters into a written agreement with the information manager in compliance with FIPPA for the privacy protection of the personal information. The public body is deemed to have custody and control of the personal information under the agreement and the information manager is subject to the same FIPPA requirements as the public body concerning the use and privacy protection of the personal information.

**9. Disclosure for delivering a common service, program or activity (clause 44(1)(f.1))**

FIPPA now sets out that a public body may disclose personal information for the purpose of delivering a common or integrated service, program or activity if the information is necessary to deliver that work, and the officer or employee to whom the information is disclosed needs the information to carry out the work.

**10. Disclosure for evaluating, monitoring or researching and planning a service, program or activity (clause 44(1)(j.1))**

FIPPA now sets out that a public body may disclose personal information for the purpose of evaluating or monitoring a service, program or activity of the public body or the Government of Manitoba, or for research and planning that relates to a service, program or activity.

**11. Disclosure of personal information routinely disclosed in a business context (clause 44(1)(x.1))**

A public body may disclose personal information that is of a type routinely disclosed in a business or professional context, limited to the individual's name, position title, business and email addresses and telephone and fax numbers, and provided the disclosure does not reveal other personal information about any individual.

**12. Disclosure for fundraising activities by an educational institution (clause 44(1)(dd), subsection 44(1.1))**

An educational institution that is a public body may now disclose personal information in its alumni records reasonably necessary for fundraising activities, where the institution has entered into a written agreement, in compliance with FIPPA, with the persons receiving the information.

**13. Disclosure to War Amps preserved (subsection 97.1(1))**

A saving provision of FIPPA sets out that if a public body disclosed names, addresses and drivers' licence numbers to the War Amputations of Canada pursuant to an agreement entered under FIPPA before January 1, 2011, the public body may continue to disclose that information if War Amps uses the information only in accordance with the agreement.

**14. Ministerial expenses available to the public (subsection 76.1(1) - (3))**

The Manitoba Government shall make available to the public a summary of certain expenses incurred personally over the fiscal year by each member of the Executive Council while performing the responsibilities of his or her office and that are paid for by his or her department. The expenses are for transportation and travel, accommodation and meals, promotion and hospitality and cell phone and personal electronic communication devices.

**15. Directory, personal information banks, public registry and Privacy Assessment Review Committee repealed**

FIPPA no longer provides for:

- a publicly available **directory** to assist in identifying and locating records in the custody or under the control of public bodies;
- a collection of personal information that is organized or retrievable by name of an individual or by other unique identifiers (**personal information bank**);
- a **public registry** of information that could be designated in the regulations and maintained by a public body; and
- the **Privacy Assessment Review Committee** that could provide advice concerning proposed linking or matching of personal information in databases, disclosure requests of personal information on a volume basis, or disclosure of personal information for certain research purposes