

MANITOBA OMBUDSMAN

**2010 Access Practices Assessment of
The Workers Compensation Board;
Manitoba Justice; The University of
Manitoba; Manitoba Hydro; and,
Manitoba Innovation, Energy and Mines**

**Audit Report under Section 49 of *The
Freedom of Information and Protection
of Privacy Act (FIPPA)***

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OMBUDSMAN'S MESSAGE

The release of this report launches what I intend, for the next several years, to be yearly reports to Manitobans about the performance of public bodies audited under our FIPPA Access Practices Assessment initiative.

The FIPPA Access Practices Assessment is an audit that examines four key components in the public body's processing of a FIPPA Application for Access. The four components examined are: (1) compliance with time requirements of the Act; (2) compliance with the requirements of a response to an applicant under section 12 of the Act; (3) adequacy of the contents of the FIPPA file; and, (4) adequacy of records preparation. These components are examined and assessed because they are pivotal to an efficient, thorough and accountable access decision.

Each year for the next several years, 5 different public bodies will be audited and the results of the audit will be released in a report to the public. In 2010, the 5 public bodies audited were:

- Workers Compensation Board (WCB)
- Manitoba Justice
- The University of Manitoba (U of M)
- Manitoba Hydro
- Manitoba Innovation, Energy and Mines (IEM)

We gratefully acknowledge the excellent cooperation and assistance provided by each public body involved in the 2010 audit.

In undertaking each audit, we set out to examine the public body's due diligence in processing requests through a review of the contents of the completed FIPPA files (i.e. the files that are set up to process applications for access) from the previous year where decisions have been made to refuse access to records in full or in part, or where records do not exist or cannot be located.

This examination is based on our view that a good access practices process is one that is:

- efficient to satisfy the time requirements of FIPPA;
- thorough so that all provisions of the Act are fully considered in the course of the access decision deliberations; and,
- well-documented to account for decisions that are made under the Act.

While FIPPA is an organization-wide responsibility, the stage for a good access practices process is set by executive leaders who are committed to making FIPPA a priority and who ensure that staff who are involved with FIPPA are provided with the necessary resources, support, and training. Finding better ways to provide information to the public is also, in my view, a responsibility of executive leaders. For example, executive leaders can be the catalyst



for web-based active release strategies to push general information out. Active release strategies can be very effective in relieving pressure on FIPPA resources and can more cost-effectively provide information that the public wants. Although the benefits of active, rather than reactive release of information under the FIPPA process seem to be theoretically recognized by public bodies, many have not yet committed to it. Executive leaders have a role and a responsibility to make active release strategies a reality.

Responsibility for a good access practices process also resides with FIPPA applicants themselves. As we have said in previous annual reports, the FIPPA process is a two-way street. Applicants have a responsibility to provide as much direction and clarity as possible to enable the public body to search for records. Often records are located throughout various program areas within a public body, and a request, for example, for "all records" will usually require some clarification or direction from the applicant. When clarification from an applicant is needed and sought by a public body, the applicant has a responsibility to promptly respond so that the public body can meet the tight legislated time frames in processing the request. As one of the purposes of the Act is to allow a right of access to records in the custody or under the control of public bodies, subject to limited and specific exceptions, using the Act responsibly also means using FIPPA to request records rather than pose questions.

The results of the 2010 audits pinpoint some longstanding issues and weaknesses that have been, over the past decade, the subject of numerous annual reports, Practice Notes, and Brown Bag Talks from my office. Longstanding issues such as compliance with the requirements of a response under section 12 of the Act and the necessity to document decisions, continue to be weaknesses that must be strengthened.

Converting weaknesses into strengths can be achieved by public bodies through fairly modest changes in their processes. To assist all public bodies in achieving good access practices we have devised two guides:

- (1) *A Guideline on Time Frames for Processing a FIPPA Request* (see Appendix A); and,
- (2) *The Standard Contents of a FIPPA File* (see Appendix B).

Both guides are referred to in the body and in some of the recommendations in this report.

Over time I hope that where weaknesses are identified and the need for improvements are indicated, these audits will contribute positively to timely responses, full compliance with the requirements of a response letter under section 12, and standardized FIPPA file documentation, including adequate records preparation, across the FIPPA community.

PURPOSE OF THE AUDIT

The FIPPA Access Practices Assessment is an audit of the compliance and the practices of public bodies regarding the processing of FIPPA requests where decisions have been made to refuse access. The purpose of the audit is to assess various components of the processing of an access request to ensure compliance and best practices starting from the point of receiving an Application for Access to the issuance of the response letter. Where weaknesses are found during the course of the audit, recommendations are made to improve the particular weakness that was identified.

The recommendations that have been made are designed to strengthen the public body's processing of FIPPA requests in order to facilitate: compliance with time requirements; compliance with the requirements of a response under section 12; adequacy of the contents of a FIPPA file that includes documentation of the decision-making process; and, adequacy of records preparation. In a few instances, additional recommendations have been made to address weaknesses that were associated with the four component areas that were assessed.

With standardized file documentation and a well-documented decision-making process, the FIPPA file can become a comprehensive source for authorized users for applicant inquiries, Ombudsman investigations, appeals to court, and corporate memory. Although documentation throughout the process takes time, in our view it is a necessary and important investment in decisions that are thorough, accountable and transparent.

AUTHORITY TO CONDUCT THE AUDIT

In addition to investigation of complaints, the Ombudsman may conduct audits and make recommendations to monitor and ensure compliance under FIPPA, as provided for in section 49 of the Act which states:

General powers and duties

49 *In addition to the Ombudsman's powers and duties under Part 5 respecting complaints, the Ombudsman may*

(a) conduct investigations and audits and make recommendations to monitor and ensure compliance

(i) with this Act and the regulations

THE AUDIT PROCESS

In December 2009, public bodies were notified of our new systemic investigations and audits program and were informed that the FIPPA Access Practices Assessment project would commence in the spring. A notification letter that the audit would be conducted was sent to the 5 public bodies in June 2010 and arrangements were made with the Access and Privacy Coordinators in each public body.

Audits were conducted in June and July 2010. On the first day of each audit, prior to reviewing the files, the process was outlined with FIPPA staff from each public body. During the course



of the audit, FIPPA staff were also interviewed and provided their perspectives in response to a series of questions about the processing of requests for their respective organizations. Debriefing meetings occurred after each audit was completed. At these meetings, the general findings of the audit were discussed through the perspective of the strengths and weaknesses that were observed in examining the contents of the FIPPA files.

Individual audit reports were provided to each of the 5 public bodies. Recommendations were made to all of the public bodies except WCB, where no recommendations were needed. The recommendations that were made, the responses to the recommendations from the public bodies, and comments from the Ombudsman on the responses to the recommendations, are included later on in this report.

Section 12 compliance and compliance with time requirements are mandatory provisions under the Act, and therefore recommendations are made to the public body if compliance is not 100%. Recommendations for the adequacy of records preparation and file documentation may be made if compliance was less than 90%.

If recommendations were made to a public body, it will be subject to a follow-up audit in 2011.



OBSERVATIONS AND FINDINGS

GENERAL COMMENTS

From the documentation that was in evidence, generally we observed a positive and genuine effort by the 5 public bodies to assist applicants, even if weaknesses in the process were identified during the audit. Staff regularly go beyond the requirements of the Act to assist applicants in obtaining the information they are seeking and they regularly provide related information or referral information if actual records do not exist despite the extra time and effort this may take. Usually these efforts take place without charging any fees even though fees could be legitimately charged. All this is done in an environment where FIPPA is usually one of many job responsibilities, where time and resources to respond to requests are increasingly limited, and where requests are increasingly complex.

The initial processing steps of the request are efficient for each public body. Typically, when a request is received it is entered into an electronic tracking system/database, a paper file is set up, and the Coordinator notifies the program area by email of the wording of the request and includes a date by which the records or any other information that might be necessary are to be provided back to him/her. Generally, FIPPA staff track and follow-up with program areas when the response due date is approaching.

WCB merits special recognition for its exemplary performance of 100% in each component category that was assessed. The WCB files that were reviewed for the audit reflected an efficient, well-organized, diligent and thorough process that is dedicated to providing excellent customer service to FIPPA applicants. WCB's approach to the processing of the requests also seems to reflect an organization-wide commitment to the spirit and intent of the Act.

Improvements are warranted for IEM, U of M, Hydro and Justice, in order to strengthen specific aspects of their processes. Examples relating to these four public bodies include:

- Timeliness was a serious problem with IEM and Hydro, and a moderately serious problem with U of M.
- The adequacy of the contents of the FIPPA file was weak for each of those four public bodies. Many files that were reviewed did not contain sufficient and at times, any documentation to substantiate the access decision. In most cases it was extremely difficult to understand the access decision, why exceptions applied, what factors were considered in the course of coming to a decision, and even generally what transpired. In most of the files that were reviewed there was little or no evidence to conclude that where applicable, any limits to the exception and the exercise of discretion were routinely considered.
- Adequacy of records preparation varied for different reasons but was generally weak for all four public bodies. Common weaknesses included no copies of the severed

records in the FIPPA file or where severed records were housed in the FIPPA file, the exceptions to withhold were not cited beside the excepted information.

- Section 12 compliance was the strongest category overall but still needs improvement in order to achieve compliance with the Act. A common weakness for non-compliance was not providing "reasons" pursuant to subclause 12(1)(c)(ii).

DETAILS

OVERALL PERFORMANCE AVERAGES OF EACH PUBLIC BODY

- WCB - 100%
- Justice - 72%
- U of M - 59%
- Hydro - 41%
- IEM - 36 %

Average 62%

COMPONENT CATEGORY AVERAGES

- Compliance with section 12 - an average of 77% of all the files reviewed were compliant
- Compliance with time requirements - an average of 65% of all the files reviewed were compliant
- Adequacy of records preparation - an average of 62 % of all the files reviewed were adequate
- Adequacy of the contents of the FIPPA file - an average of 43% of all the files reviewed were adequate

Average 62%

COMPLIANCE WITH SECTION 12

What is Required

Section 12 of FIPPA sets out the mandatory elements that are required in a response to an applicant.

What was Assessed

In assessing compliance for the audit, if one or more required element was missing from the response letter, it was determined to be not compliant.



What We Found

- ◆ WCB had 100% compliance with section 12
- ◆ IEM had 90% compliance with section 12
- ◆ U of M had 86% compliance with section 12
- ◆ Justice had 64% compliance with section 12
- ◆ Hydro had 46% compliance with section 12

Average 77%

COMPLIANCE WITH TIME REQUIREMENTS

What is Required

Compliance with the time frames set out in FIPPA is required.

For a request to be processed within the time limit of 30 calendar days, *The Guideline on Time Frames for Processing a FIPPA Request* (in Appendix A) has been devised. The Guideline uses working days, of which there are on average 20 per month, as the average number of days in which to complete the processing of a request. As some requests are more complex than others, any guideline adopted would need to be flexible, including situations where an extension of the time limit is permitted.

For a guideline on time frames to be effective, full cooperation is needed from all staff who may be involved in processing a request, regardless of position in the organization. All staff involved in processing a request have a role and a responsibility to ensure that timelines are met. Any weak link, especially in terms of missing deadlines, will delay the process and may lead to complaints. This in turn will then require the Coordinator to expend time in responding to Manitoba Ombudsman inquiries. Ultimately, the applicant could have to wait longer for a response and new access requests coming in will probably be delayed.

What was Assessed

If the response from the public body was sent to the applicant within the time limits required by FIPPA, (taking into account any extensions taken or fee estimates), the response was determined to be compliant.

What We Found

- ◆ WCB had 100% compliance with time requirements
- ◆ Justice had 98% compliance with time requirements
- ◆ U of M had 79% compliance with time requirements
- ◆ IEM had 30% compliance with time requirements

- ◆ Hydro had 18% compliance with time requirements

Average 65%

ADEQUACY OF RECORDS PREPARATION

What is Expected

When access to part of the records is refused, the FIPPA file should contain a copy of the severed and unsevered records. If there is a large volume of records and they need to be stored outside of the FIPPA file, a note should be placed in the file indicating where the records are located. A complete package of severed and unsevered records should exist regardless of location, but the location must be known to staff who have an authorized need to use the FIPPA file.

Where information has been severed, the applicable section of FIPPA should be cited beside the passage that is being withheld. When information is withheld in whole, if all the exceptions apply to each word, then the exceptions can be noted on the first page. If not, then the exceptions should be noted beside the information to which they apply. It should be clear to anyone using the file, what was released to the applicant.

There should be a copy of the exact package that the applicant received attached to the copy of the response letter. If information was severed there should be copy of the severed information with the exceptions fully cited and noted beside the excepted information kept in the FIPPA file.

What was Assessed

Although responsive records do form part of the basic contents of a FIPPA file, the audit assessed the adequacy of records preparation separately. This is because properly prepared records are an indicator that a public body has fulfilled its obligation to conduct a line-by-line review of each record to determine whether exceptions apply.

In terms of assessing adequacy of records preparation, if records existed and the severed records were in the FIPPA file with the exceptions fully cited and noted where they applied, the records preparation was determined to be adequate. This standard will change in 2011 (and for the purposes of the 2011 follow-up audits) when adequacy will also include having a file copy of the unsevered records.

What We Found

- ◆ WCB's records were adequately prepared in 100% of its files
- ◆ Justice's records were adequately prepared in 76% of its files
- ◆ Hydro's records were adequately prepared in 69% of its files

- ◆ U of M's records were adequately prepared in 50% of its files
- ◆ IEM's records were adequately prepared in 13% of its files

Average 62%

ADEQUACY OF THE CONTENTS OF THE FIPPA FILE

What is Expected

The content of the FIPPA file is critically important because it is the public body's permanent corporate record and memory of the actions and decisions that made up the processing of the request. Thorough documentation during the decision-making process is essential to keep track of how, why and by whom decisions were made.

It should be clear why the access decision was made, who was involved in the decision and their contribution, why an exception applies, and where applicable, the consideration of any limits to the exception and the exercise of discretion. It is also important to document the search that was undertaken especially where the decision is that records do not exist or cannot be located.

Under FIPPA, the processing of an access request occurs over the course of up to 30 days (or 60 days if an extension is taken under FIPPA), often incrementally, in the midst of doing other work. During the decision-making process, other employees, third parties, public bodies or trustees may be consulted. Documenting this contact and the determinations made at the time can help to keep track of the decisions and assist in explaining the basis for decisions at a later time.

In our Practice Note, *Documenting Access Decisions*, we underscore the particular importance of having well-documented decisions within a FIPPA file as it enables a public body to properly:

- ◆ support the basis for access decisions internally;
- ◆ explain the basis for decisions to an applicant;
- ◆ provide information to support those decisions when responding to complaints being investigated by Manitoba Ombudsman;
- ◆ prepare for a review by the Information and Privacy Adjudicator if requested by the Ombudsman;
- ◆ prepare evidence for court if an appeal of a refusal of access decision is made by the applicant;
- ◆ complete reports under FIPPA for Manitoba Culture, Heritage and Tourism; and,

- ◆ maintain the access request file so that any absences by the Coordinator or other key staff, will not affect any action that needs to be taken.

In our view, adequacy of the contents of the FIPPA file can be achieved by adopting the guideline, *The Standard Contents of a FIPPA File* (see Appendix B).

What was Assessed

In terms of assessing the adequacy of the FIPPA file contents for the audit, if a file contained sufficient information and documentation to explain, support, or substantiate each aspect of the access decision, the file documentation was determined to be adequate.

What We Found

- ◆ WCB had adequate documentation in 100% of its files
- ◆ Justice had adequate documentation in 50% of its files
- ◆ Hydro had adequate documentation in 32% of its files
- ◆ U of M had adequate documentation in 21% of its files
- ◆ IEM had adequate documentation in 10% of its files

Average 43%

KEY FINDINGS FOR EACH PUBLIC BODY

Workers Compensation Board

- ◆ Compliance with Time Requirements - 100% of responses were completed within required time frames.
- ◆ Compliance with Section 12 - 100% of responses were compliant with section 12.
- ◆ Adequacy of the Contents of the FIPPA File - 100% of the files had adequate contents/documentation.
- ◆ Adequacy of Records Preparation - 100% of the files had adequate records preparation.

Average 100%

Strengths

The standard contents of each file reflected a thorough, thoughtful and well-documented decision-making process. The documentation was precise and comprehensive. Consultations and discussions, including notes of telephone conversations, were documented in detail. Emails and attachments were printed and placed in the file as were any related faxes. All incoming and outgoing correspondence was copied and placed in the file. Searches for records were documented. Draft documents were stamped "Draft". The files were chronologically organized.

Compliance with time requirements was perfect, with more than half of the requests completed within 21 days or fewer.

All the response letters to applicants that were reviewed were section 12 compliant and often contained detailed explanations about the access decision, including explanations about why records do not exist. In some instances where records did not exist, in addition to providing an explanation about why records did not exist, related information was provided.

Records preparation was excellent. Copies of the both the severed and unsevered responsive records were housed in the FIPPA file. The severed copies had the exceptions noted where the exceptions were being applied.

No recommendations were made to WCB.

Justice

- ◆ Compliance with Time Requirements - 98% of responses were completed within required time frames.
- ◆ Adequacy of Records Preparation - 76% of the files had adequate records preparation.
- ◆ Compliance with Section 12 - 64% of responses were compliant with section 12.
- ◆ Adequacy of the Contents of the FIPPA File - 50% of the files had adequate contents/documentation.

Average 72%

Strengths

The department's compliance with the time requirements is excellent. All but one FIPPA request was responded to within 30 days (that response was one day late). This is an outstanding achievement particularly in the context of the high volume of FIPPA applications received by the department in 2009 and in the context of the complexity of the applications received.

The format of the response letters is good and often an extensive explanation is provided where a record does not exist or cannot be located. There is an effort to identify relevant information and assist applicants wherever possible.

Many positive examples of good customer service were observed:

- ◆ There are numerous situations where the department may not have had responsive records but still provided related information that might be of assistance to the applicant;
- ◆ There are many instances where extensive explanations are provided about the information that was requested and how it is kept;
- ◆ In some situations contact references are provided for the applicant to pursue additional information (eg. statistical information) that the department does not hold;
- ◆ When the records requested are publicly available or not subject to the Act, the department often compiles and provides the records to applicants; and,
- ◆ There is good communication and contact with applicants, especially for requests for Corrections records.

Weaknesses

Records preparation, section 12 compliance, and the adequacy of the contents of the FIPPA files were identified as weaknesses.

The following recommendations were made to Justice to address the weaknesses that were identified through the audit:

Recommendation # 1

It is recommended that Justice keep a copy of the severed and unsevered records in the central FIPPA file.

Recommendation # 2

It is recommended that Justice comply with the required contents of a response letter under section 12 of FIPPA for each request.

Recommendation # 3

It is recommended that effective upon notifying the Ombudsman of the acceptance of this recommendation, that Justice adopt the guideline, "The Standard Contents of a FIPPA File" as its standard for FIPPA file documentation.

Recommendation # 4

It is recommended that Justice ensure that staff who are involved in the processing of a FIPPA request include the Coordinator in the email distribution so that all emails and attachments are printed and placed in the central FIPPA file.

Justice accepted the recommendations.

University of Manitoba

- Compliance with Section 12 - 86% of responses were compliant with section 12.
- Compliance with Time Requirements - 79% of responses were completed within required time frames.
- Adequacy of Records Preparation - 50% of the files had adequate records preparation.
- Adequacy of the Contents of the FIPPA File - 21% of the files had adequate contents/documentation.

Average 59%

Strengths

Based on documentation that was reviewed in each file, it appears that U of M's effort to assist applicants is genuine and positive. There are instances where FIPPA staff communicated extensively with applicants to resolve issues and satisfy requests. Efforts are routinely made to clarify requests. Often there is prompt and very courteous communication with the applicant.

Compliance with the requirements of a response under section 12 is very good at 86%, but a recommendation has been made to ensure 100% compliance as required by the Act. The response letters usually provide helpful information where a record does not exist or cannot be located, and U of M tries to provide information that is related to the request even if the information may be not perfectly responsive, but may be useful to the applicant.

Weaknesses

Timeliness, records preparation, and the adequacy of the contents of the FIPPA files were identified as weaknesses.

The following recommendations were made to U of M to address the weaknesses that were identified through the audit:

Recommendation # 1

It is recommended that U of M ensure that all responses are compliant with section 12.

Recommendation # 2

It is recommended that U of M comply with the time requirements of the Act.

Recommendation # 3

It is recommended that effective upon notifying the Ombudsman of the acceptance of this recommendation, that U of M adopt "The Guideline on Time Frames for Processing a FIPPA Request" to facilitate compliance with time requirements of the Act.

Recommendation # 4

It is recommended that U of M conduct a line-by-line review for each record that is reviewed in response to an Application of Access.

Recommendation # 5

It is recommended that when information is withheld, that the applicable exceptions are noted on the FIPPA file copy of the record beside the information that is being withheld.

Recommendation # 6

It is recommended that effective upon notifying the Ombudsman of the acceptance of this recommendation, that U of M adopt the guideline, "The Standard Contents of a FIPPA File" as its standard for FIPPA file documentation.

U of M accepted the recommendations.

HYDRO

- Adequacy of Records Preparation - 69% of the files had adequate records preparation.
- Compliance with Section 12 - 46% of responses were compliant with section 12.
- Adequacy of the Contents of the FIPPA File - 32% of the files had adequate contents/documentation.
- Compliance with Time Requirements - 18% of responses were completed within required time frames.

Average 41%

Strengths

The review of the response letters under section 12 of FIPPA indicated that Hydro's efforts to provide information that would be of assistance to applicants are positive. For example, extensive explanations are often offered as to why a record does not exist and in other situations, explanatory and contextual information is provided even though the information may not have been perfectly responsive to the request.

Weaknesses

The adequacy of records preparation, compliance with section 12, the format of the response letters, the adequacy of the contents of the FIPPA files, and timeliness were identified as weaknesses.

The following recommendations were made to Hydro to address the weaknesses that were identified through the audit:

Recommendation # 1

It is recommended that Hydro ensure that non-voluminous severed and unsevered records are kept in the FIPPA file.

Recommendation # 2

It is recommended that for each request, Hydro comply with the required contents of a response letter under section 12 of FIPPA.

Recommendation # 3

It is recommended that Hydro include in all of its response letters, the Hydro FIPPA file number and the wording of the applicant's request.

Recommendation # 4

It is recommended that effective upon notifying the Ombudsman of the acceptance of this recommendation, that Hydro adopt the guideline, "The Standard Contents of a FIPPA File" as its standard for FIPPA file documentation.



Recommendation # 5

It is recommended that Hydro comply with the time requirements of the Act.

Recommendation # 6

It is recommended that effective upon notifying the Ombudsman of the acceptance of this recommendation, that Hydro adopt "The Guideline on Time Frames for Processing a FIPPA Request" to facilitate compliance with time requirements of the Act.

Recommendation # 7

It is recommended that Hydro advise the Ombudsman of actions that will be taken to ensure compliance with the time frames required by the Act.

Hydro accepted the recommendations. Concerning Recommendation # 7, Hydro advised the Ombudsman of reasonable actions that will be taken to comply with this recommendation.

INNOVATION, ENERGY AND MINES

- Compliance with Section 12 - 90% of responses were compliant with section 12.
- Compliance with Time Requirements - 30% of responses were completed within required time frames.
- Adequacy of Records Preparation - 13% of the files had adequate records preparation.
- Adequacy of the Contents of the FIPPA File - 10% of the files had adequate contents/documentation.

Average 36%

Strengths

Section 12 compliance is very good as 90% of the responses reviewed were compliant. The response letters provide helpful information and reasons, and thorough explanations are typically given about why access is being refused. Although section 12 compliance is very good, a recommendation was made to ensure 100% compliance as required by the Act.

Based on documentation that was reviewed in each file, it appears that generally, the department's efforts to assist applicants are very good. There were instances where the department acted quickly to transfer a portion of a request to another public body, made inquiries about records with another department, and communicated extensively with applicants to resolve issues and satisfy requests.

The Access and Privacy Officer and the Access and Privacy Coordinator provide back-up for each other during absences so that there are no absence-related delays in the processing of requests.

Succession planning for staff who are involved in FIPPA is acknowledged in the department as being important and efforts seem to be underway to plan for the future.

The department is interested in finding ongoing opportunities to actively release information via its website to reduce reliance on FIPPA.

Weaknesses

Timeliness, records preparation, and the adequacy of the contents of the FIPPA files were identified as weaknesses.

The following recommendations were made to IEM to strengthen the weaknesses that were identified through the audit:

Recommendation # 1

It is recommended that IEM ensure that all responses are compliant with section 12.

Recommendation # 2

It is recommended that IEM comply with the time requirements of the Act.

Recommendation # 3

It is recommended that effective upon notifying the Ombudsman of the acceptance of this recommendation, that IEM adopt "The Guideline on Time Frames for Processing a FIPPA Request" to facilitate compliance with time requirements of the Act.

Recommendation # 4

It is recommended that IEM advise the Ombudsman of actions that will be taken to ensure compliance with the time frames required by the Act.

Recommendation # 5

It is recommended that IEM conduct a line-by-line review of each record responsive to an Application for Access.

Recommendation # 6

It is recommended that IEM ensure that when a portion of information is withheld from a record, that the applicable exceptions are fully cited on the FIPPA file copy of the record beside the information that is being withheld.

Recommendation # 7

It is recommended that effective upon notifying the Ombudsman of the acceptance of this recommendation, that IEM adopt the guideline, "The Standard Contents of a FIPPA File" as its standard for FIPPA file documentation.

IEM accepted the recommendations. Concerning Recommendation # 4, IEM advised the Ombudsman of reasonable actions that will be taken to comply with this recommendation.

OMBUDSMAN'S COMMENTS ON RESPONSES RECEIVED FROM THE AUDITED PUBLIC BODIES

Feedback from some public bodies about recommendations made to them indicated concern about the implications of paper use when they are striving for and moving towards paperless environments. This is a fair comment. In general terms my view is that a public body must maintain adequate documentation to support its access decision and be prepared to provide my office with printed documentation when requested either for an investigation or for an audit. If a public body can comply with recommendations I have made by maintaining a FIPPA file that is readily accessible to authorized users that is composed of a mix of paper and electronic documents (or all electronic documents), and can be produced in paper form and provided to my office upon request, then a paper/electronic or solely electronic FIPPA file would be satisfactory. The *Guideline on Time Frames for Processing a FIPPA Request* in Appendix A and *The Standard Contents of a FIPPA File* in Appendix B have been modified (from the original versions that were provided to the public bodies) to address the concern raised.

Where recommendations were made, I asked the public bodies to indicate in the responses to me whether or not the recommendations are accepted and would be complied with. Clarification in varying degrees was required with the public bodies as we could not definitively determine from their responses if the recommendations had been accepted. Beginning next year, where recommendations are made to a public body we will be providing a form to be completed and returned to my office. The form will require the public body to indicate if it accepts or does not accept the recommendation(s) made.



APPENDIX A

Guideline on Time Frames for Processing a FIPPA Request

Time Frames (Working Days)	Guidelines
Day 1 - Day 2	<ul style="list-style-type: none"> ➤ the request is received and reviewed ➤ the applicant is contacted as necessary ➤ the request is dated/date stamped ➤ the request is numbered ➤ the due date is calculated ➤ the request is logged in to the electronic tracking system ➤ a FIPPA file is set up (paper/electronic) ➤ the Manitoba Culture, Heritage and Tourism FIPPA reporting form is completed and faxed (if required) ➤ an acknowledgement letter is sent to the applicant ➤ a notification email is sent to the area that would likely have the responsive records along with a date by which the responsive records are due to the Coordinator/Officer
Day 3 - Day 7	<ul style="list-style-type: none"> ➤ the records search is undertaken ➤ by the end of day 7, the responsive records are provided to the Coordinator/Officer with the information considered harmful to release marked and pages tagged with an explanation of the harm
Day 8 - Day 10	<ul style="list-style-type: none"> ➤ a preliminary assessment of the responsive records is done ➤ the pages are numbered if necessary ➤ copies are made as needed ➤ determine if time extension is warranted ➤ determine if third parties need to be notified ➤ consult with staff as necessary ➤ determine if a fee estimate is required and if so, prepare it and send to applicant
Day 11	<ul style="list-style-type: none"> ➤ create and complete an index of the records that includes the FIPPA file number, a description of the type of record, the date of each record, the number of pages, the possible exceptions that might be applicable to part or to all of the records, and any comments
Day 12 - Day 16	<ul style="list-style-type: none"> ➤ conduct a line-by-line review of the records ➤ consult with staff as necessary ➤ consult with third parties as necessary ➤ obtain a legal opinion or comments as necessary ➤ make copies as necessary ➤ sever records if necessary and note the exceptions on the record ➤ note the exceptions and the reasons for their application on the index of the records ➤ prepare the draft response to the applicant
Day 17 - Day 18	<ul style="list-style-type: none"> ➤ final consultations and discussions within the public body, as necessary ➤ at the end of day 18, all decisions are finalized
Day 19 - Day 20	<ul style="list-style-type: none"> ➤ the response is finalized and sent out to the applicant

APPENDIX B

The Standard Contents of a FIPPA File

- the assigned FIPPA file number;
- a tracking document that tracks the date with the actions taken on the file;
- the Application for Access and the date it was received;
- all correspondence and communications, including emails, faxes sent (with transmission reports and covering sheets) and faxes received, that are related to the file;
- notes with dates of the substance of consultations (emails and attachments, faxes, telephone conversations, meetings) with the applicant, third parties, public body staff, another public body's staff, and legal counsel;
- legal advice and legal opinions, if applicable;
- if fees applied, notes about how the fees were calculated including the activities for which a fee was charged, how much time was estimated for each chargeable activity, the basis for deciding that the amounts of time are reasonable in relation to the request, and, the amount of the fee;
- if an extension was taken, notes about why a specific provision under section 15 applies;
- notes about the search for the records indicating the locations searched, especially where the conclusion is that records do not exist or cannot be located;
- notes of why and how each exception applies and who made the decision;
- where applicable, notes of the consideration given to any limits to the exception (often identified as exceptions to the exception);
- for discretionary exceptions, notes about the reasons why the choice was made to not release;
- a copy of the records, and if information is withheld, a copy of the severed records with the applicable exceptions placed beside the withheld information, and the unsevered records;
- a copy of the response letter to the applicant; and,
- any correspondence, notes and documents relating to a complaint to the Ombudsman.