

MANITOBA OMBUDSMAN

2011 Access Practices Assessment
of The City of Winnipeg

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

February 2012

TABLE OF CONTENTS

ACTING OMBUDSMAN'S MESSAGE	2
BACKGROUND	4
PURPOSE OF THE AUDIT	4
AUTHORITY TO CONDUCT THE AUDIT	4
THE AUDIT PROCESS	5
OBSERVATIONS AND FINDINGS	7
GENERAL OBSERVATIONS	7
GENERAL FINDINGS	11
KEY FINDINGS FOR EACH DEPARTMENT	17
ASSESSMENT AND TAXATION	17
CAO'S OFFICE	18
CITY CLERK'S DEPARTMENT	19
COMMUNITY SERVICES	20
CORPORATE SUPPORT SERVICES	21
FIRE PARAMEDIC SERVICE	23
MAYOR'S OFFICE	24
PLANNING, PROPERTY AND DEVELOPMENT	25
PUBLIC WORKS	26
TRANSIT	27
WATER AND WASTE	28
RECOMMENDATIONS	30
APPENDIX A	33
APPENDIX B	34



ACTING OMBUDSMAN'S MESSAGE

In 2010, we began reporting publicly about the results of audits conducted under our FIPPA Access Practices Assessment initiative. In 2011 under this same initiative, we audited the access practices of the City of Winnipeg.

The purpose of the audit is to examine a public body's diligence in processing Applications for Access 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. The audit does not assess the correctness of the access decision.

Responding to an Application for Access can be a complex process involving multiple staff, voluminous records, and a series of decisions. To ensure an efficient, thorough, and accountable access decision for each applicant, the assessment focuses on and examines four key components in the public body's processing of a FIPPA application. These four components are: (1) compliance with the requirements of a response to an applicant as set out in the Act under section 12; (2) compliance with time requirements of the Act; (3) adequacy of records preparation; and, (4) adequacy of the contents of the FIPPA file. The requirements concerning section 12 and timeliness, as well as the expectations for adequacy concerning records preparation and contents of the FIPPA file are set out in the *General Findings* section of this report.

The findings of the 2011 audit on the access practices of the City of Winnipeg indicate a range of strengths and weaknesses across departments. All departments are outstanding performers in some key component categories. However, there are pockets of weaknesses where improvements are needed. As a whole, the City's overall performance of 79% suggests that some modifications to its access practices are necessary.

Twenty-one recommendations were made to the City to improve its access practices. All recommendations have been accepted. As well as accepting the recommendations, the City has also advised the Ombudsman of its intention to address all of the suggestions we made in relation to various systemic matters that came to light during the audit.

Apart from some weaknesses related to the four key components, on an organization-wide level the audit identified systemic matters that seem to flow from the City's FIPPA structure. As such, there may be benefit for the City to review its FIPPA structure and consider a scheme that is centrally-managed (in addition to central intake of applications), led, and executed at the corporate level. This type of scheme could enhance the City's delivery of FIPPA services to the public as it would embed stronger leadership and executive-level support, both of which are key factors for a robust FIPPA program.

A centrally-led and managed scheme may have potential to more globally improve key component weaknesses identified by the audit and may also provide an opportunity to cohesively address the following systemic matters that emerged during the audit process:



- FIPPA orientation, on-going training, resources and supports seem to be weak and need to be more fully developed.
- Improvements to the information on the City's website, particularly on the home page, about FIPPA, and about procedures for making informal requests and formal applications under FIPPA would enhance service to the public, as would publicly posting a FIPPA Disclosure Log of requests that have been completed (with outcomes or dispositions of the access decision).
- Succession planning for FIPPA Coordinator positions should be more widely undertaken to plan for the future.

Where weaknesses have been identified, they can be converted to strengths through fairly modest changes in processes. To assist public bodies in modifying their processes to improve their access practices, we devised two guides in 2010. These guides, a *Guideline on Time Frames for Processing a FIPPA Request* and *The Standard Contents of a FIPPA File* are found in Appendix A and B respectively. Both are referenced in the body of this report and *The Standard Contents of a FIPPA File* is also referenced in some of the recommendations.

Looking ahead, it is hoped that where the need for improvements are indicated, this audit of the City's access practices will contribute positively to full compliance with the requirements of a response letter under section 12, standardized FIPPA file documentation and adequate records preparation, and timely responses.

We gratefully acknowledge the excellent cooperation and assistance provided by everyone who participated in the audit, especially all of the FIPPA Coordinators who gave generously of their time and insights.

Mel Holley
Acting Manitoba Ombudsman

BACKGROUND

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 applications 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.

This examination and assessment 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 relevant 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.

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

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 April 2011, the Ombudsman formally notified the City that an audit of its FIPPA access practices would be undertaken. Thereafter, the City Clerk notified departments by email about the audit and arrangements were made to set up the process. The audit was conducted on a department-by-department basis in May and June 2011.

There are 14 departments in the City that have FIPPA responsibilities ("departments" includes the offices of the Chief Administrative Officer and Mayor, and special operating agencies). The Winnipeg Parking Authority and the City's Audit department did not have files to be audited so they were not included. Due to time constraints, the Winnipeg Police Service (WPS) was not included; the audit of the WPS and release of the audit report will occur in 2012. Therefore 11 departments were audited. We note that one department, Corporate Support Services, also has FIPPA responsibilities for City Legal Services and Finance.

Prior to assessing the files in each department, the audit process was reviewed with FIPPA staff. During the audit, staff were also interviewed to gain their perspectives about the processing of requests for their respective departments and their views on the City's FIPPA structure.

The audit reviewed and assessed the 150 FIPPA files that were completed in 2010 where the access decision was to refuse access to records in full or in part, or where records do not exist or cannot be located. The number of files that were subject to the audit varied between departments. As one would expect, it was often the case that lower volumes of files resulted in fewer observations.

Verbal feedback was provided to each department after the audit was completed. The feedback provided the general findings of the audit through the perspective of the strengths and weaknesses that were observed in examining the contents of the FIPPA files. Other observations or suggestions may also have been provided in the feedback meetings along with printed materials such as our Practice Notes or specific sections from the *FIPPA Resource Manual* produced by Manitoba Culture, Heritage and Tourism.

An overview of our general observations and findings was communicated to the Clerk, the CAO and the Mayor's Office in early December and then the City received our audit report with recommendations. All recommendations have been accepted.

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

As recommendations were made to the City, it will be subject to a follow-up audit in 2012. We anticipate that the follow-up audit will occur in July-August 2012. The follow-up audit will reassess the City's FIPPA access practices by reviewing FIPPA files that were closed between

January 1, 2012 and June 30, 2012 in relation to recommendations that were made in 2011. If a recommendation is made for:

- Compliance with section 12 - the follow-up audit will assess each element that is required under section 12 of FIPPA;
- Compliance with time requirements - the follow-up audit will assess timeliness in relation to the time requirements of FIPPA (See Appendix A for suggested time frames and guidelines);
- Adequacy of records preparation - the follow-up audit will review the FIPPA file to ensure that, where responsive records have been located, the file contains a copy of the unsevered records and a copy of the severed records, with the applicable exceptions fully cited and noted beside the withheld information; and,
- Adequacy of the contents of a FIPPA file - the follow-up audit will assess the contents of the FIPPA files in relation to the guide, *The Standard Contents of a FIPPA File* (See Appendix B).

OBSERVATIONS AND FINDINGS

GENERAL OBSERVATIONS

Staff

We observed a concerted and very positive effort by staff to assist and be of service to applicants despite any weaknesses in the process that were identified through the audit.

Staff often communicate extensively with applicants to constructively clarify and resolve issues. FIPPA staff as well as other City staff routinely go beyond the requirements of the Act to assist applicants in obtaining the information they are seeking and regularly provide related information or referral information if actual records do not exist despite the extra time and effort this may take. This occurs in an environment where FIPPA is one of many job responsibilities and time to respond to requests competes with other priorities, where requests are increasingly complex, and where the volume of requests can be high, and in some departments, escalating, without a corresponding increase in resources.

FIPPA Structure

The initial processing steps of the Applications for Access are efficient. The applications are centrally received at the City Clerk's Department. The City Clerk's Department then determines the department to which the application should be sent for response. Usually within 24 hours of receipt at the City, the application and a standard covering letter from the Clerk stating the due date and the required contents of the response according to section 12 of FIPPA, are sent electronically to the department for a response. This process generally works well but there were situations where initially, processing time was lost because it was unclear or unknown where in the City the records might reside. This may or may not be related to records management.

After the FIPPA applications are received centrally, the processing is decentralized to departments. The decentralized processing and decision-making would seem to flow from the structure constituted by the City's By-Law 7272/98 - *A By-law of the City of Winnipeg to designate persons pursuant to The Freedom of Information and Protection of Privacy Act*. A designation is required under Section 80 of FIPPA which states:

Designation of head by local public body

80 A local public body shall, by by-law or resolution, designate a person or group of persons as the head of the local public body for the purposes of this Act.

The City's By-Law 7272/98 establishes the following structure: the director of each department is designated as the head of the local public body for the City for their department for the purposes of FIPPA; the CAO, City Clerk, Mayor's Chief of Staff and the City Auditor are designated as the head for their administrative units for the purposes of the Act; and, the City Clerk is appointed as the access and privacy coordinator. The authority to approve and sign responses to Applications for Access is delegated to specific positions within departments pursuant to section 81 of FIPPA.

We note that across Manitoba, a common approach among local public bodies is to designate one person within the organization to be the head for the purposes of section 80, for example, the Reeve, the City Manager, the Mayor, or the CAO. However, some local public bodies have designated "a group of persons" such as their council as the head or their council *and* Mayor as the head.

The City's model prescribes multiple persons as heads. Effectively, this means that departments carry out their FIPPA responsibilities independently.

While there are advantages and disadvantages to any model, some Coordinators suggested that a model with a central dedicated "go-to" FIPPA position (or positions) with full FIPPA responsibilities, has potential to be a more effective scheme or structure.

A centralized corporate level FIPPA function could also alleviate some of the perceived weaknesses of the current model, described by some Coordinators as always requiring them to "get up to speed" and "reinvent the wheel". In general terms, some FIPPA Coordinators felt that centralized corporate-level decision-making, with support from Coordinators, would lend itself to improved service to the public and better compliance, and would engender corporate-level expertise, knowledge and leadership.

In our view, amalgamating FIPPA responsibilities within one location or unit at the corporate level is worth considering. A dedicated FIPPA unit could assume responsibility not only for day-to-day FIPPA matters, but also for training and resources and the development of policies. The unit could be structured to be aided and supported by Coordinators in terms of record searches and considerations related to the access decision.

Training and Resources

Training and resources are essential components of an effective and efficient FIPPA structure. Although the City has FIPPA programs in place and there have been some *ad hoc* information sharing sessions for Coordinators in the past, introducing different levels of ongoing training and easy access to electronic information resources would more effectively support the FIPPA work done by all staff, especially FIPPA Coordinators. Basic knowledge of FIPPA by all City staff and City Councillors and their staff is also an important foundation for an effective and efficient FIPPA structure.

To strengthen training and resources for the City, we suggest the following:

- create a more fully developed orientation/basic training for new hires who will have FIPPA responsibilities;
- encourage mentoring relationships within the FIPPA Coordinator group;
- canvass FIPPA Coordinators and other staff who are regularly involved with FIPPA matters to determine preferences for training and education, and deliver sessions to address the training and education needs identified by staff;
- an action plan to enhance and expand FIPPA awareness for staff and City Councillors and their staff;

- establish web-based FIPPA resources and links designed primarily for and by FIPPA Coordinators, such as an intranet page. A FIPPA Coordinator's email group and/or electronic forum may also be useful;
- designate someone to take charge of scheduling and arranging meetings for FIPPA Coordinators to discuss FIPPA matters, on a regular and frequent basis; and,
- explore options for staff training with the Information and Privacy Policy Secretariat at Manitoba Culture, Heritage and Tourism.

Website

Many files that were reviewed for the audit contained requests for publicly available records. To reduce the number of FIPPA requests for publicly available records and information, some minor modifications to the City's website, especially on the home page, would be helpful to make it clearer and easier for the public to find out how to get information on an informal basis rather than through the formal (and more time-consuming for the public and for the City) FIPPA process. Also, publicly posting a FIPPA Disclosure Log of requests that have been completed (with outcomes or dispositions of access decisions) would be a positive active disclosure initiative.

Miscellaneous Observations

- There were occurrences of the improper application of section 15 of the Act. Section 15 sets out the circumstances that permit a public body to extend the time limit for responding to an applicant. When a department is considering taking a 30-day extension under subsection 15(1), at least one of the circumstances listed in subsection 15(1) must be present. Also, when extending the time limit to respond to the applicant under section 15, subsection 15(2) requires that the applicant receives a letter addressing *(a) the reason for the extension; (b) when a response can be expected; and (c) that the applicant may make a complaint to the Ombudsman about the extension.*
- There were instances where response letters say "access is granted" or "access is granted in full" when some information had been severed. When information is severed (or records do not exist or cannot be located) and some information is released, the access decision is "granted in part". The instances of the response letters at issue explained that severing was undertaken but the response should clearly capture and indicate the decision for the applicant.
- We observed in some response letters the practice of citing exceptions to refuse theoretical records, for example by stating "even if records did exist and FIPPA applied". This practice should cease.
- Documentation was particularly weak where deliberations or actions occurred outside of email communications. Placing clear and dated memos or notes on the file about the highlights of meetings and telephone conversations, especially where a decision was made or critical information was provided, would improve the adequacy of the FIPPA file contents. The FIPPA file should exist as a stand-alone corporate memory without any reliance on any one individual's memory.

- Each Application for Access that is received requires a search, and if responsive records are located, a review of the responsive records. Where responsive records exist, each FIPPA file should contain the unsevered records, and if information is withheld, the severed records. If this is not practical because, for example, of the volume of the records or the record is a database, there should be a note in file explaining where either the severed or unsevered records are located and why they are not in the FIPPA file. Otherwise, the records in the file should be bundled and labeled as "severed" and "unsevered".

Observations on Findings

- Compliance with time requirements is the strongest category overall, with an average of 94%. Seven departments had 100% compliance, one department had 94% compliance and another had 96% compliance. Although there is room for improvement with two departments that scored 67% and 75%, the average of 94% is an excellent achievement.
- Adequacy of records preparation varied for different reasons, but is generally quite strong at 85%. This suggests that line-by-line reviews of responsive records are usually undertaken.
- The adequacy of the contents of the FIPPA file category is fairly strong at 74%, but there is wide variation on what constitutes the contents of the FIPPA file. As some requests and exceptions are more complicated than others, part of the variation could be related to type of record and exceptions relied upon.

Four departments scored 100% and one department scored 91% for adequacy of the contents of the FIPPA file, but weaknesses were identified for six departments. Concerning the six departments, many files that were reviewed did not contain sufficient and in some cases, any documentation to substantiate the access decision. In many cases it was difficult to understand the access decision, why exceptions applied, what factors were considered in the course of coming to a decision, and generally what transpired. Often there was little or no documented evidence to show, where applicable, that any limits to the exception and the exercise of discretion for a discretionary exceptions were routinely considered.

- Compliance with section 12 is the weakest category overall at 61%. A common weakness for non-compliance was not providing "reasons" and not citing a specific provision as required by subclause 12(1)(c)(ii). These are two distinct requirements of section 12.

The Clerk's transmittal email to departments provides a reminder of the required contents of a response letter to an applicant, yet nine departments were not wholly compliant. As copies of responses to applicants are provided to the Clerk's Department, we suggest that the Clerk's Department monitor compliance with section 12 and advise departments if they are not compliant and why they are not compliant.

GENERAL FINDINGS

OVERALL AVERAGE FOR THE CITY - 79% (150 FILES WERE REVIEWED)

AVERAGES - BY DEPARTMENT

- Assessment and Taxation - 65%
- CAO's Office - 44%
- City Clerk's - 84%
- Community Services - 92%
- Corporate Support Services (includes Finance and Legal Services) - 66%
- Fire Paramedic Service - 75%
- Mayor's Office - 75%
- Planning, Property and Development - 88%
- Public Works - 90%
- Transit - 100%
- Water and Waste - 89%

COMPONENT CATEGORY AVERAGES

A total of 21 recommendations across the four component categories were made to the City to address weaknesses identified in the audit.

- Compliance with section 12 - an average of 61% of the files reviewed were compliant (9 recommendations were made in this category).
- Compliance with time requirements - an average of 94% of the files reviewed were compliant (3 recommendations were made in this category).
- Adequacy of records preparation - an average of 85% of the files reviewed were adequate (3 recommendations were made in this category).
- Adequacy of the contents of the FIPPA file - an average of 74% of the files reviewed were adequate (6 recommendations were made in this category).

Average 79%

COMPLIANCE WITH SECTION 12

What is Required

Section 12 of FIPPA sets out the mandatory contents of a response to an applicant:

Contents of response

12(1) In a response under section 11, the head of the public body shall inform the applicant

- (a) whether access to the record or part of the record is granted or refused;*
- (b) if access to the record or part of the record is granted, where, when and how access will be given; and*
- (c) if access to the record or part of the record is refused,*
 - (i) in the case of a record that does not exist or cannot be located, that the record does not exist or cannot be located,*
 - (ii) in the case of a record that exists and can be located, the reasons for the refusal and the specific provision of this Act on which the refusal is based,*
 - (iii) of the title and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and*
 - (iv) that the applicant may make a complaint to the Ombudsman about the refusal.*

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

- Assessment and Taxation had 20% compliance with section 12
- CAO's Office had 33% compliance with section 12
- City Clerk's had 67% compliance with section 12
- Community Services had 84% compliance with section 12
- Corporate Support Services had 74% compliance with section 12
- Fire Paramedic Service had 0% compliance with section 12
- Mayor's Office had 50% compliance with section 12
- Planning, Property and Development had 88% compliance with section 12
- Public Works had 100% compliance with section 12
- Transit had 100% compliance with section 12
- Water and Waste had 56% compliance with section 12

Average 61%

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, we devised *The Guideline on Time Frames for Processing a FIPPA Request* (in Appendix A). The Guideline uses working days, of which there are about 20 per month, as the average number of days in which to complete the processing of a request. The Guideline also sets out the main steps involved in 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 City 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

- Assessment and Taxation had 100% compliance with time requirements
- CAO's Office had 100% compliance with time requirements
- City Clerk's had 67% compliance with time requirements
- Community Services had 94% compliance with time requirements
- Corporate Support Services had 96% compliance with time requirements
- Fire Paramedic Service had 100% compliance with time requirements
- Mayor's Office had 75% compliance with time requirements
- Planning, Property and Development had 100% compliance with time requirements
- Public Works had 100% compliance with time requirements
- Transit had 100% compliance with time requirements
- Water and Waste had 100% compliance with time requirements

Average 94%

ADEQUACY OF RECORDS PREPARATION

What is Expected

Each Application for Access should result in a search for responsive records and if responsive records are located, a line-by-line review should be undertaken.

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 or the records are necessarily held electronically, (for example, a database), 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 also be clear to anyone using the file, what was released to the applicant.

There should be a FIPPA file copy of the exact package that the applicant received attached to the FIPPA file 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.

Generally, in assessing adequacy of records preparation, if records existed and the severed and unsevered records were in the FIPPA file with the exceptions fully cited and noted where they applied, the records preparation was determined to be adequate.

What We Found

- Assessment and Taxation records were adequately prepared in 100% of its files
- CAO's Office records were adequately prepared in 25% of its files
- City Clerk's records were adequately prepared in 100% of its files
- Community Services records were adequately prepared in 100% of its files
- Corporate Support Services records were adequately prepared in 44% of its files
- Fire Paramedic Service records were adequately prepared in 100% of its files
- Mayor's Office records were adequately prepared in 100% of its files

- Planning, Property and Development records were adequately prepared in 100% of its files
- Public Works records were adequately prepared in 80% of its files
- Transit records - not applicable
- Water and Waste records were adequately prepared in 100% of its files

Average 85%

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 Application for Access. 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.

Ultimately, the FIPPA file should exist as a stand-alone corporate memory and there should not be any reliance on any one individual's memory.

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

- Assessment and Taxation had adequate documentation in 40% of its files
- CAO's Office had adequate documentation in 17% of its files
- City Clerk's had adequate documentation in 100% of its files
- Community Services had adequate documentation in 91% of its files
- Corporate Support Services had adequate documentation in 48% of its files
- Fire Paramedic Service had adequate documentation in 100% of its files
- Mayor's Office had adequate documentation in 75% of its files
- Planning, Property and Development had adequate documentation in 63% of its files
- Public Works had adequate documentation in 78% of its files
- Transit had adequate documentation in its file - 100%
- Water and Waste had adequate documentation in 100% of its files

Average 74%

KEY FINDINGS FOR EACH DEPARTMENT

Assessment and Taxation

5 files were reviewed

- Compliance with Section 12 - 20% of responses were compliant with section 12 (1 response was compliant; 4 responses were not compliant).
- Compliance with Time Requirements - 100% of responses were completed within the required time frames.
- Adequacy of Records Preparation - 100% of the files had adequate records preparation.
- Adequacy of the Contents of the FIPPA File - 40% of the files had adequate contents/documentation (2 files had adequate contents; 3 files had inadequate contents).

Average 65%

Strengths

Timeliness is excellent and records preparation is adequate.

Positive examples of good customer service were observed. The department tries to assist applicants, often by meeting with them, to determine how they may be of service even where there may not be responsive records but other information that could potentially be of interest/use to the applicant. There is evidence of the department following-up with applicants to provide additional information or explanations.

As a courtesy, a copy of the applicant's request is attached to the department's response letter.

Weaknesses

Compliance with section 12 of FIPPA and adequacy of the contents of the FIPPA files were identified as weaknesses.

The following recommendations were made to Assessment and Taxation to address the weaknesses that were identified through the audit:

Recommendation # 1

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

Recommendation # 2

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

CAO's Office

6 files were reviewed

- ◆ Compliance with Section 12 - 33% of responses were compliant with section 12 (2 responses were compliant; 4 responses were not compliant).
- ◆ Compliance with Time Requirements - 100% of responses were completed within the required time frames.
- ◆ Adequacy of Records Preparation - 25% of the files had adequate records preparation (of the 4 files that had responsive records, 1 file was adequate; 3 files were inadequate).
- ◆ Adequacy of the Contents of the FIPPA File - 17% of the files had adequate contents/documentation (1 file had adequate contents; 5 files had inadequate contents).

Average 44%

Strengths

Timeliness is excellent.

Searches for records seem thorough and diligent.

Weaknesses

Compliance with section 12 of FIPPA, adequacy of the contents of the FIPPA files, and adequacy of records preparation were identified as weaknesses.

The following recommendations were made to the CAO's Office to address the weaknesses that were identified through the audit:

Recommendation # 3

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

Recommendation # 4

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

Recommendation # 5

It is recommended that the CAO's Office conduct a line-by-line review of each record responsive to an Application for Access and ensure that when portions of information are withheld, that the exceptions to disclosure are fully cited on the file copy of the record adjacent to any withheld portions.

City Clerk's Department

3 files were reviewed

- Compliance with Section 12 - 67% of responses were compliant with section 12 (2 responses were compliant; 1 response was not compliant).
- Compliance with Time Requirements - 67% of responses were completed within the required time frames (2 responses were compliant; 1 response was not compliant).
- Adequacy of Records Preparation - 100% of the files had adequate records preparation.
- Adequacy of the Contents of the FIPPA File - 100% of the files had adequate contents/documentation.

Average 84%

Strengths

Although one response letter was not compliant, the response letters to applicants provide detailed explanations about the access decision. The Clerk's Department endeavours to provide applicants with as much information as possible and in a format that is user-friendly.

Records preparation and contents of the FIPPA file are adequate.

Weaknesses

Compliance with section 12 of FIPPA and timeliness were identified as weaknesses.

The following recommendations were made to the City Clerk's Department to address the weaknesses that were identified through the audit:

Recommendation # 6

It is recommended that the City Clerk's Department comply with the required contents of a response letter under section 12 of FIPPA, for each request.

Recommendation # 7

It is recommended that City Clerk's Department comply with the time requirements of the Act.

Community Services

32 files were reviewed

- ◆ Compliance with Section 12 - 84% of responses were compliant with section 12 (27 responses were compliant; 5 responses were not compliant).
- ◆ Compliance with Time Requirements - 94% of responses were completed within the required time frames (30 responses were compliant; 2 responses were not compliant).
- ◆ Adequacy of Records Preparation - 100% of the files had adequate records preparation.
- ◆ Adequacy of the Contents of the FIPPA File - 91% of the files had adequate contents/documentation (29 files had adequate contents; 3 files had inadequate contents). No recommendation will be made because the adequacy of the contents is over 90%.

Average 92%

Strengths

Although 100% compliance with time requirements is necessary, the department's timeliness is very good at 94% particularly in view of the volume of requests processed. We note that a large volume of requests received at the same time was responded to within 30 days and there was a concerted effort to release as much information as possible to the applicant.

Records preparation is excellent. In each file, the severed records had the applicable exception noted where the exception was being applied. In the files that were reviewed, there was evidence that a line-by-line review of each responsive record was consistently undertaken.

The physical contents of the FIPPA files are neatly and mostly chronologically organized. Emails and faxes are typically printed and placed in the file. The department is diligent about managing the correspondence - when it was sent, who it was sent to, how it was sent, and it is well-tracked by a pink sheet inside the front cover of the file folder. There are instances of constructive contact with the applicant to clarify or discuss something relative to the request.

The records searches seem very diligent and thorough.

As a courtesy to the applicant, response letters and records are often sent by courier.

Weaknesses

Compliance with section 12 of FIPPA and timeliness were identified as weaknesses.

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

Recommendation # 8

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

Recommendation # 9

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

Corporate Support Services

23 files were reviewed

- ◆ Compliance with Section 12 - 74% of responses were compliant with section 12 (17 responses were compliant; 6 responses were not compliant).
- ◆ Compliance with Time Requirements - 96% of responses were completed within the required time frames (22 responses were compliant; 1 response was not compliant as it was 1 day late).
- ◆ Adequacy of Records Preparation - 44% of the files had adequate records preparation (of the 18 files that had responsive records, 8 files were adequate; 10 files were inadequate).
- ◆ Adequacy of the Contents of the FIPPA File - 48% of the files had adequate contents/documentation (11 files had adequate contents; 12 files had inadequate contents).

Average 66%

Strengths

The information content of the response letters is excellent despite some weaknesses that were identified in relation to the requirement to cite specific provisions when responding to an applicant. Often extensive background and context information, website links, other options for obtaining the information or similar information are provided to applicants along with

detailed explanations. Effort is taken to explain policies. The reasons for refusals are expressed and explained in substantial detail, including why records do not exist. The response letters seem to reflect a very focused customer service effort aimed at giving applicants as much information as possible and to be of assistance wherever and however possible.

There seems to be constructive and often extensive communication with applicants.

Compliance with time requirements is almost perfect. One response was one day late.

Weaknesses

Compliance with section 12 of FIPPA, adequacy of the contents of the FIPPA files, and adequacy of records preparation were identified as weaknesses.

The following recommendations were made to Corporate Support Services to address the weaknesses that were identified through the audit:

Recommendation # 10

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

Recommendation # 11

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

Recommendation # 12

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

We note that although 100% compliance is required for timeliness, no recommendation is necessary for the one response that was one day late.

Fire Paramedic Service

50 files were reviewed

- Compliance with Section 12 - 0% of responses were compliant with section 12.
- Compliance with Time Requirements - 100% of responses were completed within required time frames.
- Adequacy of Records Preparation - 100% of the files had adequate records preparation.
- Adequacy of the Contents of the FIPPA File - 100% of the files had adequate contents/documentation.

Average 75%

Strengths

The department has an efficient and well-organized FIPPA process. The department's reports and documents are contained in a database that is easily searched and documents are quickly retrieved. When an access application is received in the department from the Clerk's department, processing begins immediately.

Compliance with time requirements is perfect, with 70% of the responses completed within 10 days or less.

Records preparation is excellent. In each file, the severed records had the applicable exception noted where the exception was being applied. In the files that were reviewed, there was evidence that a line-by-line review of each responsive record was consistently undertaken. The contents of the FIPPA files are organized chronologically. Emails and faxes are typically printed and placed in the file.

In some instances, positive effort was undertaken to provide contextual information or additional information to applicants due to extraordinary circumstances. Written communication in these instances was precise and compassionate. In other circumstances the department provided helpful referral and contact information to applicants.

Weaknesses

Compliance with section 12 of FIPPA was identified as a weakness.

The following recommendation was made to Winnipeg Fire Paramedic Service to address the weakness that was identified through the audit:

Recommendation # 13

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

Mayor's Office

4 files were reviewed

- ◆ Compliance with Section 12 - 50% of responses were compliant with section 12 (2 responses were compliant; 2 responses were not compliant).
- ◆ Compliance with Time Requirements - 75% of responses were completed within the required time frames (3 responses were compliant; 1 response was not compliant).
- ◆ Adequacy of Records Preparation - 100% of the files had adequate records preparation.
- ◆ Adequacy of the Contents of the FIPPA File - 75% of the files had adequate contents/documentation (3 files had adequate contents; 1 file had inadequate contents).

Average 75%

Strengths

The Mayor's Office endeavours to work with the public to informally provide as much information as possible outside of the formal FIPPA process. If an informal approach is not satisfactory to an individual, then the Mayor's office suggests that a FIPPA application be submitted. Providing information informally is an efficient way to satisfy public demand for certain types of records. It also suggests that FIPPA staff in the Mayor's Office are communicating constructively and working effectively with the public in trying to best meet their information needs.

Weaknesses

Compliance with section 12 of FIPPA, timeliness, and adequacy of the contents of the FIPPA files were identified as weaknesses.

The following recommendations were made to the Mayor's Office to address the weaknesses that were identified through the audit:

Recommendation # 14

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

Recommendation # 15

It is recommended that the Mayor's Office comply with the time requirements of the Act.

Recommendation # 16

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

Planning, Property and Development

8 files were reviewed

- ✦ Compliance with Section 12 - 88% of responses were compliant with section 12 (7 responses were compliant; 1 response was not compliant).
- ✦ Compliance with Time Requirements - 100% of responses were completed within the required time frames.
- ✦ Adequacy of Records Preparation - 100% of the files had adequate records preparation.
- ✦ Adequacy of the Contents of the FIPPA File - 63% of the files had adequate contents/documentation (5 files had adequate contents; 3 files had inadequate contents).

Average 88%

Strengths

Compliance with time requirements is excellent. Records preparation is adequate.

The content of response letters is very good. Often extensive information such as background, context, and website links is provided. There appears to be a very focused effort to give an applicant as much information and assistance as possible.

There is generally constructive contact and communication with applicants to clarify or discuss something relative to the request.

The records searches seem very diligent and thorough.

As a convenience to the applicant, the department attaches a copy of the Ombudsman complaint form to the response letter.

Weaknesses

Compliance with section 12 of FIPPA and adequacy of the contents of the FIPPA files were identified as weaknesses.

The following recommendations were made to Planning, Property and Development to address the weaknesses that were identified through the audit:

Recommendation # 17

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

Recommendation # 18

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

Public Works

9 files were reviewed

- Compliance with Section 12 - 100% of responses were compliant with section 12.
- Compliance with Time Requirements - 100% of responses were completed within required time frames.
- Adequacy of Records Preparation - 80% of the files had adequate records preparation (of the 5 files that had responsive records, 4 files were adequate; 1 file was inadequate).
- Adequacy of the Contents of the FIPPA File - 78% of the files had adequate contents/documentation (7 files had adequate contents; 2 files had inadequate contents).

Average 90%

Strengths

There is consistent evidence in the files that considerable effort is made to assist applicants.

The internal administrative set-up and the department-wide FIPPA process seem efficient and organized. More recently, the department has designed and put in place a "FIPPA Application Internal Tracking Form" for each file.

Response letters to applicants are exemplary and outstanding. The letters provide extensive information, context and background information, definitions, referrals, website links, and

substantial explanations about the nature of the records requested and the reasons for the refusal or why there are no records.

Compliance with time requirements is excellent.

Severed records in the files are marked with the exceptions fully cited beside the withheld information.

Weaknesses

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

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

Recommendation # 19

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

Recommendation # 20

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

Transit

1 file was reviewed

- Compliance with Section 12 - 100% compliance.
- Compliance with Time Requirements - 100% compliance.
- Adequacy of Records Preparation - The adequacy of records preparation was not assessed because there were no records to review; for the file that was reviewed, access was granted to all information that was requested except for part of the request where the access decision was that no records exist.
- Adequacy of the Contents of the FIPPA File - 100% adequacy.

Average 100%

Strengths

The response letter provides thorough and precise details about the information that the department had and did not have regarding the request. The department in fact located

additional records that were not formally part of the applicant's request, but were related to concerns that the applicant raised in discussion with department FIPPA staff.

Compliance with time requirements is excellent and contents of the FIPPA file are adequate.

Constructive contact to clarify the request with the applicant is in evidence. The department endeavoured to provide as much assistance and information as possible to the applicant.

Weaknesses

No weaknesses were identified. No recommendations were necessary.

Water and Waste

9 files were reviewed

- Compliance with Section 12 - 56% of responses were compliant with section 12 (5 responses were compliant; 4 responses were not compliant).
- Compliance with Time Requirements - 100% of responses were completed within the required time frames.
- Adequacy of Records Preparation - 100% of the files had adequate records preparation.
- Adequacy of the Contents of the FIPPA File - 100% of the files had adequate contents/documentation.

Average 89%

Strengths

Timeliness is excellent. Records preparation and contents of the FIPPA file are adequate.

There are multiple instances where extensive explanations and helpful information are provided to the applicant about the access decision, despite some weaknesses with section 12 compliance.

There are instances of constructive contact with the applicant to clarify or discuss something relative to the request. There is a definite focus on trying to provide the applicant with as much information and context to the information, as possible.

The records searches seem very diligent and thorough.

Weaknesses

Compliance with section 12 of FIPPA was identified as a weakness.

The following recommendation was made to Water and Waste to address the weakness that was identified through the audit:

Recommendation # 21

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

RECOMMENDATIONS

Recommendation # 1

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

Recommendation # 2

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

Recommendation # 3

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

Recommendation # 4

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

Recommendation # 5

It is recommended that the CAO's Office conduct a line-by-line review of each record responsive to an Application for Access and ensure that when portions of information are withheld, that the exceptions to disclosure are fully cited on the file copy of the record adjacent to any withheld portions.

Recommendation # 6

It is recommended that the City Clerk's Department comply with the required contents of a response letter under section 12 of FIPPA, for each request.

Recommendation # 7

It is recommended that City Clerk's Department comply with the time requirements of the Act.

Recommendation # 8

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

Recommendation # 9

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

Recommendation # 10

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

Recommendation # 11

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

Recommendation # 12

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

Recommendation # 13

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

Recommendation # 14

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

Recommendation # 15

It is recommended that the Mayor's Office comply with the time requirements of the Act.

Recommendation # 16

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

Recommendation # 17

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

Recommendation # 18

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

Recommendation # 19

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

Recommendation # 20

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

Recommendation # 21

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

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 or to a review by the Information and Privacy Adjudicator, if requested by the Ombudsman.