

# Manitoba OmbudsNews

Ombudsman

Access and Privacy Newsletter



## Manitoba Ombudsman Releases 2011 Annual Reports

In early June 2012, Manitoba Ombudsman released two annual reports for the 2011 calendar year - one under *The Freedom of Information and Protection of Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA), and the other under *The Ombudsman Act* and *The Public Interest Disclosure (Whistleblower Protection) Act* (PIDA).

Issuing two reports helps to profile the work done by each division of the office. The bilingual reports are distributed to more than 2000 individuals and organizations around the province and country. If you would like your own print copy, please call 204-982-9130 or 1-800-665-0531 (toll free in Manitoba), or email [ombudsman@ombudsman.mb.ca](mailto:ombudsman@ombudsman.mb.ca). The reports are also available on our website at [www.ombudsman.mb.ca](http://www.ombudsman.mb.ca).

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## FIPPA and PHIA report highlights:

- A case where Manitoba Public Insurance (MPI) initially declined to make records available for the Ombudsman's review during an investigation. The basis for MPI's position was that the records were subject to solicitor-client privilege. The Ombudsman disagreed. Read "Is there any record the Ombudsman cannot see?" on page 2.
- Under the Division's FIPPA Access Practices Assessment initiative, an assessment of the City of Winnipeg was conducted, as well as a reassessment of Manitoba Justice, Manitoba Hydro, the University of Manitoba, and Manitoba Innovation, Energy and Mines. The Division also conducted a follow-up assessment of the timeliness of Manitoba Public Insurance in meeting the mandatory requirements of FIPPA. See page 3.
- The Division continues to keep Manitobans informed about their access and privacy rights related to eChart Manitoba, Manitoba's electronic health record system that was launched in late 2010. See "Take charge of your information on eChart" on Page 3.
- Detailed statistics on page 4 show the disposition of the 453 access and privacy cases investigated in 2011 under parts 4 and 5 of FIPPA and PHIA.

>> <http://www.ombudsman.mb.ca/pdf/2011-APReport-eng.pdf>



## Ombudsman Act and PIDA report highlights:

- The Division investigated disclosures of wrongdoing under PIDA related to alleged gross mismanagement of public funds. As a result of our investigation, 3 recommendations were made to the government organization. Read "Disclosure of wrongdoing" on page 2.
- Numerous case studies on pages 1 to 3 highlight the wide variety of issues investigated by the Division under *The Ombudsman Act*. Included is a report on the conclusion of an issue that we first looked at over a decade ago. See "A long-standing issue: holding of youth under *The Intoxicated Persons Detention Act*" on page 1.
- The Ombudsman was able to assist an individual who was denied reimbursement for out-of-province medical expenses from Manitoba Health. See "Out-of-province health benefits" on page 2.
- As a result of a complaint from an individual who did not have an opportunity to appeal an Environment Act Licence because the minor alteration did not trigger the statutory appeal process, the Ombudsman took the view that appeal provisions in the Act are triggered by the issuance of a licence, and not by the nature of the alteration. However, based on the circumstances of the case we determined that it would not be appropriate to make a recommendation in favour of the complainant. See "Environmental Assessment and Licensing" on page 3.



>> <http://www.ombudsman.mb.ca/pdf/2011-OmbDivReport-eng.pdf>

## Winnipeg Police Service FIPPA Access Practices Assessment Audit Report

Our most recent audit under our FIPPA Access Practices Assessment initiative focused on the Winnipeg Police Service (WPS). The audit, conducted in early 2012, reviewed 101 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.



Kudos to the WPS who scored an overall performance of 97% in the four components audited, indicating that FIPPA applicants are very well-served. In addition to an overview of findings, the report provides details on the WPS's efficient, organized and thorough FIPPA process. The report is available on our website at:

<http://www.ombudsman.mb.ca/reports.htm>

## Making a Decision to Disregard FIPPA Access Requests

Amendments to section 13 of FIPPA, which came into effect on January 1, 2011, allow a public body to disregard an application for access under FIPPA in specific circumstances permitted by law. The amendment was designed to balance the right of access with the responsible exercise of that right.

In late 2011, we received a complaint about a public body's decision to disregard an access request. In this case, an applicant submitted 161 access applications to a municipality on one day. The municipality relied on certain clauses in subsection 13(1) of FIPPA to disregard the applicant's requests; a decision which prompted the complaint to our office.

We determined that 22 of the 161 applications were repetitious, and all 161 were systematic in nature. Responding to all 161 applications would have interfered unreasonably with the operations of the municipality. Accordingly, the Ombudsman concluded that the municipality's decision to disregard the requests was in fact authorized under clause 13(1)(b) of FIPPA.

The Ombudsman's investigation report regarding this case (2011-0520) contains a detailed analysis of the issue and findings. The report's conclusion on page 8 also offers guidance to other public bodies who may consider relying on section 13 of FIPPA to disregard access requests. Because of the importance of this investigation, the report has been posted on our website in its entirety.

### Definitions: incomprehensible, frivolous, vexatious, repetitious, systematic

Clause 13(1)(a) of FIPPA provides discretion for a public body to disregard a request that is incomprehensible, frivolous or vexatious. An **incomprehensible** request is one that cannot be understood. A **frivolous** request is one that is trivial or of little importance. **Vexatious** suggests malicious intent and includes requests that are made in bad faith or for a purpose other than obtaining access, such as harassment of a public body or to grind its operations to a halt.

The focus of clause 13(1)(b) is on the nature of the requests and the effect of those requests. In terms of the nature of the requests, a request that is **repetitious** is one that seeks the same information as requested previously. Requests may be of a **systematic** nature where they reflect a pattern of conduct that is regular or deliberate.

### Tips for users of the FIPPA process

Users of FIPPA can assist public bodies in the application for access process by:

- determining, before making a formal request, that the records they are seeking are not already available outside of FIPPA;
- providing as much direction and clarity as possible to enable a public body to search for records when completing an Application for Access;
- requesting records rather than posing questions;
- responding promptly when public bodies make inquiries for clarification or additional information;
- exercising reasonableness in the number of applications submitted to a public body at one time or within a short period of time; and
- ensuring that a response under FIPPA has not been sent by a public body before complaining to the Ombudsman about a failure to respond.

**Coming Soon!** If you're interested in learning more about FIPPA, watch for our new guide to be released in fall 2012. The guide is designed to assist Manitobans in navigating the FIPPA process.

## Communication and Complaints

The notion that people should be treated fairly and with respect seems like common sense, yet a surprising number of complaints end up at the Ombudsman's office because sometimes people feel disrespected in their dealings with government organizations. Often disrespect is not intentional, but it happens. Understanding how it happens is key to preventing it. We recently concluded a complaint investigation with Manitoba Public Insurance that illustrates how these kinds of cases often unfold.

Several years ago, an individual was injured in a motor vehicle collision and suffered many medical issues after the collision, some of which were attributed to the collision, some of which were not. MPI's decision on the matter was appealed by the individual to MPI's Internal Review Office, and the Review Office's decision was appealed to the Automobile Injury Compensation Appeal Commission. The Commission upheld the Review Office's decision - the individual could submit requests for compensation for any treatment of medical conditions caused by the motor vehicle collision. The individual's spouse submitted a comprehensive list of expenses to MPI's case manager. This is the point where things went awry.

A decision letter regarding which expenses would be covered and which would not, as well as payment for the eligible expenses, were sent approximately six months after the request was submitted. During those six months, the individual's spouse wrote a series of letters requesting a status update on the file. While the letters were not answered in writing, the case manager tried to contact the

individual by phone, but the call went unanswered and there was no ability to leave a message. To complicate matters, the individual received a cheque for eligible expenses before receiving the decision letter about the claim.

From the individual's perspective, the status of the claim request was completely unknown until such time as the cheque was

received (with no explanation about how the amount was calculated). As the individual was unhappy with the service received from MPI, a complaint was made to the Ombudsman. Notice that the complaint was not about any decision regarding which expenses would be covered; rather, the complaint was related to a lack of communication.

MPI acknowledged that in this situation, service expectations were not met. There were a number of factors that contributed to the length of time it took to process the expense claim, but these were not communicated. A decision letter explaining how the claim amount was calculated was sent at the same time as the cheque, but it was not received. A copy of the letter was later sent to the individual by courier. In addition to acknowledging that its service was not up to usual standards, MPI apologized to the individual for the lack of communication regarding claim status. During a lengthy telephone discussion, all questions regarding the case were answered to the individual's satisfaction. Our involvement prompted MPI to revisit some of its customer service practices. In the end, the situation was

***"Often disrespect is not intentional, but it happens."***

***"...lack of communication between the person making a decision and the person affected by a decision is often at the centre of a complaint."***



resolved. It highlights, however, the importance of communication to customer service.

As we remind people in *Understanding Fairness* (our guide for municipal decision makers), lack of communication between the person making a

decision and the person affected by a decision is often at the centre of a complaint.

Understanding fairness is all about understanding people. People who feel like they have been heard and treated with respect are less likely to complain, and more likely to accept a resolution or a settlement that is less than or different from what they initially wanted.

## Coming Soon!

If you're interested in understanding more about fairness and fair decision making, watch for our new guide to be released in fall 2012. The guide is designed to assist Manitobans in dealing with government.



## Staffing Changes



The office's **Ombudsman Division** welcomed two new investigators in early 2012 - Cydney Keith and Marc Cormier. Marc Cormier is filling the role of Acting Manager of Systemic and PIDA investigations in the Ombudsman Division on a temporary basis. Bob Baker is Acting Manager of Investigations in the Ombudsman Division while former manager, Mel Holley, fills the role of Acting Ombudsman.

The office's **Access and Privacy Division** also welcomed two new investigators in early 2012 - David Kuxhaus and Mary Loepp. With the retirement of long-time employee Gail Perry in May 2012, Nancy Love has moved into the role of Senior Legislative and Policy Analyst. Jacqueline Bilodeau is now Manager of Investigations in the Access and Privacy Division, and Louise Collette is Acting Manager of Intake Services.

## Upcoming Events

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|-----------------------|--|
| September 19, 2012    | Brown Bag Talk for Access and Privacy Coordinators and Officers. Please consult our website for topic. 12:05 - 12:50 p.m., our office. Call 982-9130 for details or to register.                         |
| September 24-28, 2012 | Right to Know Week   |
| October 31, 2012      | Manitoba eHealth conference: On The Right Track, Victoria Inn, Winnipeg<br><a href="http://www.manitoba-ehealth.ca/conference/conf2012.html">http://www.manitoba-ehealth.ca/conference/conf2012.html</a> |



### Manitoba Ombudsman: Ombudsman and Access and Privacy Divisions

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