

# Manitoba OmbudsNews



Ombudsman

Access and Privacy Newsletter

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## FIPPA Access Guide Released

Citizens have a new tool to help them access information under *The Freedom of Information and Protection of Privacy Act* (FIPPA). *The User's Guide to FIPPA: Access to Information and Protection of Privacy*, produced by Manitoba Ombudsman, outlines the steps for accessing information. It includes tips on filling out access request forms and explains how complaints are investigated by the Ombudsman. The guide also highlights how public bodies are required to protect the personal privacy of citizens.

The guide is not intended to replace FIPPA but recognizes that understanding the Act can be challenging. We hope that having a practical, easy to understand guide for users will allow requests for information to be processed in a more efficient and effective manner.

The 32-page guide is divided into four parts.

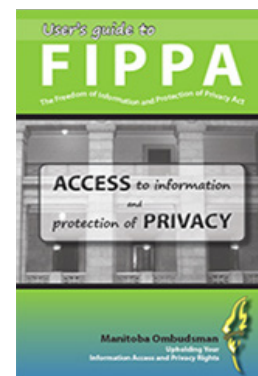
- **Accessing Information** – includes an overview of what information is available, how to make a request, and notes the applicable fees.
- **Access Decisions** – explains some of the factors public bodies consider in deciding on what information to release
- **Protecting Your Privacy** – highlights principles surrounding the collection, use, and disclosure of your personal information
- **Access and Privacy Investigations** – discusses the role of the Ombudsman in investigating complaints

Mel Holley, Acting Ombudsman, said he felt it was important that his office assist citizens in understanding how FIPPA works.

"While the majority of our work is involved in investigating complaints, we also have an important role in educating the public and providing citizens with resources that will help them get the information they need." Holley added that having a guide for users will also help public bodies and applicants work more effectively together.

The guide is available free of charge. Copies can be obtained by contacting the Manitoba Ombudsman's office. Printable electronic versions in both English and French can also be found on our website at [www.ombudsman.mb.ca](http://www.ombudsman.mb.ca).

Manitoba Ombudsman would like to thank the Information and Privacy Policy Secretariat (IPPS) of Manitoba Culture, Heritage and Tourism for their valuable input into the content of the guide.



## Right to Know Week 2012

For the seventh consecutive year, Manitoba Ombudsman joined other information and privacy commissioner offices around the country in marking international Right to Know Day on September 28 and national Right to Know Week, September 24 to 28, 2012. Right to Know acknowledges an individual's democratic right of access to government-held information and promotes the benefits of open, accessible, and transparent government.

In addition to launching the User's Guide to FIPPA during the week, Manitoba Ombudsman acknowledged those governments that publicly demonstrated their commitment to upholding an individual's right of access to government-held information by proclaiming Right to Know Week 2012. Governments that issued proclamations included the Province of Manitoba and the cities of Brandon, Dauphin, Flin Flon, Portage la Prairie, Selkirk, Thompson and Winkler.



Acting Ombudsman Mel Holley joined Brandon Mayor Shari Dexter Hirst for the signing of Brandon's Right to Know proclamation

## New PHIA Investigation Report

In early September, we released our first public investigation report with recommendations under *The Personal Health Information Act* (PHIA) about safeguarding personal health information in electronic medical records.

We received two complaints from an individual whose daughter was a patient of CancerCare Manitoba. The complainant was worried that an acquaintance who worked at CancerCare had looked at her daughter's medical records when there was no work-related need for the employee to see this information. An audit of CancerCare's electronic medical record system showed that the employee had looked at the personal health information, and CancerCare determined that the employee had no need to do so. We found that this was an unauthorized use of personal health information by the employee.



Our investigation of the breach also included a review of CancerCare's policies and the measures in place to restrict access to electronic medical records to only those staff that need to see the personal health information in order to perform their job duties. At the conclusion of our investigation, we made several recommendations designed to strengthen CancerCare's privacy safeguards and to promote greater communication with any individual

who may be affected by a privacy breach in the future.

CancerCare accepted all of the Ombudsman's recommendations and is now in the process of reviewing how all user access privileges are assigned in its electronic medical record system. CancerCare also agreed to increase the scope of the audits it conducts of its electronic medical record system, and of all of its security safeguards.

This type of unauthorized use of personal health information, or 'snooping' as it is commonly known, poses significant risks for privacy in our increasingly digital and networked world where information may be available at the click of a mouse to large numbers of people. However, an employee's snooping or any other willful unauthorized use of personal health information would not be considered an offence under PHIA, in contrast to a willful unauthorized disclosure of the same information, which would be an offence.

In recognition of what appeared to be a shortcoming in the legislation, we asked Manitoba Health to consider whether it would be appropriate to amend PHIA in order to better protect the privacy of Manitobans, and to provide strong sanctions to deter snooping and any other unauthorized use of personal health information. Manitoba Health agreed to review the sanctions available under PHIA in light of the concerns we raised.

## Ombudsman Act Amendment

Clause 18(d) of *The Ombudsman Act* restricts Ombudsman investigations in cases where a complainant has an existing avenue of appeal for addressing an alleged administrative grievance.

In June 2012, at our request, Section 18 of *The Ombudsman Act* was amended by adding the following after clause (d):

*For greater certainty, a cause of action is not a right referred to in clause (d), and the existence of a cause of action in relation to a matter does not, by itself, affect the authority of the Ombudsman to investigate that matter.*

This amendment originated in response to an investigation into a complaint about the City of Winnipeg where an individual was not satisfied with how the City handled a claim for compensation related to multiple sewer back-ups in the individual's home. The individual's claim was repeatedly denied. The individual complained to our office.

Initially the City of Winnipeg refused to cooperate with the Ombudsman investigation. It was suggested by the City that the "right of appeal" contemplated in clause 18(d) included a "cause of action". In law, a cause of action is a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party. In other words, the City believed that since the individual had the legal right to sue by applying to either the Small Claims Division of the Court of Queen's Bench, or to its Civil Division, then the Ombudsman had no authority to investigate the matter until the limitation period for such action expired. This kind of interpretation would prevent the Ombudsman from investigating any complaint where there may also be a cause of action until the limitation provided for in *The Limitation of Actions Act* has expired. This clearly could not be what legislators intended.

The amendment serves to reinforce our interpretation of *The Ombudsman Act*, and preserves the right of citizens to seek redress through this office as an alternative to costly litigation.

## Mark your Calendars!

Manitoba Ombudsman to host two access and privacy conferences in Winnipeg in May 2013

### Access, Privacy, Security and Information Management Conference - Making Connections



Manitoba Ombudsman will be hosting an Access, Privacy, Security and Information Management Conference in Winnipeg on May 13-14, 2013. Access to information, privacy, information security and information management challenges are intertwined with almost everything that Manitoba public bodies and trustees do. This conference is intended to help public bodies and trustees, subject to *The Freedom of Information and Protection of Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA), meet the information challenges within these interconnected disciplines.

The conference will be relevant to public sector employees in provincial and municipal governments, school divisions, universities, colleges and health care bodies across Manitoba. The conference will have a series of plenary and breakout sessions held over a day and a half on May 13 and 14, with optional workshops in the afternoon of 14th.

### Western Canada Health Information Symposium (WCHIPS)

Manitoba Ombudsman, together with the Offices of the Information and Privacy Commissioners in Alberta, British Columbia and Saskatchewan, will be co-hosting the Western Canada Health Information Privacy Symposium in Winnipeg on May 15-16, 2013.



WCHIPS is designed for trustees subject to Manitoba's *Personal Health Information Act* (PHIA), including health professionals and employees who handle personal health information in regional health authorities, hospitals, personal care homes, medical clinics, laboratories and public bodies, as well as anyone governed by health information privacy laws in the western provinces. Through a series of plenary and breakout sessions over a day and a half, with a half day of optional workshop sessions, trustees will gain a clearer understanding of health information privacy issues, learn about how individuals and organizations in the four western provinces have successfully addressed common privacy problems and challenges and develop new insights on potential solutions for their own organization's practices.

We are working with advisory committees made up of staff representing Manitoba public bodies and trustees to develop the agendas for the conferences. Verney Conference Management, which has coordinated previous Manitoba access and privacy conferences, will be managing these conferences. For more information and registration details, please go to <http://www.manitobaconnections2013.ca> and <http://www.wchips2013.ca>





*Acting Ombudsman Mel Holley with Rita Cullen, Chair of the Board of Directors of the Metis Child and Family Services Authority, at the Authority's annual general meeting in Brandon on September 27.*

*Ombudsman staff at the Manitoba Social Sciences Teachers' conference on October 19.*



## Upcoming Events

- December 12, 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 204-982-9130 for details or to register.
- January 28, 2013 - Data Privacy Day
- May 13-14, 2013 - Access, Privacy, Security and Information Management Conference - Making Connections For public sector employees in provincial and municipal governments, school divisions, universities, colleges, and health care bodies, subject to FIPPA and PHIA. Held at the Delta Winnipeg. For more information and registration details, see <http://www.manitobaconnections2013.ca>
- May 15-16, 2013 - Western Canada Health Information Symposium (WCHIPS) For personal health information trustees under PHIA, including health professionals and employees who handle personal health information in regional health authorities, hospitals, personal care homes, medical clinics, laboratories and public bodies. Held at the Delta Winnipeg. For more information and registration details, see <http://www.wchips2013.ca>

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

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