

Manitoba OmbudsNews

2013-2 Ombudsman, Access and Privacy Newsletter

Read all about it! Manitoba Ombudsman releases 2012 annual reports

Every year between January and May we start compiling and designing our annual reports for the previous calendar year. This really is a team effort. Investigators put forward cases for review and selection, support staff crunch numbers, managers edit and re-edit in consultation with investigators, and then there is lay-out and design, French translation and finally printing.



We're happy to report that in late May and early June we released our two annual reports for 2012 – one under *The Ombudsman Act* and *The Public Interest Disclosure (Whistleblower Protection) Act*, and the other under *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*. This year for the first time we also released a supplementary report under section 16.1 of *The Ombudsman Act*. Section 16.1 sets out the Ombudsman's role in monitoring the implementation of recommendations resulting from special investigations of child deaths by the Children's Advocate.

Ombudsman Act and PIDA report highlights:

- A case that prompted us to ask Manitoba Local Government to consider changes to *The Municipal Act* to ensure that public notice requirements are the same whether a municipality chooses to fund a special project, such as a recreation complex, by way of a local improvement plan by-law or a general borrowing by-law.
- A case that arose when an individual appealed a decision to deny his application for funding under a flood proofing initiative. The individual submitted an appeal but was not informed that the appeal body had not yet been created.
- A case where graduates of a private vocational institution offering health care aide training were not being recognized by Manitoba Health and the Winnipeg Regional Health Authority as trained health care aides because the school was not on their "approved list."

- An overview of our framework for assessing "gross mismanagement" under PIDA – a framework that assisted us in determining that a wrongdoing had occurred at a personal care home.
- Detailed statistics on the status of the 347 Special Investigation Report recommendations received by the Ombudsman from the Office of the Children's Advocate in the supplementary report under section 16.1 of *The Ombudsman Act*.

FIPPA and PHIA report highlights:

- A case where a patient's privacy at CancerCare Manitoba was breached when an employee, not involved in the patient's care, snooped in the patient's electronic medical record. As a result of this case, a bill was introduced in the Legislature to amend PHIA to ensure that sanctions are the same for unauthorized disclosure, use, or viewing of personal health information.
- A case that marked the first time we considered the provisions of FIPPA that allow a public body to disregard access requests in specific circumstances. In this case, the Town of Neepawa disregarded applications for access that it considered repetitious and vexatious. We agreed that the decision to disregard the access requests was authorized under FIPPA.
- An overview of the numerous ways in which we provided information about access and privacy rights, obligations of public bodies under FIPPA and trustees under PHIA, and about our role under both Acts.

PHIA Day at Southern Health: promoting health information privacy



On June 20th, we participated in "PHIA Day" at the Southern Health region. This was the region's fifth year of organizing a PHIA Day, which provides employees with information and training about health

information privacy under *The Personal Health Information Act* (PHIA). In the beginning, PHIA Day involved the Health Information Management group of the region. It has evolved to include all Privacy Officers in the region and this year all staff were invited to participate. Sessions were available to staff throughout the region via telehealth.

This year's theme for the region's PHIA Day revolved around the meaning of signing a pledge of confidentiality, a requirement under PHIA for all employees and agents of a

trustee. Sessions dealt with privacy obligations under PHIA, policies and procedures and best practices.

Our office gave a presentation on the topic of being prepared to respond effectively to a privacy breach. Privacy breaches can occur due to weaknesses in security safeguards (unencrypted portable devices), human error (misdirected fax), or deliberate actions (snooping). Our presentation, "Caution: Privacy Breach Ahead – Are you Prepared?" stressed the importance of having a breach protocol so that staff are prepared to take immediate action by following policies and procedures, should a breach occur.

We have two Practice Notes on our website to help public bodies and trustees be prepared to effectively address a breach: *Key Steps in Responding to Privacy Breaches under FIPPA and PHIA* and *Reporting a Privacy Breach to Manitoba Ombudsman*. These are located at http://www.ombudsman.mb.ca/documents_and_files/practice-notes-1.html

Privacy Emergency Kit



Personal information can play an important role in an emergency situation. Uncertainty around the sharing of personal information could result in unnecessary confusion and delays – and have significant consequences for people. Privacy laws should not be considered a barrier to appropriate sharing, nor should they be used as an excuse for inaction.

Before an emergency, organizations need to understand the privacy laws that could apply to the situation and make the best preparations, such as drafting policies and information-sharing protocols. Taking proactive steps to anticipate information flows in emergency situations is part of a sound risk management strategy for any organization.

The Office of the Privacy Commissioner of Canada has developed a Privacy Emergency Kit to help public and private sector organizations subject to federal, provincial and territorial privacy laws to enhance the timeliness and content of communications during an emergency, while also giving people confidence that their personal information will be handled appropriately. This guidance was developed in consultation with several provincial and territorial privacy oversight offices across Canada, including Manitoba Ombudsman.

The kit contains:

- Frequently Asked Questions About Emergencies and Legal Authorities for Sharing Personal Information
- Before an Emergency: A Checklist for Appropriate Handling of Personal Information
- During an Emergency: A Checklist for Appropriate Handling of Personal Information
- After an Emergency: A Checklist for Appropriate Handling of Personal Information
- Privacy in the Time of a Pandemic: Fact Sheet for Employees (October 2009)
- Privacy in the Time of a Pandemic: Guidance for Employers (October 2009)

The Privacy Emergency Kit is at http://www.priv.gc.ca/information/pub/gd_em_201305_e.asp

Additional FIPPA and PHIA investigation reports on web

Since 2011 we've been posting FIPPA and PHIA reports with recommendations on our website. We recently added nine FIPPA and one PHIA investigation reports to the site, all without recommendations. We hope that by posting more investigation reports, both the public and public bodies and trustees subject to FIPPA and PHIA will gain greater insight into how we interpret and apply the legislation and resolve complaints in situations where recommendations are not needed.

The newly added reports include:

Cases 2012-0017 and 2012-0018

City of Winnipeg (Public Works Department); refusal of access to privacy policies and/or procedures on the use of Global Positioning System (GPS) technology to monitor vehicles and employees, on the basis that the records did not exist.

Case 2012-0250

Winnipeg School Division; refusal of access to information relating to the mathematics portion of an assessment program, on the basis that such records did not exist.

Case 2012-0294

University of Manitoba; refusal to grant access to records used to tabulate examination marks, initially on the basis that disclosure would be harmful to a third party's privacy and, after subsequent clarification of the records being sought, on the basis that the records did not exist.

Case 2012-0316

Manitoba Hydro; refusal of access to records showing a breakdown of the reimbursement of community costs of the Cree Nation Partners, on the basis that disclosure would be harmful to a third party's business interests and that disclosure could harm relations between the public body and the council of a band as defined by the *Indian Act*.

Case 2012-0334

Manitoba Family Services and Labour; refusal of access to financial records relating to the transfer of Aboriginal (First Nation) pension plans from the federal regulator to the Province of Manitoba, on the basis that the records did not exist.

Case 2012-0388

City of Winnipeg (Winnipeg Police Service); refusal of access to portions of a specific Winnipeg Police Service incident report and related records, on the basis that disclosure would be harmful to third parties' privacy, harmful to law enforcement, harmful to security of property, and would violate solicitor-client privilege.

Case 2012-0396

Manitoba Conservation and Water Stewardship; failure to respond to a request for access to records containing such words as Makoon, cub, bear cub, Assiniboine Park Zoo, for the period from March 15 to July 10, 2012.

Case 2012-0408

Manitoba Agricultural Services Corporation; duty to assist in providing access to regards regarding damage to and estimates to repair a family cottage.

Case 2012-0417

Winnipeg Regional Health Authority; refusal of access to records on mobile health care services that were contracted by the authority over the past two years, on the basis that disclosure would be harmful to the third parties' business interests.

Case 2013-0016

Workers Compensation Board; disclosure of personal health information (prescribed medications) to an employer, in respect of an appeal filed by the complainant.

To read the reports, click on the "investigation reports" link under FIPPA or PHIA at:
<http://www.ombudsman.mb.ca/info/access-and-privacy-division.html>

Manitoba Ombudsman on Facebook



In March we launched our Facebook page as another way (in addition to our website and this newsletter) to let people know about our work, events, and other initiatives. On the site you'll find photos and news about the office that you won't find anywhere else. For example, you can read about how we deal with anonymous complaints, progress on certain cases or issues we've been working on, our use of the Golden Boy's torch as our office logo, and lots more.

If you haven't yet visited us on Facebook, please do so – you don't have to have a Facebook account to see our postings:
www.facebook.com/manitobaombudsman

Meet your Access and Privacy Coordinator

Every public body under *The Freedom of Information and Protection of Privacy Act* (FIPPA) is required to have an Access and Privacy Coordinator. You may be familiar with the Coordinator's role in dealing with applications for access to information under FIPPA, but did you know that the Coordinator is also your public body's key resource for helping you to address privacy questions and issues involving personal information under FIPPA?

Coordinators have expertise with the privacy requirements under FIPPA for the collection, use and disclosure of personal information (PI), as well as valuable insider knowledge of the types of programs and services delivered by your public body.

Uncertain whether the information you need for the delivery of a program is PI? Want to ensure that your program's current or

anticipated practices for collection of PI meet the requirements of FIPPA? Time to refresh how your program areas provide notice to the individuals from whom you are collecting PI? Considering new uses for the PI you have collected or received? Uncertain whether your disclosure practices put you at risk for running afoul of FIPPA? Need to update or develop policies to ensure the protection of the PI by your program staff?

Access and Privacy Coordinators can help you with these and other privacy questions you may have. If you are unsure who the Access and Privacy Coordinator is for your public body, check the Manitoba government's FIPPA website at <http://www.gov.mb.ca/chc/fippa/wheretosend/index.html> for contact information.

Access and privacy conferences wrap up



Privacy lawyer **Brian Bowman** talks about information sharing in organizations and who needs to know.

Three of your WCHIPS hosts (L-R): **Gary Dickson**, Information and Privacy Commissioner of Saskatchewan, **Jill Clayton**, Information and Privacy Commissioner of Alberta, **Mel Holley**, Acting Manitoba Ombudsman.



Karen Meelker, Access and Privacy Officer/Coordinator at the University of Manitoba, puts conference participants through their paces at an access and privacy bootcamp designed to make "better, stronger" officers and coordinators.



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