

# Manitoba Ombuds News

2013-4      Ombudsman, Access and Privacy Newsletter

## Resolve to learn more about privacy in 2014

Get your copy of the **Office of the Privacy Commissioner of Canada's** 2014 calendar and keep privacy in mind all year long. To mark Data Privacy Day on January 28, 2014, the OPC is once again creating a calendar full of light-hearted editorial cartoons and privacy tips that everyone can use. Copies of the calendars will be shared with information and privacy commissioner offices across the country, including Manitoba Ombudsman. Request your copy today by contacting [ombudsman@ombudsman.mb.ca](mailto:ombudsman@ombudsman.mb.ca), 204-982-9130 or 1-800-665-0531 (toll-free in Manitoba). First come, first served. Supply is limited.



If you pick up a calendar, mark January 28 on it. Recognized by privacy professionals, corporations, government officials, academics and students around the world, **Data Privacy Day** highlights the impact that technology is having on our privacy rights and underlines the importance of valuing and protecting personal information.



"THERE'S A LOT OF SENSITIVE PERSONAL INFORMATION ON THIS FLASH DRIVE SO HANDLE IT WITH CARE!"

## Back by popular demand!

To acknowledge Data Privacy Day last year, Manitoba Ombudsman produced "ID shields" to help protect against identify theft and fraud. These card sleeves were so well-received, we decided to produce another small batch for 2014. If your card displays the contactless card symbol (a series of curved lines) or has a phrase like PayPass, Speedpass, payWave, ExpressPay, or Interac Flash, your card is one that can be waved or tapped to make a payment. The ID shields, made of metallized, water and tear-resistant paper, are designed to protect against unauthorized access to the personal information contained on your card's radio frequency identification (RFID) chip. If you would like us to send you an ID shield, please contact us with your request.

## Reasons for Decisions

At Manitoba Ombudsman we promote government transparency and accountability. We investigate complaints and search for solutions that lead to the better administration of government programs. It's really about the relationship between government and the public; a relationship that can be assessed and graded every time any of us visits a hospital, applies for a permit, asks our municipal council for a zoning variance or registers a vehicle.

We grade that relationship on the basis of outcome (do we get what we want?) but also on the basis of what is communicated to us. Understanding the “why,” the reasons we sometimes don't get what we want, can be the basis on which we grade our interaction with government, pass or fail. A 1985 decision of the Ontario Supreme Court highlighted the importance of reasons to the unsuccessful party in a hearing:

*In order that faith may be maintained in the legal system, it is necessary that losing parties be satisfied that they have been fairly dealt with, that their position has been understood by the judge, and that it has been properly weighed and considered. It is, therefore, important that the reasons for a decision be stated, and stated in language that the party who has been dealt the blow can comprehend.*

(Re Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services, 1985 CanLII 2053 (ON SC))

We believe that decision makers have a duty to explain their decisions. We also believe it is good practice. Transparency is fundamentally linked to accountability. We often talk and write about why it is important to explain the reasons for our decisions: it demonstrates that we have listened and understood; it demonstrates that we have considered the evidence and criteria that are the basis for a decision; and it reduces the

possibility of speculation about why we have accepted one position over another. Explaining the reasons for a decision helps to demonstrate the fairness of that decision.

Although the benefits of explaining our reasons for decision seem obvious to us, it doesn't always happen. We are sometimes told that a decision maker is not “legally required” to provide reasons, and that can be true. But we see it as a best practice, as a critical piece in demonstrating transparency and accountability. In a decision earlier this year, the Manitoba Court of Appeal reiterated the importance of providing written reasons:

*As is well known, reasons for decision are important for three reasons:*

1. *to tell the parties and others why the tribunal made the decision it did;*
2. *to provide public accountability with a view to justice being done and being seen to be done; and*
3. *to permit effective judicial review*

(Abetew v. The Taxicab Board, 2013 MBCA 19)

Ombudsman investigations are not like a judicial review, but like the courts, our investigations can be more effective when decision makers can point to meaningful reasons to support the decision being investigated.

There are many arguments in support of providing meaningful reasons for decisions. We believe that providing meaningful reasons for a decision demonstrates the transparency people expect, and that it fosters accountability, both of which are important to maintaining confidence in the decisions that governments make.

*“A written decision can be an opportunity to say to those people who may be disappointed by the decision that their views were considered. It is an opportunity to set out the evidence considered and relied upon in making the decision. It is an opportunity to explain the logic behind the decision; an opportunity council members will not have had until now because it is only at this point that you will have heard and considered all of the evidence. If the evidence and arguments you have accepted and relied upon in making the decision are not explained, people are free to speculate about the reasons for your decision. They are free to second guess your decision on the basis of incomplete information or erroneous assumptions.”*

**Understanding Fairness:**

**A Handbook on Fairness for Manitoba Municipal Leaders, Revised 2013**

## Fifteen municipal investigation reports posted on website

In December 2013 we started posting investigation reports about municipal complaints under *The Ombudsman Act* on our website. Five reports have been posted to date:

Two reports (**2011-0460** and **2012-0080**) highlight complaints about the Town of Neepawa. In one case, an allegation was made that a councillor placed himself in a conflict of interest situation, in another, concerns were raised about both a council meeting agenda and the in-camera portion of a council meeting.

A third report (**2011-0474**) details a complaint made by a landowner about council's decision to deny a conditional use request for the construction of a residence on agricultural land in the Rural Municipality of Saskatchewan. Although the ombudsman did not make a recommendation, he suggested that the municipality (and all municipalities) issue reasons for their decisions.

The fourth report (**2012-0369**) results from a complaint about the Rural Municipality of Alexander, where an allegation was made that council did not correctly

interpret and fairly enforce its zoning by-law. The ombudsman found that the complainant in this case had been treated unreasonably. As the matter could not be informally resolved, the ombudsman made three recommendations to the municipality.

The fifth report (**2012-0213**) details a complaint about the Rural Municipality of Macdonald, where the complainant believed that the RM had unfairly denied two variance applications for subdivision of his land, and that the public hearing held to consider the applications was procedurally unfair. Similar to the RM of Saskatchewan case, the ombudsman did not make recommendations, but identified that the absence of reasons for the RM's decisions contributed significantly to the complainant's perception that he was treated unfairly.

[http://www.ombudsman.mb.ca/documents\\_and\\_files/municipal-investigation-reports.html](http://www.ombudsman.mb.ca/documents_and_files/municipal-investigation-reports.html)

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In December 2013 we added the following FIPPA investigation reports to our website:

**2013-0256:** Rural Municipality of Rosser; adequacy of search for email and other electronic records referring to the complainant.

**2013-0179:** Rural Municipality of Woodlands; refusal of access to records of animal unit verification counts for a specified hog operation, on the basis that disclosure could be harmful to the third party's business interests.

**2013-0178:** Town of The Pas; refusal of access to water fluoridation study on the basis that disclosure would reveal deliberations of an 'in camera' meeting of the town council.

**2013-0144:** Rural Municipality of Ritchot; refusal of access in part to records about development plans and water and wastewater treatment management.

**2013-0035:** City of Winnipeg (Golf Services SOA); refusal of access to records about finances of city golf courses.

**2013-0001:** City of Winnipeg (Corporate Support Services Department); refusal of access to invoices paid to various real estate companies on the basis that

disclosure could be harmful to third party business interests and to the city's financial interests.

**2012-0416:** City of Winnipeg (Fire Paramedic Services Department); refusal of access to records about traffic effects of new fire hall at Route 90 and Portage Avenue on the basis that disclosure could be harmful to third party business interests and could reveal analyses and recommendations developed for the city.

**2013-0217-0220:** City of Winnipeg (Winnipeg Transit); various aspects of handling of four requests for information about operating expenses and advertising on buses.

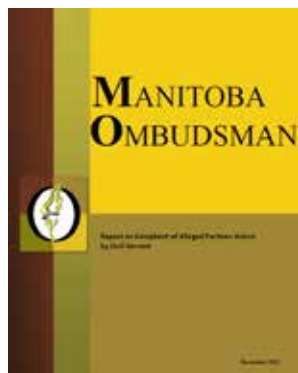
**2013-0022:** City of Winnipeg (Winnipeg Police Service); concerns about the proposed approach to searching for email records mentioning the applicant or his organization.

**2011-0538:** City of Winnipeg (Winnipeg Police Service); refusal of access in part to records relating to a photo-radar enforcement report.

[http://www.ombudsman.mb.ca/documents\\_and\\_files/investigation-reports.html](http://www.ombudsman.mb.ca/documents_and_files/investigation-reports.html) (scroll down to "Access Reports")



## New Report on Alleged Partisan Action by Civil Servant



Have you ever stopped to think about the relationship between the civil service and elected officials? A complaint we received about alleged partisan action by a civil servant provided us the opportunity to explore and discuss this important issue in our investigation report.

Civil servants must remain neutral (impartial and non-partisan) in carrying out their responsibilities for the effective operation of government. Any real or perceived erosion of this impartiality can undermine public confidence in the administrative actions and advice of civil servants.

The complaint in this case focused on the actions of an assistant deputy minister (ADM), who, acting in response to a request from a minister, sent an invitation to various organizations to attend the legislature on a particular day to witness the minister table a resolution. The action of the ADM could be (and was) perceived by some as a partisan act.

The ombudsman found that there was no personal or administrative misconduct that would amount to partisan action by the civil service in this situation.

However, recognizing the importance of this matter, we asked government to consider whether there might be any appropriate role for elected officials in working with civil servants to address situations like this where administrative actions could give rise to the perception of partisanship.

In response, the government advised that while primary responsibility to maintain political neutrality rests with civil servants, there is a role for elected officials and political staff to be mindful of the neutrality required of civil servants.

We were advised that the clerk of Executive Council and the Civil Service Commissioner have agreed to work together to develop a set of guidelines for consideration by elected officials and political staff to assist them when developing directions or instructions to civil servants that avoid the potential for situations where administrative actions could result in the perception of partisanship. The Civil Service Commission has also agreed to create an implementation plan in consultation with each department to ensure that all civil service employees attend a "Working in Government: Values and Ethics in the Manitoba Civil Service" workshop.

Read the full report at:

[http://www.ombudsman.mb.ca/documents\\_and\\_files/reports.html](http://www.ombudsman.mb.ca/documents_and_files/reports.html)

## Revised version of Understanding Fairness

We're still tallying our statistics for 2013 so the final numbers may shift a bit, but we've noticed that almost 40% of Ombudsman Act complaints this year were about municipalities. On November 21 we released an updated version of *Understanding Fairness: A Handbook on Fairness for Manitoba Municipal Leaders*. The 34-page guide is intended to provide municipal officials and administrators with several tools to help make fair decisions. The guide includes:

- a fairness framework and some definitions of commonly used fairness terms
- tips for conducting fair public hearings and meetings
- case examples to illustrate actions and decisions that are unfair, and
- checklists to help make fair decisions

While the guide is aimed at municipalities, it is also popular with citizens who use the guide when dealing with their municipal governments. It's a pretty handy guide to have! Read or download a copy from our website at [www.ombudsman.mb.ca](http://www.ombudsman.mb.ca) (click on the orange Ombudsman Division link, then click on "reports"), or request a print copy by contacting us.



## PHIA Amendments to strengthen the protection of your privacy

Bill 4, *The Personal Health Information Amendment Act*, received Royal Assent on December 5, 2013.

What's new?

- Subsection 63(1) is amended to make it an offence for any person to knowingly falsify another person's personal health information (PHI).
- Subsection 63(2) is amended to make it an offence for an employee, officer or agent of a trustee, information manager or health research organization, to wilfully use, gain access to or attempt to gain access to another person's PHI without the authorization of the trustee, information manager or health research organization.

We recognize that most people who provide care to Manitobans respect the privacy of PHI. Employees who need to know the PHI of an individual for authorized purposes, such as for the care or treatment of the individual, should not be fearful of prosecution when using or gaining access to it to perform their job duties. Inadvertent privacy breaches can occur due to human error in the course of performing job duties. These new offence provisions are not aimed at these situations.

The changes to subsection 63(2) are aimed at those who disregard the requirements of PHIA and wilfully use (or attempt to use) PHI for purposes unrelated to their job duties and contrary to the act, such as by snooping (or trying to snoop) in records. This offence is particularly important because electronic health records can provide an employee with access to significant amounts of PHI about thousands of individuals.

Privacy violations have a negative and sometimes traumatizing impact on the affected individuals and can also diminish public confidence in the health care system. These amendments promote increased personal accountability, and are intended to address situations where a person chooses to abuse their access to PHI and violate the privacy rights of others.

These new offences, with a penalty of up to \$50,000 if convicted, should serve as a deterrent. The amendments also serve as a reminder to trustees of their obligations under PHIA to ensure that their employees understand and comply with the requirements of the act.

To read Bill 4, please visit:  
<http://web2.gov.mb.ca/bills/40-3/b004e.php>

To see our previous article with background information about Bill 4, please see the 2012-4 issue of OmbudsNews.

## Upcoming Events

January 28, 2014

**Data Privacy Day**

February 19

**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.

**OCTOBER  
2014**



In follow up to the 2013 Making Connections - Access, Privacy, Security and Information Management conference hosted by our office, we are planning a conference in Winnipeg in October 2014. Stay tuned for more details to be posted on our website as they become available.

# Happy Holidays!

*For each of us the holiday season can have a different meaning, a special significance that may be unique or may represent a shared bond with others. The holidays are a time of celebration, a time of hope and optimism, a time of caring, sharing and giving. It can also be a time of reflection.*

*It is a time to think about and appreciate the people around us. At Manitoba Ombudsman we celebrate our successes and share our challenges together. We promote a culture of caring and support and in many ways we celebrate our triumphs and share our tragedies as a “work family.”*

*We know that we are not unique in this. Through our work we meet many dedicated hard working people whose work families are equally vibrant and supportive.*

*This holiday season we want you to know that we appreciate all of the support and cooperation you show us as we go about our business. On behalf of everyone at Manitoba Ombudsman, from our work family to yours, Happy Holidays.*

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

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