

Manitoba Ombuds News

2015-3 Ombudsman, Access and Privacy Newsletter

NEW Privacy Impact Assessment Tool

Manitoba Ombudsman has developed a user friendly *Privacy Impact Assessment Tool* that encourages public bodies and trustees (organizations) to think about privacy when evaluating an existing or proposed program, service or activity. This *Privacy Impact Assessment Tool* replaces the *Compliance Review Tool for Manitoba's Information Privacy Laws*, developed by Manitoba Ombudsman in 2003.

Under *The Freedom of Information and Protection of Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA), organizations have specific privacy obligations that govern how they collect, use and disclose the public's personal and personal health information.

The PIA tool supports organizations in assessing privacy risks when planning or evaluating an initiative that involves personal or personal health information. If potential privacy risks are identified, reasonable steps can be taken to safeguard information and minimize risk.

- A privacy impact assessment is recommended to:
- determine when and how a project will impact privacy
 - save time and money by identifying privacy issues early in the design stage
 - assist organizations in exercising due diligence
 - address any privacy risks
 - assure the public that their personal and personal health information will be managed and safeguarded appropriately

Although a privacy impact assessment is not a legal requirement under FIPPA and PHIA, organizations may have policies in place that require a PIA to be completed in some circumstances. This PIA tool is not intended to replace any other existing processes or tools.

PRIVACY IMPACT ASSESSMENT TOOL

CONTENTS

Introduction	1
Frequently Asked Questions	2
Before Getting Started	3
Privacy Impact Assessment Tool	4
Part 1: Summary of Program or Activity	4
Part 2: Describe the Scope	4
Part 3: Collection, Use and Disclosure of Personal (Health) Information	5
Part 4: Access Rights for Individuals	6
Part 5: Privacy and Security Measures	6
Part 6: PIA Summary and Findings	8
Appendices	9

September 2015

Manitoba Ombudsman
750 - 500 Fortage Avenue
Winnipeg, MB R2C 3K1

204-982-9130 (phone)
1-800-665-0531 (toll free in Manitoba)
204-942-7903 (fax)
ombudsman@ombudsman.mb.ca
(general email inquiries)
www.ombudsman.mb.ca

Introduction

Under *The Freedom of Information and Protection of Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA), public bodies and trustees (organizations) have specific privacy obligations. These include how you collect, use and disclose the public's personal and personal health information.

Protecting privacy is more than just upholding the law, it also involves taking a proactive approach to safeguarding the public's personal (health) information.

Risks to privacy can arise in many circumstances. Collecting excessive information, using intrusive means of collection, or obtaining sensitive details in unexpected circumstances all represent risks to the individual. The use or disclosure of that information, or its retention for an unduly long period, puts privacy at risk.

Many organizations use privacy impact assessment (PIA) tools to assist in safeguarding Manitobans' personal (health) information.

To support organizations in achieving this goal, Manitoba Ombudsman has developed a PIA tool that "tells the story" of a project from a privacy perspective. Simply, it encourages organizations to think about privacy when evaluating an existing or proposed program, service or activity.

It is our intent that this PIA tool will assist organizations in identifying potential privacy risks and as a result, they will be in a better position to address those risks early on.

This PIA tool is not intended to replace any processes you may already have or be a substitute for complying with FIPPA and PHIA. Our office encourages you to review the information gathered through this process with an access and privacy representative (access and privacy coordinator, privacy officer, lawyer, etc.) so that you can address specific privacy requirements.

Acknowledgments

We gratefully acknowledge the contributions of the Nova Scotia department of Justice, British Columbia Office of the Chief Information Officer, University of Manitoba, Office of the Information and Privacy Commissioner of Alberta and New Zealand's Privacy Commissioner's Office to our *Privacy Impact Assessment Tool*. Our tool incorporates much of their collective advice and knowledge.

Manitoba Ombudsman
www.ombudsman.mb.ca | ombudsman@ombudsman.mb.ca | 1-800-665-0531 | 204-982-9130

The *Privacy Impact Assessment Tool* is available in print and on the Manitoba Ombudsman website at:
<https://www.ombudsman.mb.ca/info/privacy-impact-assessment.html>
Fillable versions of the questionnaire portion of the PIA tool are also available.

Six new FIPPA investigation reports on website

To acknowledge national Right to Know Week, September 28 to October 2, 2015, we posted six new FIPPA investigation reports on our website. Right to Know raises awareness of a person's democratic right of access to government-held information and promotes the benefits of open, accessible, and transparent government.

All six reports are access-related. Each one raises different issues that were encountered by applicants in the course of making their FIPPA requests. The outcome of these cases – how these issues were handled – will be of interest to any person wanting to access government records and to public bodies that must respond to these requests. Understanding how the process works can improve the experience for everyone.

FIPPA investigation reports can be found at:

https://www.ombudsman.mb.ca/documents_and_files/investigation-reports.html

Case 2014-0040: An individual submitted an application to Manitoba Infrastructure and Transportation requesting access to construction progress reports. Initially, the department refused access in full to the records on the basis that the disclosure would be harmful to third party business interests and harmful to legal proceedings. As a result of our investigation, the public body issued a revised response to the individual enclosing the requested records with minimal information redacted. In addition, the public body also relied on exceptions in FIPPA to withhold personal information about individuals on the basis that disclosure would be an unreasonable invasion of privacy. We found that the remaining withheld information was subject to the cited exceptions.

Case 2014-0409: An individual requested access to financial estimates and statements for each provincial park district for the years 1999/2000 through 2014/2015. Manitoba Conservation and Water Stewardship responded to the individual, granting access to some of the information requested and advised that other information was either not available in the format requested or not available at all. The complainant believed that the department was required to prepare and maintain such information pursuant to *The Provincial Parks Act* and that the information should be available, regardless of format. We partly supported the complaint.

Case 2014-0560: In response to an access request under FIPPA, the Pembina Trails School Division created a financial statement for the individual. The individual was not satisfied with the document and, believing that there was more information responsive to her request, filed a complaint of refusal of access with our office. Our review determined that the school division had complied with her request and provided the relevant information.

Case 2015-0019: An individual requested records from Manitoba Justice regarding the place of birth of a deceased person whose estate had transferred to the Manitoba government. Manitoba Justice refused to confirm or deny the existence of records regarding the place of birth of the deceased, specifically the name of the city in which the deceased was born. We found that the department was authorized to make this decision and that it did not act unreasonably in exercising its discretion to refuse to confirm or deny the existence of records.

Case 2015-0041: An individual requested access to a copy of an agreement including any tariff schedules between the Manitoba government and the Manitoba Chiropractors Association (MCA). Manitoba Health, Healthy Living and Seniors consulted with the MCA about the request and initially refused access in full. In the course of our investigation, the department provided partial access to the agreement, severing some information that it believed would be harmful to a third party's business interests. We found that one of the claimed exceptions did apply. (After this investigation concluded, the Manitoba government amended the Chiropractic Services Insurance Regulation, making the amount of the benefit for insured chiropractic services publicly available.)

Case 2015-0045: An individual requested access to a copy of Winnipeg School Division By-law No. 1018 as well as any other documentation relating to the establishment and adjudication of the Disability Income Plan for Officers and Employees (Other Than Teachers) of the Winnipeg School Division. The school division provided a copy of By-law No. 1018 but did not initially provide the other items requested or provide information as to how they may be obtained. We partly supported the complaint.

First information and privacy adjudicator decision

In March 2015 we reported that for the first time, we referred a matter under PHIA to Manitoba Information and Privacy Adjudicator Ron Perozzo for additional review after a trustee did not comply with the ombudsman's recommendations.

In this case, we received a complaint that a registered psychologist and health information trustee had refused access in response to a request from an individual to view and receive copies of the individual's own personal health information as allowed under PHIA. The ombudsman recommended release of the records to the complainant. As a result of the trustee's refusal to take action to implement the recommendations, the ombudsman requested that the information and privacy adjudicator review the trustee's failure to act.

Having considered the matter and reviewed the submissions of all of the parties, the adjudicator concluded that the trustee must provide the records, subject to certain conditions, to the complainant.

Read the adjudicator's decision at:

<http://www.mbipa.ca/orders/reference-concerning-psychological-test-materials.pdf>

The ombudsman's report with recommendations and the trustee's response (Case 2013-0419) is available at:
<https://www.ombudsman.mb.ca/uploads/document/files/case-2013-0419-en.pdf>

Manitoba's information and privacy laws were amended, effective January 1, 2011, to create an information and privacy adjudicator – an additional level of independent review and complaint resolution available to the ombudsman in access and privacy matters. The ombudsman may refer a matter to the adjudicator if a public body or trustee does not act on a recommendation made by the ombudsman in an access to information or privacy complaint. Upon completing a review, the adjudicator has the power to make an order.

Upcoming Events

FIPPA: An Introduction for Local Public Bodies, 8:30-noon, November 18, 2015, hosted by the Information and Privacy Policy Secretariat

The Information and Privacy Policy Secretariat (IPPS) is hosting a half-day online training session about FIPPA for local public bodies. The session will provide participants with the fundamentals of access to information and protection of privacy law in Manitoba. Participants will be introduced to the main concepts of freedom of information, including the right of access, the process for responding to applications for access to records, applying exceptions to disclosure and key definitions. The principle of privacy protection and obligations to comply with FIPPA will also be discussed.

The session will be offered via Microsoft Office Live Meeting (an application that can be downloaded free of charge if you do not already have it on your computer). Live Meeting allows participants to see and follow along with the PowerPoint presentation while listening to the presenter.

Interested participants must contact IPPS by emailing ipps@gov.mb.ca to register.

- Registrations must be received before Thursday, November 12th. IPPS will reply to your email to confirm your registration.
- Please ensure that the email includes your name and the email address to which your Live Meeting invitation should be sent. You will need to access that emailed invitation or the calendar connected to that email account the morning of the session in order to join the meeting.

For more information, contact IPPS at 204-945-1252.

More upcoming events

Brown Bag Talks – Brown Bag Talks are informal discussions of issues of interest led by Manitoba Ombudsman staff with participation by access and privacy coordinators and officers. Reserve your spot by phoning our office at 204-982-9130.

- November 18, 2015 - Manitoba Ombudsman's new Privacy Impact Assessment Tool
- February 17, 2016 - Fees and Fee Estimates (with reference to recent investigation reports)
- April 20, 2016 - Privacy Breach Reporting Under PHIA
- June 15, 2016 - Considerations for Disregarding a Request for Access Under FIPPA (with reference to recent investigation reports)

2015 Manitoba Connections Workshop Series, November 9-10, 2015, hosted by Verney Conference Management. Workshops include:

- Access Basics Bootcamp
- Privacy Basics Bootcamp
- Building a Roadmap for EDRMS Implementations
- Researching Canadian Records Retention Requirements
- Information Governance
- Building a Security Program Roadmap
- Privacy Auditing

For workshop descriptions and registration information, visit:
<http://www.manitobaconnections.ca>

Jacqueline Bilodeau at the Manitoba Centre for Health Policy's annual RHA workshop



Mary Loepp at the Manitoba Social Sciences Teachers' Association conference

Any article in this newsletter may be reprinted in whole or in part. Please credit Manitoba Ombudsman.

Manitoba Ombudsman: Ombudsman and Access and Privacy Divisions

To subscribe to Manitoba OmbudsNews or be removed from our distribution list please send your email address to Ideandrade@ombudsman.mb.ca

Winnipeg Office
750 - 500 Portage Ave.
Winnipeg, MB R3C 3X1
Phone: 204-982-9130
Fax: 204-942-7803
Toll Free in MB: 1-800-665-0531

www.ombudsman.mb.ca
ombudsman@ombudsman.mb.ca
Facebook: www.facebook.com/manitobaombudsman
YouTube: www.youtube.com/user/manitobaombudsman

Brandon Office
202- 1011 Rosser Ave.
Brandon, MB R7A 0L5
Phone: 204-571-5151
Fax: 204-571-5157
Toll Free in MB 1-888-543-8230