

Manitoba OmbudsNews

2016-1 Ombudsman, Whistleblower, Access and Privacy Newsletter

SAVE THE DATE – SEPTEMBER 27 AND 28, 2016

Work in a provincial government department or agency, municipal government, school division, university, college, regional health authority or health-care facility? Is your organization subject to FIPPA and PHIA?



**Join us for the
2016 Manitoba Connections:
Access, Privacy, Security and
Information Management
Conference
September 27-28, 2016
at the Delta Winnipeg**

Manitoba Connections recognizes the benefits that can be gained by breaking down the silos around access, privacy, security and information management. Bringing these information disciplines together in one conference can help public sector employees strengthen their skills in these areas and improve the connections in these areas within their workplaces.

Manitoba Ombudsman is your official conference host. Verney Conference Management is coordinating the conference planning effort, along with an advisory committee of representatives from public bodies and trustees.

Registration is open. The lowest “super saver” rate is available until the agenda is finalized in June, so register early.

Please visit the conference website for more information.

CALL FOR PRESENTATIONS

We are seeking proposals for plenary, breakout or workshop presentations. We’re looking for every day access, privacy, security and information management stories to share. They could come from you, or maybe someone else in your organization. Our goal is to develop over 20 sessions.

Proposals could include:

- basic level instruction in any of the theme areas
- case studies showing challenges and application of solutions
- expert led sessions in any of these areas
- sessions for any of the following sectors – municipal, health, education, provincial government, etc.
- sessions on current, topical issues such as cloud computing and open government initiatives
- and more

The deadline for proposal submission is Friday, May 27, 2016. For more information, please see the call for presentations and the online submission form on the conference website.

www.manitobaconnections.ca

Ombudsman of South Australia research into information sharing



Donna Mayhew (right) with Manitoba Ombudsman Charlene Paquin

On April 6 and 7, 2016, we welcomed **Donna Mayhew**, principal advisor on information sharing from the Ombudsman of South Australia.

Donna was awarded a 2015 Winston Churchill Memorial Trust Fellowship to research perceptions of privacy and practice around disclosure of personal information – in particular where failure to share information, even where there are serious threats to safety and well-being, leads to critical incidents or death. Her research aims to emphasize practice and protocols that enable information sharing within multi-discipline case management and early intervention initiatives. As part of her research, she is visiting Canada and the United Kingdom from April to June 2016 for the purpose of meeting with information and privacy commissioners, coroners and ombudsmen.

Interjurisdictional initiatives

Manitoba Ombudsman is part of a federal, provincial and territorial community of access and privacy oversight offices across Canada. As an oversight community, we often work together on issues of mutual interest and concern.

We recently participated in developing a joint resolution on protecting and promoting Canadians' privacy and access rights in **information sharing initiatives**. The purpose of these initiatives is to facilitate the sharing of personal information to better serve citizens in the delivery of social programs, community safety, research, health and education. The resolution outlines actions to take to protect and promote privacy and access to information rights when embarking on information sharing initiatives, such as:

- Being open and transparent about how information sharing initiatives will be implemented
- Being proactive by undertaking assessments to help identify possible privacy risks at the outset
- Acting in an accountable manner by implementing information sharing initiatives that will, for example, share the least amount of information needed to satisfy the goals of the initiative and implementing all reasonable and necessary safeguards.

Another issue of mutual concern among oversight offices is ensuring that key decisions and actions of public bodies are recorded. Access to information rights depend upon the creation of records that document the affairs of public bodies. Without adequate records, public bodies compromise their ability to make evidence based decisions, fulfill legal obligations, and preserve the historical record. In a joint statement, oversight offices outlined the importance of creating a legislated **duty to document**. This would require public bodies to document matters related to their deliberations, actions and decisions to create full and accurate records of their business activities. By creating records that explain the 'what' and 'why' of public body decision making, a duty to document promotes accountability, transparency, good governance and public trust.

Joint resolution on information sharing:

https://www.priv.gc.ca/media/nr-c/2016/res_160125_e.asp

Joint statement on duty to document:

http://www.oic-ci.gc.ca/eng/resolution-obligation-de-documenter_resolution-duty-to-document.aspx

New investigation reports

We've added the following four Ombudsman Act reports to our online collection.

To read municipal reports, visit:

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

Reports related to provincial departments and agencies are at:

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

Case 2015-0040: We received a complaint from a property owner in the RM of St. Clements alleging that the Red River Planning District (RRPD) handled his subdivision application unfairly. The property owner's application to subdivide his parcel of land was conditionally approved by the RM's council. However the RRPD board, which is the approving authority, rejected the application. The property owner believed that the RRPD did not provide him with sufficient notification of the board meeting and that the board did not provide him with meaningful reasons for its decision. While we concluded that the RRPD did not breach any statutory requirements regarding meeting notification or the provision of reasons, we did suggest that the RRPD revise its online information about the subdivision process and that it provide meaningful reasons to applicants.

Case 2014-0515: We received a complaint from a property owner in the RM of Armstrong. The property owner had received a compliance order from the RM requiring her to clean-up her property, and she explained to us that she did so prior to the prescribed deadline. She further explained that the RM visited her property several months later, took material away, and issued her a bill for \$630. We were unable to determine whether an inspection occurred or whether the property was cleaned-up by the deadline as the RM does not have any record of inspecting the property within a reasonable time following the deadline. In our view it was unfair for the RM to wait approximately three months to enforce the compliance order without further notifying the complainant that she was contravening the order. We made four recommendations to the RM. As a result of our investigation, the RM decided to cancel the clean-up charges. The RM indicated that it will also amend its policy for dealing with unsightly property in order to improve record-keeping and set reasonable time frames for enforcement of compliance orders.

Case 2012-0358: We received four unrelated written complaints from individuals who believed their eligibility for Handi-Transit service was unfairly assessed. While the individual complaints were ultimately resolved, we investigated broader issues raised regarding the Handi-Transit application and appeal

process. As a result of our investigation, Handi-Transit implemented administrative changes to improve the fairness of its decision-making process and its written communication with applicants, including: providing written reasons in its decision letters to ineligible applicants; advising unsuccessful applicants in writing that if an applicant wishes to provide new information related to eligibility, Handi-Transit will accept the new information and then decide whether a reassessment, additional information, or a new application is required; and providing an appellant a copy of the functional assessment report the Handi-Transit Appeal Hearing Body considers at the hearing.

Case 2012-0097: We received a complaint that the Manitoba Securities Commission failed to investigate the complainants' grievance regarding an investment advisor and that they were not provided with sufficient information about the advisor including the advisor's active supervisory terms and conditions. Based on our investigation, we found that the commission's decision not to formally open an investigation into the complainants' concerns was not wrong or unreasonable. However, the commission should have provided the complainants with the investment advisor's supervisory terms and conditions that were part of the public record when the complainants first brought their grievance forward. As a result of our investigation, the complaint is supported in part and two recommendations were made to improve administrative accountability. The commission accepted the recommendations and has taken steps to implement them.

Staff arrivals and departures

In recent months, complaints analyst Jacquie Laberge and office manager Laura Foster retired after many years with Manitoba Ombudsman.

Joining our office are Laurie Gordon and Robyn Osmond as access and privacy investigators and Jannie Gulakow as a complaints analyst in intake services.

First snooping charge under new provision of PHIA

In our increasingly digital and networked world, information (including our personal health information) may be available at the click of a mouse to large numbers of people. We recognize that most people who provide health care to Manitobans respect the privacy of personal health information and access the information only when necessary, such as when providing care. And sometimes human error can occur in the course of performing job duties and information is accessed inadvertently. In some cases though, employees deliberately disregard the requirements of PHIA and wilfully use personal health information for purposes unrelated to their job. These

kinds of privacy violations can have a negative impact on affected individuals, and they can also reduce public confidence in the health-care system.

In 2012 we asked Manitoba Health to consider changes to PHIA to better protect the privacy of Manitobans and to create sanctions to deter snooping and any other unauthorized use of personal health information. In December 2013, PHIA was amended. Recently, we laid the first charge under the new offence provision. Read the full news release on our website at:

<https://www.ombudsman.mb.ca/news/news/2016-04-20/manitoba-ombudsman-lays-snooping-charge-under-the-personal-health-information-act.html>

Public interest disclosure (whistleblower) reports

In the past three months, we've completed a number of public interest disclosure (whistleblower) reports. These reports were not released publicly, but were issued to the disclosers and the applicable public bodies in accordance with the act. The general nature of the allegations of wrongdoing and the outcomes of the investigations were as follows:

- Financial mismanagement of overtime in a government department – we found no wrongdoing and made no recommendations.
- Serious issues regarding care at a personal care home – we found no wrongdoing, but we made two recommendations for policy improvement, which were accepted by the public body.
- Gross financial mismanagement and an alleged offense committed under FIPPA by a senior manager at an educational institution – we found no wrongdoing and made no recommendations.
- Dangers to the health and life of inmates with a specific health condition at a correctional centre – we found no wrongdoing, but made eight recommendations for administrative improvements, seven of which were accepted by the public body.
- Dangers to the health and life of residents of a personal care home – we found no wrongdoing, but made eight recommendations for policy improvements, which were accepted by the public body.
- Abuse of inmates at a health-care facility – we found no wrongdoing, but made one recommendation for administrative improvement that was accepted by both public bodies affected.
- Danger to health and safety of the employees and of the public, regarding radiation emitting equipment at a hospital – we found no wrongdoing and made no recommendations.

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