

Manitoba Ombuds News

2017-3 Ombudsman, Whistleblower, Access and Privacy Newsletter

From the Ombudsman...By Charlene Paquin

I was appointed as Manitoba's ombudsman in May 2015 and it has been a busy two years for the office since then. In addition to the events and many publications that we have highlighted in our annual reports and past newsletters, the office has been working internally on initiatives aimed at enhancing our processes and maximizing our resources.

I want to first recognize the efforts of staff who continue to work diligently to help address the concerns of Manitobans. Part of this effort has also been to consistently work toward addressing our backlog of cases, which has been an ongoing challenge for the office for many years.

The work of our office is primarily driven by complaints submitted from members of the public and we are committed to providing service in an efficient and timely manner while ensuring that all our investigations are thorough, fair and impartial. Delays in the conclusion of investigations can be due to complexity and can be cyclical or cumulative. Like many public services, we too must manage high volumes of work with our existing resources.

To help assess and address our needs we have done or are currently undertaking the following:

- In November 2016, the office participated in an action planning session that resulted in the identification of five priority areas for a multi-year action plan. One of the things identified as a priority was looking at processes to help address efficiency and timeliness. Another priority area was increasing awareness of our role and our work, and as a result, a multi-year communications plan is being developed.
- Due to the persistently high volume of access and privacy cases, particularly under FIPPA, we undertook our own internal review of our processes in early 2017 to help ascertain how we are meeting our standards and any reasons that we may not

be able to do so. The outcome of this review has already helped to identify process changes, and work is ongoing to identify further ways in which we can expedite our work. It also resulted in a dedicated plan and process to address the more significantly backlogged files.

- The office as a whole has been engaged in reviewing and documenting our current business processes. This work will continue to help us identify areas where we can be more efficient and effective as well help train new staff and be a resource for existing staff.
- We are reviewing our software needs to make sure we have a functional system that allows us to manage our caseloads most effectively as well as support consistent and high quality data.
- Between May and July 2017, we were able to fill two deputy ombudsman positions for the office. One is dedicated to overseeing the Access and Privacy Division (the Freedom of Information and Protection of Privacy Act and the Personal Health Information Act) and one oversees the Ombudsman Division (the Ombudsman Act and the Public Interest Disclosure Act). One of the purposes of changing the office's structure to include deputies is so that there are senior managers who can concentrate on the core mandates and lead focused change in their areas.
- Finally, we continue to create and update our own policies and procedures to ensure that we are meeting our obligations under legislation, such as workplace safety and health legislation, as well as holding ourselves to the highest standards possible as public servants.

The values of the office of the ombudsman include integrity, respect, independence and excellence and we continue to work within this framework while making changes that enhance our work and improve our service to Manitobans.

Guidelines for Implementing a Privacy Management Program

When we did our privacy breach practices survey of 238 public-sector organizations in 2016, we asked organizations to tell us about what resources would assist them in managing privacy breaches. As a result of that exercise, we realized that in addition to specific resources to help with responding to breaches, there was a need for guidance on how to develop an over-arching privacy management program. Privacy breach management is one component of such a program, and there are many other components as well.

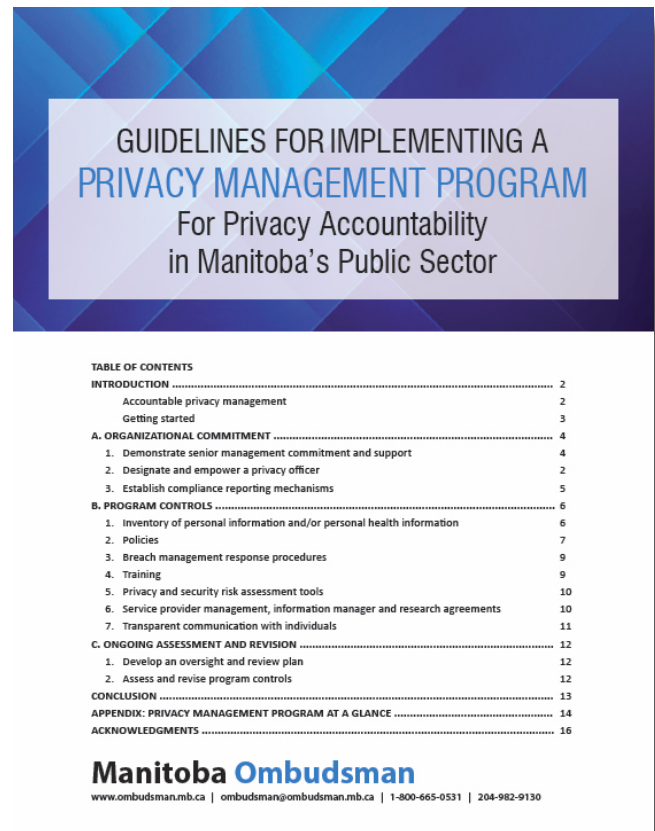
This summer we released *Guidelines for Implementing a Privacy Management Program for Privacy Accountability in Manitoba's Public Sector*. The guidelines outline a step-by-step process for implementing an effective, accountable and transparent privacy management program for all public-sector organizations subject to Manitoba's privacy legislation – the Freedom of Information and Protection of Privacy Act and the Personal Health Information Act.

We've distributed print copies of the guidelines to many organizations. Print copies are still available – contact us if you would like one.

The guidelines are available in both English and French on our website at:

<https://www.ombudsman.mb.ca/uploads/document/files/privacy-management-program-guidelines-en.pdf> (English)

<https://www.ombudsman.mb.ca/uploads/document/files/guidelines-privacy-management-program-fr-fr.pdf> (French)



Right to Know

Manitoba Ombudsman
INFORMATION IS EMPOWERING
Exercise your right to know

Information helps us to:

- Make good decisions
- Engage with each other
- Build knowledge
- Create an informed community
- Connect globally

What else does information help us do?

Why exercise your right to obtain government-held information?

- To find out more information about government plans and priorities
- To gain a better understanding of issues that are of particular interest or concern to you
- To actively participate in the democratic process
- To help make government accountable to its citizens

FIPPA Manitoba's Freedom of Information and Protection of Privacy Act (FIPPA) allows people to request documents and other records from public-sector organizations such as provincial government departments, school divisions, universities, hospitals and municipalities. FIPPA gives people the right to complain to Manitoba Ombudsman about not getting access to requested information or about how the request for information was handled. Find out more at www.ombudsman.mb.ca

National Right to Know Week may be over for 2017, but our “right to know” carries on throughout the year. During RTK Week from September 25 to October 1, we reminded our Facebook followers daily that we’ve got lots of guidance available on our website for anyone who wants to exercise this important democratic right. From brochures and FAQs to more detailed FIPPA and PHIA user guides and practice notes, there is a wide range of materials available for everyone.

Find us on the web at:

<https://www.ombudsman.mb.ca/info/access-and-privacy-division.html>

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New Investigation Reports Posted Online

FIPPA Reports

Case 2017-0081: A request was made to Executive Council for access to records of local, national and international phone calls and text messages from the premier's personal cell phone regarding Manitoba government business. The records were not provided on the basis that FIPPA did not apply to the personal records of a minister. We found that the request was for records relating to Manitoba government business and not the personal records of a minister and that all records relating to government business (regardless of where or how created) come within the scope of the act. Executive Council issued a revised decision and gave access to the requested information in part.

Case 2017-0181: Manitoba Health, Seniors and Active Living refused access to the Health Sustainability and Innovation Review report on the basis that the report had been created for submission to cabinet and it contained advice, recommendations, and policy options created for the public body. We found that the report's disclosure would reveal the substance of deliberations of cabinet as well as advice to a public body, and therefore the complaint was not supported.

Case 2017-0182: Manitoba Finance refused access to the Fiscal Performance Review undertaken by the Manitoba government on the basis that the report had been created for submission to cabinet. We found that the report's disclosure would reveal the substance of deliberations of cabinet and that cabinet did not consent to its release. The complaint was not supported.

Case 2017-0209: The City of Winnipeg refused access to the Portage and Main Transportation Study on the basis that the draft versions contained advice to a public body. We found this exception applied to the advice, opinions, analyses and recommendations contained in draft versions of the report but that the exception did not apply to the entire records. The complaint was partly supported. The city confirmed that the final version of the report was scheduled to be presented to city council on October 25, 2017. Given the public release of the report, our office did not consider it reasonable or practical in the circumstances to make any recommendations to release portions of the draft versions.

Ombudsman Act Reports

Case 2017-0028: Manitoba Housing, a division of Manitoba Families, manages a Homeowners Renovation Assistance Program (HRAP) that provides funding for household repairs to low income homeowners. We received a complaint from a homeowner who applied for financial assistance for repairs but was refused. While we determined that the decision was made in accordance with the eligibility criteria for HRAP, we did make several suggestions for administrative improvements to the program, particularly with respect to ensuring applicants clearly understand the terms and conditions of the program.

Cases 2016-0156 and 2016-0157: We received complaints about a decision by council in the RM of Rosser to re-open its August 11, 2015 council meeting in order to pass a resolution in accordance with the Municipal Act approving the absence of the reeve at three consecutive council meetings. This resulted in procedural irregularities that contravened certain requirements in the RM's procedures by-law. As a result, we recommended that if the RM council wants to suspend requirements in its procedures by-law it should vote on the suspension of the by-law at a council meeting and minutes should clearly indicate which by-law requirements council chose to suspend. We also suggested that the RM develop a formal procedure to track attendance of council members at meetings. The RM accepted our recommendation and administrative suggestion.

Case 2014-0379: A group of residents complained about water quality and capacity issues in the RM of Springfield. Specifically, the complainants were concerned about the operation of gravel pits close to the source of the Oak Bank/Dugald municipal water system, improper decommissioning of the Hillside Road landfill in 1997 and inadequate planning for increasing the capacity of the Oak Bank/Dugald water supply system to meet the ongoing needs of current and projected users. Throughout the course of our investigation, the RM took action to resolve the issues that were raised and is taking steps to develop a comprehensive water supply plan.

Case 2014-0478: Ten individuals and the chief administrative officer of the Rural Municipality of Argyle alleged that they were not provided with adequate notification about a proposed water project by the Town of Pilot Mound and therefore were unable to formally register their concerns with Manitoba Sustainable Development's Environmental Approvals Branch. We determined that the public bodies involved with the implementation of the water project met requirements regarding public notification of the project. However, we are of the view that improvements can be made to ensure a more comprehensive notification process to allow individuals to fully participate in the review process. In addition, we suggested improvements to the communication and administrative coordination between the branches of Sustainable Development and the Manitoba Water Services Board with respect to providing information about projects.

New Investigation Reports Posted Online, continued

Where to find these reports:

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

Ombudsman Act (municipal): https://www.ombudsman.mb.ca/documents_and_files/municipal-investigation-reports.html

Ombudsman Act (provincial): https://www.ombudsman.mb.ca/documents_and_files/provincial-investigation-reports.html

Presentations and Events

We enjoy getting out and about to talk about our office and the work we do. We try to accommodate as many events and requests for presentations as our schedules allow.

Over the last several months, we've delivered several presentations, including:

- *Overcoming privacy paralysis* at the annual PHIA Day, June 22, organized by Southern Health/Santé Sud.
- A presentation about the ombudsman's office at Learning at the Leg!, a workshop on August 24 for teachers held at the legislature.
- *Personal Information Privacy* at the Manitoba Centre for Health Policy's Evidence to Action workshop on September 26.
- A presentation about the office to regional constituency assistants in Brandon on September 29.
- A presentation about the office to political science students at the University of Manitoba on October 26.

In addition, we attended the following events:

- We joined our colleagues from the Office of the Privacy Commissioner of Canada at an exhibitor booth at the Canada Summer Games, Duckworth Centre venue, from August 1-4.
- We had display tables at both the Manitoba Social Sciences Teachers' Association conference (Winnipeg) and the Learning Information for Teachers conference (Brandon) on October 20.



- We attended the General Authority's annual general meeting on September 27 and the Southern First Nations Network of Care AGM on September 29. This teepee, handpainted by the youth engagement committee, was set up for the Southern Authority's meeting held at Swan Lake First Nation. (photo by Cindy Holloway)

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