

# Manitoba Ombuds News

## 2018-3 Ombudsman, Whistleblower, Access and Privacy Newsletter

### Out and about: education and outreach

Fall is always a super busy time for education and outreach, and we wouldn't have it any other way.

Ombudsman and Civil Service Commission staff spoke to attendees at the [Manitoba Municipal Administrators' Association district meetings](#) in Winnipeg on September 14 and in Brandon on September 21 about amendments to the Public Interest Disclosure (Whistleblower Protection) Act that allow municipalities to opt into being covered by the legislation.

September 24-30 was [Right to Know Week](#), with [International Right to Know Day](#) on September 28. RTK gives us the opportunity to remind everyone about our access to information rights. This year, we highlighted different rights throughout the week on our Facebook page. On one of the days, we reminded everyone that our health information is personal and sensitive. Individuals and organizations (called "trustees") who keep our health records give us access to our own personal health information and protect the privacy of it. Our access to information and privacy rights are set out in Manitoba's Personal Health Information Act (PHIA). Download a list of your PHIA rights at:

[www.ombudsman.mb.ca/uploads/document/files/health-info-rights-access-privacy-en.pdf](http://www.ombudsman.mb.ca/uploads/document/files/health-info-rights-access-privacy-en.pdf)

#### PERSONAL HEALTH INFORMATION ACT Know Your Health Information Rights

Manitoba's Personal Health Information Act (PHIA) allows you to see or get a copy of your personal health information with limited exceptions. PHIA also requires health-care providers and facilities to collect, use and disclose your health information for purposes allowed under PHIA, such as to provide you with health care.

PHIA gives you the following access to information and privacy rights:

##### Know why your personal health information is collected

When health-care providers collect your health information from you, they must take reasonable steps to explain the purposes of the collection.

##### Ask to see or get a copy of your personal health information

You can make a request for access to see or get a copy of your personal health information. Speak to a member of your health-care team if you wish to request access to your health information.

##### Ask that errors be corrected

If you believe that your personal health information is inaccurate or incomplete, you can ask your health-care provider or facility to correct it.

##### Have another person exercise your rights

You can authorize another person to exercise your health information rights on your behalf, if you wish. For example, you can authorize another person (in writing) to obtain a copy of your personal health information on your behalf.

##### Opt out of your information being shared for charitable fundraising

If you have received care from a hospital, personal care home, health-care facility or health services agency, your name and mailing address may be disclosed to its affiliated charitable fundraising foundation. You have the right to object to this disclosure and opt out of having your information shared.

##### Opt out of your information being shared with religious organizations

If you are receiving care in a hospital or personal care home, the facility can share your name, general health status and location in the facility with a representative of a religious organization. You have the right to object to this disclosure and opt out of having your information shared.

##### Make an access or privacy complaint

If you have a concern about getting access to your personal health information or if you have a concern about the privacy of your information, you can contact Manitoba Ombudsman. The ombudsman has authority to investigate access and privacy complaints under PHIA.

#### Where to find more information about your rights and PHIA

[www.ombudsman.mb.ca/info/phia.html](http://www.ombudsman.mb.ca/info/phia.html)  
[www.gov.mb.ca/health/phia/index.html](http://www.gov.mb.ca/health/phia/index.html)



Our colleagues from the Office of the Privacy Commissioner of Canada invited us to share their exhibitor space at [Central Canada Comic Con](#) in Winnipeg from October 26-28, 2018. Events such as this one allow us to extend our reach and talk about the importance of protecting privacy with a wider audience...and have some fun while we're at it. We encouraged attendees to pick up our ID shields for credit and debit cards, one



of our new "protecting privacy is my superpower" waterless tattoos, and some of the OPC's information about privacy and identity theft. Interested attendees also received some hands-on, practical advice about adjusting their social media privacy settings.

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## Out and about: education and outreach, continued

On September 6, we arranged for in-house delivery of Organization and Staff Development's [Indigenous Peoples: Building Stronger Relationships](#) workshop. The workshop aims to increase awareness about the history, values and practices of Indigenous peoples and to deepen understanding about the direct and intergenerational effects of colonization and the legacy of residential schools. The facilitators shared practical information and personal stories with ombudsman staff, which made for a very satisfying day of learning and discussion.



Facilitators Lisa Murdock and Leona McIntyre with Marc Cormier

Acting Ombudsman Marc Cormier attended the [national public interest disclosure commissioner conference](#) on September 17-18 in Quebec City.

Ombudsman staff attended the annual general meeting for the [Metis CFS Authority](#) on September 20 and for the [Southern First Nations Network of Care](#) on October 4.

On October 19, we set up display tables at the [Manitoba Social Science Teachers' Association PD Day](#) event in Winnipeg and at the [Learning Information for Teachers](#) event in Brandon. Connecting with teachers gives us the chance to promote our new collection of learning activities and other related information available at [www.ombudsman.mb.ca/info/teachers-and-students.html](http://www.ombudsman.mb.ca/info/teachers-and-students.html)

Our office participated in the [Manitoba Connections Access, Privacy, Security and Information Management conference](#) held in Winnipeg on November 1-2. We participated on the advisory committee along with representatives of public bodies and trustees to help Verney Conference Management plan the conference agenda. Acting Ombudsman Marc Cormier made welcoming remarks to open the conference. Ombudsman staff also delivered two presentations:

**Finding Solutions – Responding to FIPPA requests (and complaints):** Responding to FIPPA requests (and complaints) can be challenging. This session provided tips and tools to help address even the trickiest FIPPA situations. Topics covered in this session included approaches for identifying what an applicant truly wants, focusing on issues rather than positions, problem-solving tips and strategies for finding win-win outcomes.

**Claiming Your (solicitor-client) Privilege and Proving it, too:** The law relating to solicitor-client privilege and the right of access to information has evolved and so have the practices around demonstrating the privilege exists. This session delivered what participants needed to know on the challenging and timely topic of dealing with FIPPA requests for information subject to solicitor-client privilege and responding to complaints arising from a refusal to give access to this information. This session addressed the substantive and practical issues in applying the FIPPA exception for solicitor-client privilege and proving the privilege exists in responding to a complaint investigation by the ombudsman. The presenters provided perspectives of both the public body and the ombudsman.

On September 19, we hosted a Brown Bag Talk in our office about our new online 'longer extensions under FIPPA' form and related materials. About 30 people attended in person and another eight joined by phone. The PowerPoint presentation from the session is available on our website at: [www.ombudsman.mb.ca/uploads/files/general/43//presentation-longer-extensions-under-fippa.pdf](http://www.ombudsman.mb.ca/uploads/files/general/43//presentation-longer-extensions-under-fippa.pdf)

### Coming soon

If you missed the [Finding Solutions – Responding to FIPPA Requests \(and Complaints\)](#) conference session on November 1 (or if you want to participate again!), join us for our "Finding Solutions" Brown Bag Talk from 12:05 - 12:50 p.m on December 12. Call (204) 982-9130 to register.

Visit our exhibitor booth at the [Association of Manitoba Municipalities annual convention](#) at the RBC Convention Centre on November 27 and 28. Also, mark your calendars for [Data Privacy Day](#) on January 28.

## New investigation reports posted on website

### FIPPA Reports

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

**2018-0292:** An individual requested access to his personal information from the Workers Compensation Board of Manitoba (WCB). In the WCB's initial access decision, it refused access in part. During the course of our investigation, the WCB reconsidered its access decision on its own accord, and provided the complainant with additional information. Our office reviewed the information that continued to be withheld and determined that information in one record did not appear to fall under the provision cited by the WCB. The WCB agreed and provided the record to the complainant. Our office found that exceptions related to personal information about a third party and advice to a public body applied to the information that continued to be withheld by the WCB. The complaint was partly supported.

**2018-0252:** An individual requested access to the record of a complaint made to the City of Brandon about his property. Access was provided to the record, with some information relating to another person withheld. Our office found that the withheld information was personal information of a third party that was provided in confidence for the purposes of administering the city's zoning by-law. We determined that the city was required to refuse access and therefore the complaint was not supported.

**2018-0127:** An individual made an access request to Manitoba Agriculture for records about an investigation initiated under the Animal Care Act. The department refused access in full on the basis that disclosure would be harmful to a third party's privacy and business interests. In the course of our investigation, the department issued a revised access decision stating that it was also refusing access on the basis that disclosure would be harmful to law enforcement or legal proceedings. Our office found that the department's decision to refuse access was authorized under FIPPA. The complaint was not supported.

**2017-0469:** The complainant made an access request to the Consumer Protection Division (CPD) of Manitoba Justice for copies of all records regarding Bill 27, the Elections Amendment Act, from the deputy minister's office. The CPD granted access to some records, refused access in whole or in part to others and determined that some were not subject to FIPPA. Our investigation confirmed that some records were excluded from FIPPA. We also found that some of the exceptions to access applied, while other cited exceptions did not apply. The complaint was partly supported.

**2017-0266:** An individual requested that the Winnipeg Regional Health Authority provide information related to the coordination or transfer of care of individuals who request medical assistance in dying (MAID) while in a hospital that does not allow medical assistance in dying on its premises. The WRHA provided access in part, and its refusal was based on several clauses of FIPPA for the bases of its decision (disclosure deemed an unreasonable invasion of a third party's privacy; advice to a public body; disclosure harmful to individual or public safety; solicitor-client privilege). Most of the contents of email correspondence relating to the process for the provision of MAID in objecting facilities was severed, however the dates of the correspondence were released. Our investigation found that the exceptions did not apply to all of the severed information. Also, it was our view that had the information about the process for the provision of MAID been released (which would inform the public about an issue of public interest without identifying individual patients), this would have been more consistent with the purpose of FIPPA than releasing the dates of emails and little else to the complainant. We observed that the dates of the correspondence naturally organize themselves around the dates when requests for medical assistance in dying were made. This characteristic, in conjunction with publicly available information could potentially allow the identification of individuals who availed themselves of MAID while in an objecting facility. This being the case, we were not able to ask the WRHA to release further information. The complaint was partly supported.

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## New investigation reports, continued

**2017-0416:** An individual made an access request to the Winnipeg Regional Health Authority, which issued a fee estimate to process the request. The individual requested a fee waiver, believing that the record related to a matter of public interest, but the WRHA decided not to waive the fee. Our office found that the WRHA reasonably concluded that the requirements for a fee waiver were not satisfied. The complaint was not supported.

### PHIA Report

**2018-0299:** An individual made an injury claim with Manitoba Public Insurance (MPI) and subsequently appealed MPI's decision to the Automobile Injury Compensation Appeal Commission (AICAC). As part of the appeal process, MPI provided copies of four reports containing the individual's personal health information to AICAC. In a complaint to our office, the individual alleged that MPI disclosed his personal health information to AICAC without his consent, and therefore was contrary to PHIA. Our office found that the disclosure of the individual's personal information was authorized. The complaint was not supported.

Find PHIA reports at [www.ombudsman.mb.ca/documents\\_and\\_files/investigation-reports-1.html](http://www.ombudsman.mb.ca/documents_and_files/investigation-reports-1.html)

## Securing trust and privacy in Canada's electoral process

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.

At a meeting in Regina from September 11-13, 2018, Canada's information and privacy ombudspersons and commissioners called on governments to pass legislation requiring political parties to comply with globally recognized privacy principles, to provide Canadians with access to the personal information they hold about them, and to provide for independent oversight to verify and enforce privacy compliance.

Read the full news release with a link to the resolution *Securing Trust and Privacy in Canada's Electoral Process* at: [www.ombudsman.mb.ca/info/federal-provincial-territorial.html](http://www.ombudsman.mb.ca/info/federal-provincial-territorial.html)

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