

Manitoba Ombuds News

2018-4 Ombudsman, Whistleblower, Access and Privacy Newsletter

Amendments to the Public Interest Disclosure (Whistleblower Protection) Act are now in effect

The Public Interest Disclosure (Whistleblower Protection) Act (PIDA) facilitates disclosure and investigation of significant and serious wrongdoing in the Manitoba public service. The act also provides employees reprisal protection for coming forward.

Effective December 1, 2018, our powers have been enhanced to receive and investigate reprisal complaints from employees of public bodies who allege that acts or threats of reprisal have been taken against them for seeking advice about making a disclosure, making a disclosure, or cooperating in an investigation under PIDA. Complaints of reprisal must be submitted to us in writing and a further complaint can be filed with the Manitoba Labour Board if the employee or former employee is not satisfied with the outcome of our process.

Other key changes to the act are as follows:

- inclusion of school divisions and school districts
- inclusion of municipalities by regulation, including the City of Winnipeg and the City of Brandon
- clarification of roles of the ombudsman and the designated officer of a public body
- Manitoba Ombudsman may request a copy, review and make recommendations on a public body's disclosure procedures
- strengthening investigatory powers of designated officers within public bodies
- information about PIDA and disclosure procedures are required to be communicated by the chief executive *annually* to the employees of the public body
- the protection of a whistleblower's identity is strengthened by prohibiting the disclosure of information in a civil court proceeding or a proceeding of an administrative tribunal that could reveal the person's identity

We recognize that stepping forward to speak about a wrongdoing requires quite a bit of courage and can be daunting for some. If you have questions about PIDA, PIDA investigation procedures, or if you would like more information about how to come forward with a disclosure of wrongdoing, contact our office at 1-800-665-0531 or ombudsman@ombudsman.mb.ca. Your name will be kept confidential.

More information about PIDA is also available on our website at:

www.ombudsman.mb.ca/info/ombudsman-division.html

Privacy breach resources

Privacy breaches can happen to an organization of any size, they can affect one person or many, and they can have significant consequences for the individuals affected.

The Freedom of Information and Protection of Privacy Act (FIPPA) and the Personal Health Information Act (PHIA) set out requirements for managing personal and personal health information that Manitoba public bodies and trustees must follow. A privacy breach can occur when personal information or personal health information is lost, stolen, improperly accessed or mistakenly disclosed.

New resources available on our website include:

- A privacy breach reporting form that allows public bodies and trustees to complete an analysis of the privacy breach and submit the details to Manitoba Ombudsman. The form is available online and as a fillable PDF file.
- A revised practice note, *Key Steps in Responding to Privacy Breaches under FIPPA and PHIA*, which outlines four key steps to consider when responding to a privacy breach.
- A new practice note, *Privacy Breach Notification Letter Checklist*, which provides guidance on notifying affected individuals.

Manitoba Ombudsman has developed new privacy breach resources for Manitoba public bodies and trustees, including an online reporting form and new guidance documents:

www.ombudsman.mb.ca/info/privacy-breaches.html

When a privacy breach occurs, it is important for public bodies and trustees to take immediate action to respond to the breach. Our practice note, *Key Steps in Responding to Privacy Breaches under FIPPA and PHIA*, is intended help facilitate a rapid response by outlining the actions to take within the following four key steps:

1. Take immediate common sense steps to contain the breach.
2. Evaluate the risks associated with the breach to determine what action is necessary and the urgency of action.
3. Consider notifying the individuals affected by the breach and others, and whether to report the breach to Manitoba Ombudsman.
4. Develop or improve safeguards to prevent future breaches.

Privacy breaches can have significant consequences for affected individuals, including identity theft, physical or mental harm, a damaged reputation, embarrassment, and loss of employment. Our *Privacy Breach Notification Letter Checklist* offers guidance on what to include in a notification letter to affected individuals to provide them with information about the breach and on what steps they could take, including their right to make a privacy complaint to our office.

Coming soon! An office in Thompson

Manitoba Ombudsman and the Manitoba Advocate for Children and Youth (MACY) are opening a shared office in Thompson as part of a two-year pilot project. Setting up the office in the City Centre Mall at 300 Mystery Lake Road is a work in progress. We anticipate an early 2019 opening.

“We’re excited about being a part of the Thompson community and connecting with people throughout the north. Having a physical presence on the ground in Thompson, which is also connected via technology to our Winnipeg office, will make it easier for people to bring their questions and concerns forward to us. We can’t wait to begin.”

Acting Ombudsman Marc Cormier

New investigation reports posted on website

FIPPA Case 2018-0279: A request was made to Manitoba Infrastructure for access to records relating to the valuation of Manitoba's transportation and flood infrastructure investment deficit. The department provided access to some records and withheld others. Our office found that exceptions to disclosure related to cabinet confidences and advice to a public body applied to the withheld information. The complaint was not supported.

FIPPA Case 2018-0118: An individual requested copies of correspondence about a drainage issue and a copy of a petition presented to council of the Rural Municipality of La Broquerie. The municipality granted access to the information in part, and withheld some information on the basis that releasing it would be an unreasonable invasion of a third party's privacy. The ombudsman found that the municipality's decision to refuse access to some of the information was authorized. As a result of this investigation, our office suggested that the municipality consider developing guidance materials for residents that set out how personal information will be handled throughout the petition process.

PHIA Case 2017-0479: While attending the Victoria General Hospital for a medical procedure, a nurse collected an individual's medical history through a verbal discussion in a semi-public area of the hospital, where others could hear the discussion. The individual complained about the hospital's failure to safeguard her personal health information. Our office found that the hospital did not adequately protect personal health information from the risk of inadvertent unauthorized disclosure, and we supported the complaint. During our investigation, the hospital made changes to the layout of the unit to provide greater physical and visual separation of patients during the intake procedure. Our office concluded that because of these changes, the hospital implemented reasonable safeguards to protect personal health information discussed with patients during the intake process.

[FIPPA reports: www.ombudsman.mb.ca/documents_and_files/investigation-reports.html](http://www.ombudsman.mb.ca/documents_and_files/investigation-reports.html)

[PHIA reports: www.ombudsman.mb.ca/documents_and_files/investigation-reports-1.html](http://www.ombudsman.mb.ca/documents_and_files/investigation-reports-1.html)

Ombudsman Act Case 2016-0228: We received a complaint about a decision by the Municipality of North Cypress-Langford to approve multiple staff dwellings on an agriculturally zoned property. We determined that the municipality had the authority to approve the staff dwellings; however, we noted that the municipality did not have specific criteria to consider when assessing applications for accessory use buildings or structures. Having such criteria would help identify the factors council considered and applied in making its decision. The complainant further believed that the property owners did not have a conditional use permit for their home-based business, which sells items produced off-site. Our office is of the view that in accordance with the municipality's zoning by-law, conditional use approval is required for the home-based business. At the conclusion of our investigation, our office made three recommendations to the municipality.

Ombudsman Act Case 2017-0368: A female resident at the Manitoba Youth Centre (MYC) raised health and hygiene concerns about a policy that restricted residents from having or wearing their own underwear. Under the policy, MYC residents were issued institutional underwear that were randomly distributed to them after laundering. As a result of our investigation, the complaint was resolved. MYC changed its policy and now provides female residents with three pairs of institutional underwear, which is labelled for female residents' exclusive use during their stay at MYC, and which is returned to the resident after laundering. We also made two suggestions for administrative improvement, including that MYC reconsider using mesh laundry bags in the facility so that all residents' personal clothing could be kept together and separate from others and that MYC consider establishing procedures to encourage a consultative approach to process and policy changes whenever possible and appropriate (such as when clothing restrictions directly affect residents).

[Municipal reports: www.ombudsman.mb.ca/documents_and_files/municipal-investigation-reports.html](http://www.ombudsman.mb.ca/documents_and_files/municipal-investigation-reports.html)

[Provincial reports: www.ombudsman.mb.ca/documents_and_files/provincial-investigation-reports.html](http://www.ombudsman.mb.ca/documents_and_files/provincial-investigation-reports.html)

Happy holidays!



Happy holidays from all of us at Manitoba Ombudsman!

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