

Manitoba OmbudsNews

2021-1 Ombudsman, Whistleblower, Access and Privacy Newsletter

Collaborative work with other oversight offices

Over the last several months, we have been working with our counterpart oversight offices to develop practical guidance related to privacy and fairness that can be used as governments develop and implement vaccination status programs.

As part of a network of ombudsman and information and privacy commissioner offices across the country, we often collaborate on important issues of mutual interest and concern. How governments certify COVID-19 vaccination status has been a topic of discussion. Some jurisdictions use the terms vaccine passport, vaccination certificate, immunity passport or digital proof of vaccination. In Manitoba, the name “immunization card” is being used to show proof of COVID-19 immunization status. Whatever the name, these kinds of cards or certificates may allow people to travel and gather and could support economic recovery while protecting public health.

Privacy

Immunization status initiatives must be developed and implemented in compliance with applicable privacy laws. They should also incorporate privacy best practices in order to achieve the highest level of privacy protection proportionate to the sensitivity of the personal health information that will be collected, used or disclosed. On May 19, 2021, a joint statement, *Privacy and COVID-19 Vaccine Passports*, was endorsed during the annual meeting of federal, provincial and territorial information and privacy commissioners. Read the statement at: priv.gc.ca/en/opc-news/speeches/2021/s-d_20210519/

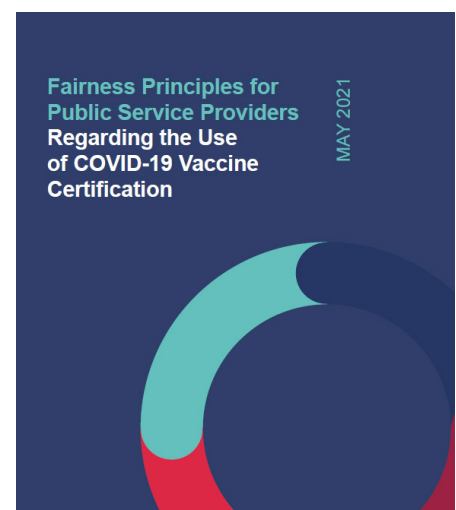
Fairness

On May 26, the Canadian Council of Parliamentary Ombudsman released *Fairness Principles for Public Service Providers Regarding the Use of Vaccine Certification*. This guidance document calls on provincial and territorial governments to consider key fairness principles when contemplating vaccine certification:

- Clear direction for the use of vaccination certification must be given by government via legislation or publicly available policy.
- Any vaccine certification program must be evidence-informed and all decisions must be subject to review and appeal processes.
- Accommodations must be made for those who have not received the vaccine, including alternative service delivery options.
- Decisions about restricting access to a service based on a person's vaccination status must be done in a transparent, procedurally fair manner and be clearly communicated to the affected person in an accessible way.

You'll find the guidance document at:

www.ombudsman.mb.ca/uploads/document/files/ccpo-fairness-principles-vaccine-passport-may2021-en.pdf



Collaborative work with other oversight offices, continued

Privacy and access to information rights during and after a pandemic

In a joint resolution on June 2, Canada's information and privacy commissioners called on their respective governments to respect Canadians quasi-constitutional rights to privacy and access to information. The commissioners took note of the serious impact the COVID-19 pandemic has had on the right of access to information and privacy rights. The pandemic has accelerated trends that were occurring prior to March 2020, such as concerns among the public about increasing surveillance and the slowing down of processing access requests.

The joint resolution adopted 11 access to information and privacy principles and called on Canada's governments to show leadership by implementing them and making the modernization of legislative and governance regimes around freedom of information and protection of privacy a priority. Read the news release with a link to the joint resolution here: www.ombudsman.mb.ca/news/news/2021-06-02/information-and-privacy-commissioners-issue-joint-resolution-about-privacy-and-access-to-information-rights-during-and-after-a-pandemic.html

First Whistleblower Awareness Day

On March 24, we marked the first ever Whistleblower Awareness Day in Canada by releasing a new infographic about Manitoba's Public Interest Disclosure (Whistleblower Protection) Act. The infographic highlights some key points to know about making a disclosure of wrongdoing or a complaint about reprisal under PIDA.

You'll find the PIDA infographic at www.ombudsman.mb.ca/uploads/document/files/pida-infographic-en.pdf

Launching Whistleblower Awareness Day was a collaborative effort among the oversight offices in Canada that have public interest disclosure responsibilities.

Speak up. We're listening.

whistleblower protection

Manitoba's Public Interest Disclosure (Whistleblower Protection) Act or PIDA provides a process for the safe disclosure of information about potential wrongdoing in public bodies.

WRONGDOING

A wrongdoing is a significant and serious matter that includes:

- an action that is an offence under another law
- knowingly directing or counselling a person to commit a wrongdoing
- gross mismanagement, including of public funds or assets, or
- an action that creates a specific and substantial danger to the life, health or safety of persons or the environment

REPRISAL

Who can make a complaint about reprisal?

- Public body employees who make a disclosure, seek advice or participate in a PIDA investigation are protected from reprisal. An employee who believes reprisal has occurred may make a complaint to us.

DISCLOSURES

Who can make a disclosure?

- A public body employee who believes they have information about a wrongdoing can make a disclosure to their supervisor, the designated officer in their organization or to us.
- Anyone else who is not an employee may also contact us to provide information about a wrongdoing.

PUBLIC BODIES

Public bodies include:

- provincial government departments, agencies, boards, commissions and Crown corporations
- health authorities and health-care bodies*
- child and family services agencies and authorities
- school divisions, colleges and universities
- some municipalities*
- other organizations* that receive at least 50% of their funding from government
- independent offices of the legislative assembly

*Identified in the PIDA regulation. Contact us if you are unsure if your employer is a public body.

Manitoba Ombudsman receives and acts on disclosures of wrongdoing. If you believe a wrongdoing or reprisal has occurred, please contact us for advice or to make a disclosure. We will treat your concern with confidentiality. Protecting the identity of disclosers is required by law.

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Fostering accountability and integrity within government

New investigation reports on our website

FIPPA Cases 2020-1991 to 2020-1994: An applicant made four requests to Manitoba Infrastructure for access to records. The department extended the time limit and did not respond to the applicant by this date, which prompted the applicant to make a complaint to the ombudsman. The ombudsman found that the department did not comply with the time limit for responding to the requests and did not uphold its duty to assist the applicant. The ombudsman recommended that the department make access decisions by March 29, 2021, and provide copies to the applicant and to our office. On March 16, 2021, Manitoba Infrastructure issued its access decisions to the applicant, and on March 18, 2021, we received their formal response accepting the recommendations.

New investigation reports on our website, continued

FIPPA Case 2018-0424: An applicant requested records from the City of Winnipeg related to a claim for sewer back-up damage. The city refused access in part on the basis of exceptions relating to advice to a public body, unreasonable invasion of an individual's privacy, disclosure harmful to law enforcement or legal proceedings and solicitor-client privilege. The city refused to provide records for review by our office on the basis of its claim of solicitor-client privilege. Our office considered the city's representations and found that the city had not established that these exceptions applied. In the absence of records for review, our office was unable to conclude that the other exceptions relied on by the city applied to the withheld information. The ombudsman recommended that the city provide the complainant with a copy of the withheld information, with the exception of any information withheld under section 17 of FIPPA. As the city did not accept the recommendation, the ombudsman requested a review by the information and privacy adjudicator of the city's decision to refuse access to the records in question.

FIPPA investigation reports are on our website at:

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

PHIA Case 2020-1304: Manitoba Families: Privacy Breach Report

We released a report under the Personal Health Information Act (PHIA) about an investigation into a privacy breach that affected 8,900 children receiving services from the Children's disAbility Services (CDS) program of Manitoba Families.

On August 26, 2020, the CDS program unintentionally blind-copied about 100 service agencies and community advocates on an email that was intended solely for the Manitoba Advocate for Children and Youth. The personal health information in a document attached to the email included details such as the child's name, gender, date of birth, address, the nature of their disability and dates and types of medical and psychological assessments that had been conducted. While the information was encrypted, a follow-up email containing a password was sent moments later. The follow-up email was also blind-copied to the service agencies and community advocates.

Our office launched a systemic investigation to review the circumstances surrounding the privacy breach, to examine the department's compliance with the requirements of PHIA and to identify areas where administrative improvements related to the protection and security of personal health information in the care of Manitoba Families could be made.

We made nine recommendations to the department related to strengthening policies and procedures and training employees about privacy obligations. As the department collects personal and personal information from thousands of Manitobans receiving its services, we also recommended that the department implement a comprehensive privacy management program.

The department accepted our nine recommendations and its response to each recommendation can be found in the report at: www.ombudsman.mb.ca/uploads/document/files/case-2020-1304-en.pdf

"We trusted that all our information would be kept private and confidential."

PRIVACY BREACH investigation

Under Manitoba's Personal Health Information Act (PHIA)

PRIVACY BREACHES
A privacy breach occurs when there is unauthorized collection, use, disclosure or disposal of personal or personal health information, such as when information is stolen, lost or mistakenly disclosed. Misdirected communication (fax, email, mail) that contains personal or personal health information is a privacy breach.

THE MISDIRECTED EMAIL
On August 26, 2020, the Children's disAbility Services (CDS) program of Manitoba Families unintentionally blind-copied about 100 recipients on an email with an encrypted document containing personal health information of 8,900 children that was intended solely for the Manitoba Advocate for Children and Youth. A follow-up email with the password for the document was also blind-copied to the unintended recipients.

PERSONAL HEALTH INFORMATION
The document attached to the email included personal health information such as the child's name, gender, date of birth, address, the nature of their disability and dates and types of medical and psychological assessments that had been conducted.

OMBUDSMAN INVESTIGATION
The ombudsman launched an investigation to review the circumstances of the breach, to examine the department's compliance with the requirements of PHIA and to identify areas where administrative improvements related to the protection and security of personal health information in the care of Manitoba Families could be made.

INVESTIGATION OUTCOMES
The ombudsman made nine recommendations to the department about strengthening policies and procedures, enhancing training for employees about privacy obligations, ensuring employees sign a pledge of confidentiality, and implementing a privacy management program. Read the report at www.ombudsman.mb.ca/uploads/document/files/case-2020-1304-en.pdf

Under PHIA, the ombudsman investigates complaints, conducts audits to monitor and ensure compliance with the act, informs the public about the act and comments on the access and privacy implications of proposed legislation, programs or practices of public bodies.

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UPHOLDING YOUR INFORMATION ACCESS AND PRIVACY RIGHTS



New investigation reports on our website, continued

FIPPA Case 2019-0561: We released a summary report on our review of the privacy implications of Manitoba Liquor and Lotteries' Controlled Entrance Initiative at Liquor Mart stores. In November 2019 Manitoba Liquor and Lotteries (MBLL) implemented the initiative to improve safety and security in response to thefts. We conducted the review to assess and comment on privacy implications and whether MBLL's collection, use, disclosure and security of customers' personal information complied with FIPPA.

As controlled entrances were put in place at Liquor Marts, we began receiving questions from the public about MBLL's authority to collect their personal information and about how they were handling it after collection. To help answer these questions, this report highlights:

- How MBLL handles the personal information it collects at controlled entrances in relation to the requirements of FIPPA.
- The safeguards MBLL has in place to protect the privacy of customers' personal information.
- Our comments about MBLL's Controlled Entrance Initiative's compliance with FIPPA.

Our summary report also highlights the importance of completing a privacy impact assessment when implementing initiatives that affect individual privacy. As more organizations use technology to innovate and deliver services, a privacy impact assessment can assist with anticipating and preventing risks to personal information in the planning phase. Conducting a privacy impact assessment can demonstrate to citizens that their personal information is being appropriately managed and safeguarded. For more information on privacy impact assessments, see www.ombudsman.mb.ca/info/privacy-impact-assessment.html

The summary report is available at: www.ombudsman.mb.ca/uploads/document/files/case-2019-0561-en.pdf

Upcoming event

The Public Service Information Community Connection (PSICC) is hosting a virtual 2021 Right to Know Week event from September 28 to October 1, 2021. For more information about the event, visit: psimcc.ca/rtk2021/index/&lang=en



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