

Manitoba Ombuds News

2022-1 Ombudsman, Whistleblower, Access and Privacy Newsletter

Access and privacy laws changed on January 1, 2022

Changes for public bodies

If you work in an organization subject to the Freedom of Information and Protection of Privacy Act (FIPPA) and the Personal Health Information Act (PHIA), it's important to know that amendments to the acts came into force on January 1, 2022.

For **highlights of FIPPA changes**, please see our infographic ----->
www.ombudsman.mb.ca/uploads/document/files/infographic-for-pbs-revised-en.pdf

For information about **mandatory privacy breach reporting** under both FIPPA and PHIA, please see pages 2-3 of this newsletter.

We have started updating our **practice note series** that provides guidance to public bodies and trustees on how to apply various provisions of the acts. To date, we have updated the following practice notes:



FIPPA

- Checklist: Contents of a Complete Response Under FIPPA
- Documentation About Processing Access Requests Under FIPPA
- Guideline on Time Frames for Processing a FIPPA Request

For the public: new ways to submit complaints

To provide better service and to understand complaint details more clearly, we have developed three new fillable PDF complaint forms that are now available on our website:

- FIPPA access complaint form
- PHIA access complaint form
- FIPPA and PHIA correction or privacy complaint form

The three forms are accessible from our complaints page at:

www.ombudsman.mb.ca/info/complaints.html

Individuals who would like to make a FIPPA or PHIA complaint can also do so by setting out the details of their complaint in a letter or email to the ombudsman.

- Considering Limits to Exceptions When Making Access Decisions Under FIPPA
- Responding to a Complaint About a Refusal to Correct Personal Information Under FIPPA
- Responding to a Complaint About a Refusal of Access Under FIPPA
- Responding to Recommendations Made by the Ombudsman Under FIPPA

PHIA

- Handling Requests for Correction Under PHIA
- Responding to a Complaint About a Refusal to Correct Personal Health Information Under PHIA
- Responding to Recommendations Made by the Ombudsman Under PHIA
- The Duty to Assist Under PHIA

Both FIPPA/PHIA

- Key Steps in Responding to a Privacy Breach under FIPPA and PHIA
- Privacy Breach Notification Letter Checklist

NEW Mandatory Privacy Breach Reporting

Amendments to FIPPA and PHIA made it mandatory for public bodies and trustees to notify affected individuals and Manitoba Ombudsman when a real risk of significant harm has been created for individuals as a result of a privacy breach. Mandatory breach reporting has existed in a number of Canadian provinces for some time. The coming into force of these amendments is another step toward better informing Manitobans who have been subject to a privacy breach and it is a reminder to all public bodies and trustees about the importance of protecting the personal and personal health information in their custody and control at all times.

The provisions referenced below are excerpts of the amended legislation and are intended as guidance only. Please refer to the provisions listed following each excerpt for the correct and legal wording.

The amendments define “privacy breach,” “the real risk of significant harm” (RROSH), and the factors which determine RROSH:

“privacy breach” means, in relation to personal or personal health information, theft or loss; or access, use, disclosure, destruction or alteration in contravention of the acts.

[41.1\(1\) FIPPA and 19.0.1 \(1\) PHIA](#)

“significant harm” includes, in relation to an individual, bodily harm, humiliation, damage to the individual’s reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the individual’s credit rating or report, and damage to or loss of the individual’s property.

[41.1\(1\) FIPPA and 19.0.1 \(1\) PHIA](#)

Factors involved in assessing the “real” risk of significant harm include:

- the sensitivity of the personal or personal health information
- the probability that the personal or personal health information could be used to cause significant harm
- any other relevant factors

[3.1 FIPPA reg. and 8.7 PHIA reg](#)

The required form and manner of notification of affected individuals and the ombudsman if RROSH has been determined:

Notify individuals affected by the breach as soon as practicable in writing unless the delay necessary to provide written notice may increase RROSH for the individuals.

[3.2\(1\), 3.2\(2\) FIPPA reg and 8.8\(1\), 8.8\(2\) PHIA reg](#)

Notify individuals indirectly in certain circumstances:

- there is a risk to public health or safety
- the identity or current contact information of the individual(s) is not known
- giving notice directly is impractical or unduly expensive because of the large number of affected individuals or could threaten or harm the individual’s mental or physical health.

[3.3\(1\) FIPPA reg and 8.8.1\(1\) PHIA reg](#)

Employees of public bodies or trustees may disclose unauthorized activity to the ombudsman:

Unauthorized activity may include collecting, using, disclosing, retaining, concealing, altering or destroying personal health information in contravention of the acts. The employee:

- must not disclose personal or personal health information unless the ombudsman requests it.
- is not liable to prosecution for an offence under the acts for disclosing personal or personal health information requested by the ombudsman.
- may request that the ombudsman keep the individual’s identity confidential, in which case the ombudsman must take reasonable steps to protect the identity of the individual.

[41.2\(1\) FIPPA and 27.1\(1\) PHIA](#)

To assist public bodies and trustees in understanding their new privacy breach obligations, we have developed the following resources available at: www.ombudsman.mb.ca/info/privacy-breaches.html

- a revised fillable PDF Privacy Breach Reporting Form
- revised practice notes: *Key Steps in Responding to a Privacy Breach under FIPPA and PHIA* and *Privacy Breach Notification Letter Checklist*
- two new privacy breach risk rating tools -- one for FIPPA and one for PHIA -- to help determine the risk of significant harm

We also will be offering online sessions on mandatory privacy breach reporting and other access and privacy topics this winter to familiarize everyone with new requirements and tools. Watch our website and social media for details. If you're interested in participating or hosting a session, send us an email at ombudsman@ombudsman.mb.ca

New reports released in 2021

To mark international Ombuds Day on October 14, we released a special report that takes a retrospective look at the origin and evolution of our office over the past 50 years. You'll find **Manitoba Ombudsman: Celebrating 50 Years** at: www.ombudsman.mb.ca/uploads/document/files/ombudsman-report-1970-2020-web-en.pdf



We released our **2020 annual report**, which quantifies contacts to the office, identifies challenges we faced during the first year of the pandemic and features case summaries and detailed statistics on the office's work under FIPPA, PHIA, the Ombudsman Act and PIDA. A limited number of bilingual print copies are available by contacting our office at 204-982-9130, 1-800-665-0531 or ombudsman@ombudsman.mb.ca. The report is on our website at: www.ombudsman.mb.ca/uploads/document/files/2020-annual-report-web-en-en.pdf

FIPPA investigation report

Case 2020-1026: Manitoba Finance. A request was made under FIPPA to Manitoba Finance for access to records. We found that the department did not comply with the time limit for responding to the request and it did not uphold its duty to assist the applicant. The ombudsman supported the complaint and recommended that Manitoba Finance make an access decision by June 18, 2021. Manitoba Finance made its access decision on June 18, 2021, and provided it to the applicant and the ombudsman. In a letter dated June 25, 2021, Manitoba Finance provided its response to the ombudsman's report with recommendations accepting the recommendations. www.ombudsman.mb.ca/uploads/document/files/case-2020-1026-en.pdf

Ombudsman Act investigation reports

Case 2018-0457: Manitoba Liquor and Lotteries. An individual complained to our office that Manitoba Liquor and Lotteries (MLL) was not adequately enforcing its Voluntary Self-Exclusion (VSE) program. The individual believed the program would keep her from gambling at local casinos, but after signing up for the program, she discovered she was still able to gamble and ended up losing approximately \$10,000. Partway through our investigation the individual withdrew her complaint for personal reasons, but supported a continued investigation on the ombudsman's own initiative. At the conclusion of our investigation, the ombudsman recommended improvements to the way MLL communicates about the VSE program, including the use of plain, clear language, keeping information on its website updated, and articulating limitations related to detection and enforcement of the VSE program.

You'll find provincial Ombudsman Act reports at

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

Cases 2019-0283 and 2019-0284: Rural Municipality of Lac du Bonnet. A property owner in the RM of Lac du Bonnet, whose property was adjacent to public reserve land in the municipality, was concerned about snowmobilers using his property and the public reserve to access the Lee River. The property owner raised concerns about snowmobile activity within the RM, but believed that the RM had not treated his concerns fairly. In this case, the ombudsman concluded that while the RM has no obligation to enforce the Off-Road Vehicles Act (the RCMP enforces the act in this area), the RM has an obligation to set expectations and rules for snowmobile use in the area, given that it markets itself as a "four-season playground." The ombudsman recommended that the RM work with the local RCMP detachment to create a safer and more compliant environment for snowmobiling and also that the RM review plans and bylaws of other municipalities that regulate snowmobile use and consider how such practices could apply in the RM.

Case 2018-0311: Rural Municipality of Rockwood. Property owners contacted our office about actions and decisions of the RM of Rockwood related to music festivals and retreats held on adjacent agricultural zoned land. The RM issued temporary development permits for the events but did not enforce noise restrictions outlined in the permit conditions. The ombudsman concluded that if the RM was stipulating conditions in its temporary development permits, it should take steps to ensure it has the ability to enforce all conditions on behalf of its residents. The ombudsman recommended that the RM put in place a framework to guide decision making related to deploying enforcement resources and it should post the framework on its website. The property owners also believed that there may have been a conflict of interest on the part of a council member because his spouse publicly supported these events. While there was no financial gain for the council member or his spouse, there may have been the perception of a conflict of interest. The ombudsman suggested that the RM ensure its elected officials are aware of their responsibilities under its Council Members' Code of Conduct Policy and that it consider further training in this area.

Case 2018-0313: City of Winnipeg. A Winnipeg resident applied for permission to construct a driveway that did not conform to one of the rules for driveways in Winnipeg's Private Access By-law. The bylaw allows the community committee for each area to approve an application even when a proposed driveway does not meet the rules. Ultimately the resident submitted three applications to the city, paying the application fee three times. His application was approved after his third attempt, despite the fact that it was the same proposal that he had submitted on his second attempt, which had been denied. The resident complained to our office that his application was treated unfairly by the community committee and the city. The ombudsman found that there were different interpretations of the Private Access By-law among city entities and that the resident did not receive reasons for the second denial of his application. The ombudsman recommended that the city review the bylaw and develop a common interpretation of the relevant provision, that community committees deliver verbal reasons for decisions and record them in minutes and that the city refund one of the application fees paid by the resident.

You'll find municipal Ombudsman Act reports at

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

PHIA charges laid

We recently announced that one of our PHIA investigations resulted in three charges being laid against an employee of a trustee under PHIA. The employee, a privacy officer in a health-care facility, had allegedly used her access to personal health information for purposes unrelated to her work. We received a complaint from the individual whose privacy had been breached and we also received a report of a privacy breach from the trustee.

Upon completing the investigation, the ombudsman laid the charges against the employee for deliberately accessing and disclosing another person's health information without authority under PHIA. Our investigation report into this matter will be posted when court proceedings conclude.

See our news release about the PHIA charges at:
www.ombudsman.mb.ca/news/news.html

COVID-19 FAQ

We receive lots of questions and complaints about a variety of pandemic-related issues and hear about the impact the pandemic is having on individuals and communities. To help answer some of the most frequent COVID-19-related questions our office has been receiving, we posted a FAQ on our website at:

www.ombudsman.mb.ca/uploads/document/files/faq-covid-19-issues-en.pdf



Data Privacy Day

On January 28, many people and organizations around the world celebrate Data Privacy Day. Data Privacy Day highlights the impact technology is having on our privacy rights and reminds us about the importance of valuing and protecting personal information. It aims to inspire dialogue and empower individuals and organizations to take action.

Any article in this newsletter may be reprinted in whole or in part. Please credit Manitoba Ombudsman.

Ce bulletin est disponible en français

To subscribe to Manitoba OmbudsNews or be removed from our distribution list please send your email address to acleutin@ombudsman.mb.ca

www.ombudsman.mb.ca
ombudsman@ombudsman.mb.ca
 Twitter: @MBOmbudsman
 Facebook: [fb.com/manitobaombudsman](https://www.facebook.com/manitobaombudsman)

Brandon Office
 202- 1011 Rosser Ave.
 Brandon, MB R7A 0L5
 Phone: 204-571-5151
 Fax: 204-571-5157
 Toll Free in MB 1-888-543-8230

Thompson Office
 City Centre Mall
 1720-300 Mystery Lake Road
 Thompson, MB R8N 0M2
 Phone: 204-677-7270
 Toll Free: 1-877-677-7270

Winnipeg Office
 750 - 500 Portage Ave.
 Winnipeg, MB R3C 3X1
 Phone: 204-982-9130
 Fax: 204-942-7803
 Toll Free: 1-800-665-0531