

MANITOBA OMBUDSMAN PRACTICE NOTE

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DISTINGUISHING BETWEEN PERSONAL INFORMATION AND BUSINESS INFORMATION UNDER FIPPA

Under FIPPA, there are specific requirements for protecting personal information and for protecting business information. In order to determine which requirements apply, it is necessary to distinguish between the types of information.

FIPPA defines personal information as “recorded information about an identifiable individual”. The definition of personal information in the Act provides 14 inclusions that articulate that the purpose and intent is to protect the privacy of a natural person, a human being. Corporations, organizations, businesses, or public bodies are not natural persons.

The terms “business” and “individual” are not defined under FIPPA, nor is the phrase “business information”. Although there is no single test that determines whether a particular entity may be classified as a business, criteria such as whether the entity is registered as a corporation with the Companies Office and whether the entity has registered a business name pursuant to *The Business Names Registration Act* can be helpful indicators.

FIPPA sets out obligations to protect personal information in two ways. Personal information of a third party is protected by an exception to disclosure in section 17 of Part 2 of FIPPA if disclosure would be an unreasonable invasion of privacy of an individual. Section 17 protects personal information about third parties who are individuals or human beings. This exception does not protect information about third parties which are corporations, businesses, organizations, or other public bodies. Generally, to qualify as personal information, the information must be about an individual in a personal capacity. Therefore information connected with an individual in their professional, official or business capacity is not usually considered to be about an individual. However further consideration should be given to whether the information reveals something of a personal nature about an individual.

Personal information about individuals is also protected under Part 3 of the Act, in various provisions governing a public body’s collection, use, disclosure and security of personal information. Under clause 44(1)(x.1), a public body may disclose personal information “of a type routinely disclosed in a business or professional context”, and is limited to the individual's name, position name or title, business and email addresses and telephone and fax numbers. Also, the

disclosure must not reveal other personal information about the individual or personal information about another individual.

Concerning business information, FIPPA sets out an obligation to protect certain types of information that could harm the business interests of a third party. This information is protected under section 18 of Part 2 of FIPPA if disclosure could reveal a trade secret or, in some limited circumstances, commercial, financial, labour relations, scientific or technical information of a third party. Section 18 protects the business interests of third parties that are corporations, organizations, and businesses as well as third parties who are individuals. However there could be occasions where even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.

The privacy provisions in Part 3 of FIPPA only apply to personal information and not to the types of information that are protected under section 18. Part 3 is not intended to protect entities like corporations, businesses or organizations.

In distinguishing between personal information and business information, the first question to ask is in what context or realm does the information appear. Is it a context that is *about* someone as an individual or is it in a context *about* a business, or professional or official government business that is not connected in a personal way or in a personal realm to an individual.

When distinguishing between personal information and business information under Part 2 or Part 3 of FIPPA, consider the following questions:

Is the information about a third party (under Part 2 of FIPPA)?

Is the information personal information *about* an identifiable individual?

Is the information *about* an identifiable individual in a personal capacity?

Is the information *about* a business such as a corporation?

Is the information *about* an individual in a business context?

Does the information belong to or relate to a business, or personally to an individual?

Where a business entity is involved, is the information very closely related to the personal affairs of an identifiable individual?