

# Manitoba mbudsman

## REPORT UNDER

### *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

CASE 2014-0407

### THE UNIVERSITY OF MANITOBA

### PRIVACY COMPLAINT: DISCLOSURE OF PERSONAL INFORMATION

**PROVISIONS CONSIDERED: 36, 42, 43, 44, 44.1, 45**

**REPORT ISSUED ON DECEMBER 12, 2014**

**SUMMARY:** The complainant contacted Manitoba Ombudsman to report an alleged breach of his privacy by the University of Manitoba. The complainant alleged that the university had inappropriately disclosed his personal information to a third-party without his consent by providing his information to the U.S. service provider which handles the university's library management system. The university's position was that the disclosure was authorized under the *Freedom of Information and Protection of Privacy Act (FIPPA)* and that the disclosure was necessary for the complainant to have online access to the university's libraries. The ombudsman found that the disclosure of the complainant's personal information was authorized under FIPPA.

### **BACKGROUND INFORMATION**

On June 28, 2012, the University of Manitoba entered into a subscription, services and support agreement with ExLibris (USA) Inc. in relation to the use of two systems for the web-based management of the university's library system. Those systems are Alma, which is used by library staff to manage circulation, cataloguing, electronic resources and acquisitions and Primo which is the search and discovery interface that provides users with access to the information stored in Alma. A Privacy Impact Assessment (PIA) was completed by the Access and Privacy Office (APO) of the university on July 6, 2012.

Although the original intention of the university and ExLibris was to utilize the ExLibris servers located in Amsterdam, Netherlands, it was determined that due to the difference in time zone between Amsterdam and Winnipeg using those servers was not feasible. Based on this information it was determined that the ExLibris servers located in the United States of America would be used instead. The Alma servers are located in Des Plaines, Illinois and the Primo servers are located in Atlanta, Georgia. This change of server location did not affect the

recommendations made in the PIA. By February 1, 2014 all of the recommendations made by the APO in its PIA had been implemented.

Students at the university access the Primo system using their unique UMNetID, which all students are required to claim through Iridium, the university's identity management system. The ID is a unique username and password specific to each student and is needed to use all of the university's systems, including the university's email service and student information management system (Aurora). When claiming their ID, students are given the option to choose what university services they wish to use and Primo is one of the optional accounts that can be chosen. If students choose to use the Primo system, then their access information is transferred to the Alma system. This access information is described in greater detail later in this report.

## COMPLAINT

On August 23, 2014 the complainant contacted Manitoba Ombudsman to make a complaint concerning an alleged breach of his privacy by the University of Manitoba. The complainant was concerned because the university uses an American company to run its library system. The complaint indicated as follows:

*The University of Manitoba makes available some of their library resources through web sites. After logging in to the library catalogue web site, I found evidence that would indicate a breach of my privacy.....*

*The web site is hosted at an Internet address that is not at the University of Manitoba. The domain of the internet address is exlibrisgroup.com, which is a domain registered to ExLibris USA Inc., in Des Plaines, Illinois, USA, according to WHOIS records. The particular server, named primo-pmtna01.hosted.exlibrisgroup.com is located in Atlanta, Georgia, USA, according to several sources that match servers to their geographic coordinates. Therefore this server is neither operated by nor located at the University of Manitoba.*

*My name is visible on this web page. There seems to be no way for me to provide, amend or repeal this information. .... My address and city were initially filled in and I have erased that information. My province and postal code could not be changed.*

*In addition to my personal information, any library activity I may conduct, such as research on topics that could be deemed personal or confidential, is being exposed to the third party. The research could expose my religious beliefs, association or activities; my personal health information; my political beliefs, association or activities; my education, employment or occupation, or educational, employment or occupational history; and so on.*

It is the position of the complainant that his personal information should not have been disclosed without his permission. Under subsection 59(3) of *The Freedom of Information and Protection of Privacy Act* (FIPPA) an individual who believes that his or her personal information has been collected, used or disclosed in violation of FIPPA may make a complaint to the ombudsman.

## **POSITION OF THE UNIVERSITY OF MANITOBA**

The ombudsman's office contacted the Access and Privacy Office (APO) at the university to inform it of the complaint about unauthorized disclosure and offer it the opportunity to make representations in relation to this matter. On October 1, 2014, our office received a response from the APO, which acknowledged that the complainant's personal information would be contained within the ExLibris system. However, it is the position of the university that the disclosure of personal information in this instance is authorized under FIPPA and *The University of Manitoba Act*.

The university indicated that the collection, use and disclosure of personal information is authorized when establishing and carrying-out the functions of the university. The establishment and use of a library management system is one of the functions of the university and as such the collection, use and disclosure of personal information is allowed in relation to this function. The university indicated that the ExLibris system was set up to use the minimum amount of personal information necessary to carry out the functions of the library system. Also, students can choose at any time to opt-out of using the Primo system as they are not required to use the Primo system to perform searches of the library's resources, to access electronic resources or to use physical sources while they are on campus. The Primo system is only required if a student wishes to check out or reserve an item.

The university provided the following with respect to the nature of the personal information (access information) stored in Alma, and the purposes for which that information is used:

- *Name – required to identify the student*
- *User Group (student or staff) – required to distinguish borrowing privileges*
- *Address – required to contact students when materials have not been returned*
- *Email address – required for primary communication with students in relation to returns or allowing Primo to email references and citations upon request of the student*
- *Barcode from Student ID card – this is required for system matching when a student takes out material at the reference desk*
- *University UMNNetID (ID only, no passwords are transported) – this is required as it is the match-point within the system to authenticate our students so they are authorized to use other online services through a Lightweight Directory Access Protocol (LDAP) connection which limits the disclosure of personal information and allows for simple and secure identity authentication services.*

The university also indicated that the connection between Primo and Alma only occurs while the student is logged into the system. There is also a time-out function in Primo so that the connection cannot stay live after the student has logged off. Any searches conducted by the student are only retained while the student is logged into the Primo system and once a student logs out there is no record retained of any searches unless the student saves the searches.

The university stated that the information shown on the Primo system such as the address could not be changed as the information is only displayed on Primo and not stored there. The name and email address of the student cannot be changed as they are deemed to be essential fields and are necessary if the student is going to save any searches or put holds on material. The university also noted that Manitoba law does not prevent personal information from being held in another jurisdiction and that this is often necessary as the companies that supply information technologies are often global companies with data centers in many jurisdictions. Lastly, the university provided a copy of a screen grab of the libraries main webpage, which includes a Notice Regarding Storage of Personal Information Outside of Canada that states:

*The University of Manitoba has taken steps to ensure that its agreements with contracted vendors for their online services provided is in compliance with The Freedom of Information and Protection of Privacy Act (FIPPA). Please be aware that your personal information, including any data transmitted during any searches conducted within the library system, may be stored on servers outside of Manitoba or Canada. The University of Manitoba cannot and does not guarantee protection against the possible disclosure of your data including, without limitation, possible disclosures of data in accordance with the laws of a foreign jurisdiction.*

## **ANALYSIS OF THE ISSUES AND FINDINGS**

### **Was the personal information of the complainant disclosed to a third party by the University of Manitoba?**

The university acknowledged that it did disclose the complainant's personal information to a third party, ExLibris and has never disputed that fact. Personal information is defined under FIPPA as recorded information about an identifiable individual. Among other things, this includes an individual's name and contact information, all of which is routinely provided to ExLibris to facilitate a student's access to the library's information management system.

The university agrees that when the complainant signed up for access to the library's information management system, Primo, it provided his personal information to ExLibris to be stored in the Alma system. As such, the ombudsman found that the complainant's personal information was disclosed to a third party, ExLibris, by the university.

### **Was the disclosure of the complainant's personal information authorized under FIPPA?**

There are two main issues that need to be determined when investigating a complaint dealing with the disclosure of personal information by a public body such as the university, first, whether that disclosure was authorized under FIPPA; and second, if the disclosure was authorized, whether the disclosure was limited to only the personal information necessary to achieve the purpose for which it was disclosed.

There are several provisions of FIPPA which provide the university the authority to collect, use and disclose the personal information of staff and students. The collection of personal information by a public body for the purpose of providing services, programs or activities would

generally be authorized under clause 36(1)(b) and the amount of information collected is required to be limited by subsection 36(2).

***Purpose of collection of information***

***36(1) No personal information may be collected by or for a public body unless***

*(b) the information relates directly to and is necessary for an existing service, program or activity of the public body; or*

***Limit on amount of information collected***

***36(2) A public body shall collect only as much personal information about an individual as is reasonably necessary to accomplish the purpose for which it is collected.***

The university is a public body which provides several different services to its students and staff, including the use of the library and its associated systems. The collection of personal information is done to identify the students and provided them personalized access to the university's services. As such the collection of personal information is necessary as required under subsection 36(1). As mentioned in the university's response to our office's request for representations, the university only collects as much information as is necessary to complete its task, in this case, providing access to the university's library system.

Section 42 of FIPPA places restrictions on the disclosure of personal information by public bodies and section 43 places limits on the use of personal information by a public body.

***General duty of public bodies***

***42(1) A public body shall not use or disclose personal information except as authorized under this Division.***

***Limit on amount of information used or disclosed***

***42(2) Every use and disclosure by a public body of personal information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.***

***Use of personal information***

***43 A public body may use personal information only***

*(a) for the purpose for which the information was collected or compiled under subsection 36(1) or for a use consistent with that purpose under section 45;*

*(b) if the individual the information is about has consented to the use; or*

*(c) for a purpose for which that information may be disclosed to the public body under section 44, 47 or 48.*

Subsection 44(1) of FIPPA sets out when personal information can be disclosed by public bodies, and identifies the circumstances in which a disclosure can be made without the consent

of the individual the information is about. Clauses (a), (j) and (aa) of subsection 44(1) apply to the disclosure of personal information in circumstances of this nature.

### ***Disclosure of personal information***

***44(1)*** A public body may disclose personal information only

(a) for the purpose for which the information was collected or compiled under subsection 36(1) or for a use consistent with that purpose under section 45;

(j) for the purpose of determining or verifying an individual's suitability or eligibility for a program, service or benefit;

(aa) to an information manager in accordance with section 44.1;

Sections 44.1 and 45 of FIPPA deal specifically with the disclosure of personal information by a public body, like the University of Manitoba, to an information manager, like ExLibris. Subsection 44.1(1) allows a public body to provide an information manager with personal information, subsection 44.1(2) places restrictions of the use of personal information by the information manager.

### ***Public body may provide information to an information manager***

***44.1(1)*** A public body may provide personal information to an information manager for the purpose of processing, storing or destroying it or providing the public body with information management or information technology services.

### ***Restrictions on use***

***44.1(2)*** An information manager may use personal information provided to it under this section only for the purposes and activities mentioned in subsection (1), which must be purposes and activities that the public body itself may undertake.

### ***Agreement required***

***44.1(3)*** A public body that wishes to provide personal information to an information manager under this section must enter into a written agreement with the information manager that provides for the protection of the personal information against such risks as unauthorized access, use, disclosure, destruction or alteration, in accordance with the regulations.

### ***Information manager shall comply with Act***

***44.1(4)*** An information manager shall comply with

(a) the same requirements concerning the protection of personal information that the public body is required to comply with under this Act; and

(b) the duties imposed on the information manager under the agreement entered into under subsection (3).

### ***Information deemed to be maintained by the public body***

*44.1(5) Personal information that has been provided to an information manager under an agreement described in subsection (3) is deemed to be in the custody and control of the public body for the purposes of this Act.*

***Consistent purposes***

*45 For the purpose of clauses 43(a) and 44(1)(a), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure*

*(a) has a reasonable and direct connection to that purpose; and*

*(b) is necessary for performing the statutory duties of, or for delivering an authorized service or program or carrying out an activity of, the public body that uses or discloses the information.*

The authority for the use and disclosure of the personal information collected by the university in the course of carrying out its functions and for the purpose of providing services to students and staff is found in several different sections of FIPPA as noted above. Sections 42, 43 and 44 deal with the general uses and disclosures of information by a public body and include references to section 44.1 and the disclosure of personal information to an information manager, which specifically applies to the current case. These sections allow for a public body to use or disclose information as long as that use or disclosure is consistent with the purpose of the collection of the information or is needed for performing another function of the public body.

As indicated earlier, section 44.1 deals specifically with the disclosure of personal information to an information manager and as such is applicable in the current case. Subsection 44.1(1) allows a public body to provide an information manager with personal information for the purpose of storing the information and/or providing an information management or information technology service. In the current case, ExLibris is both storing information provided by the university and providing an information management service to the university. Subsections 44.1(2) requires that the information manager use the personal information for the purposes identified in subsection 44.1(1) which must be purposes and activities which the public body itself can undertake. The university is allowed to collect, use and disclose personal information to provide a service to its students and staff and the creation and use of a library management system is one such service. As such, the purposes and activities of ExLibris, in delivering a library management system, are consistent with the purposes and activities that the university itself is able to undertake.

Subsection 44.1(3) of FIPPA requires that the public body and the information manager enter into an agreement requiring that the information manager protect the personal information provided from unauthorized access, uses and disclosures. The APO provided the ombudsman's office with a copy of the agreement between ExLibris and the university. Part 10 of the agreement requires ExLibris to comply with the requirements of subsection 44.1(3) and reads as follows:

*“Notwithstanding anything else herein ExLibris agrees to maintain confidential and not make available or disclose in any way for the use or benefit of any unauthorized party, and not copy or use the Customer Data or related materials or other propriety information received from the Customer, in whole or in part, unless the Customer*

*consents in writing. ExLibris shall use industry practice to prevent unauthorized access to, or use of Customer Data and shall notify Customer as soon as possible if it becomes aware of any unauthorized access or use. Upon termination or expiration of the Agreement ExLibris shall ensure that all Customer Data is destroyed or returned to Customer. “*

Part 3 of the Agreement, DaaS – Data as a Service, states as follows:

*“material which a Customer posts for its internal purposes to its own library (the “**Library Zone**”) will continue to be owned by the Customer or its licensor; material which a Customer otherwise posts (the “**Community Zone**”) (including, without limitation, community catalog records) will continue to be owned by the Customer or its licensor, and Customer will mark whether it is owned by Customer or its licensor; notwithstanding anything herein, Customer will own all Customer Data.”*

This section of the agreement deals with the requirements of FIPPA under subsection 44.1(5) and sets out that all of the data provided by the university remains in the control of the university. This would include the personal information, such as that of the complainant, collected by the university and used to identify users of the system.

While we recognize and appreciate the concerns of complainant about the extra-judicial storage of personal information, the information provided by the university satisfies our office that the university has complied with FIPPA and taken the necessary steps to find the balance between the need to provide its students and staff with services, which sometimes necessitates using companies outside of the university and protecting the privacy of its students and staff. The university did everything required, and more in the form of the Privacy Impact Assessment, to make sure its use of the ExLibris service complied with FIPPA.

## **CONCLUSION**

The ombudsman concluded that the personal information of the complainant was disclosed by the University of Manitoba, however that disclosure of personal information was authorized under FIPPA as the collection, use and disclosure of personal information was necessary for the university to provide services to its staff and students. The personal information collected, used and disclosed was the minimum necessary to provide the service, the students were able to opt out of the service without any major reduction in access to the library services and the university placed a notice relating to the use of the American based information manager on the library webpage so that users were informed of the handling of their information. Based on the ombudsman’s findings in this matter, we conclude the disclosure of the complainant’s personal information was authorized under *The Freedom of Information and Protection of Privacy Act*; therefore the complaint is not supported.

December 12, 2014  
Manitoba Ombudsman