

Your Information Rights

Under

F I P P A

The Freedom of Information and Protection of Privacy Act

Manitoba  Ombudsman

Upholding Your Information Access and Privacy Rights

Introduction

We have produced this guide to assist you in understanding and exercising your rights under Manitoba's Freedom of Information and Protection of Privacy Act (FIPPA). As the oversight office for this legislation, Manitoba Ombudsman investigates complaints about how public bodies respond to access to information applications, and protect your privacy. We also provide public bodies and the public with information and education about the legislation. On a daily basis, we talk to people who have access or privacy concerns, and we talk to employees of public bodies who deal with access applications and privacy matters. We really do see and, we hope, understand both perspectives.

Based on this experience we have offered a practical guide to using the legislation effectively. Much of what we say in these pages seems like common sense, and that's by design. We have included information about what the legislation says and practical tips on how to use the systems in place to seek access to the information you need and how to address your privacy concerns. We hope you find it helpful.

This guide was initially published as *User's Guide to FIPPA* and has been updated and republished as *Your Information Rights Under FIPPA*.

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About FIPPA

The Freedom of Information and Protection of Privacy Act (FIPPA) came into force on May 4, 1998 and replaced the Freedom of Information Act.

Access and privacy legislation is based on two fundamental rights of people in a democratic society:

- the right to access information held by government and other public bodies, including information about ourselves, subject only to certain specified exceptions, and
- the right to privacy for personal information collected, stored, used and disclosed by public bodies.

FIPPA gives you the legal right to access records held by Manitoba public bodies, subject to certain exceptions. The act also requires that public bodies, such as provincial government departments, protect the privacy of your personal information contained in records they hold.

Some of the public bodies that fall under FIPPA include:

- Manitoba government departments
- Executive Council office (Manitoba's premier and ministers)
- All municipal governments, including the City of Winnipeg
- Local government districts
- Community councils under the Northern Affairs Act
- Planning and conservation districts
- Manitoba government agencies, including Crown corporations, such as Manitoba Hydro and Manitoba Public Insurance and Manitoba boards, commissions and similar bodies, such as the Municipal Board and the Public Utilities Board
- School divisions, universities and colleges
- Hospitals and regional health authorities

FIPPA does not apply to:

- Private sector businesses, non-profit organizations or professional organizations. Employee information in the federally regulated private sector and the personal information of customers is protected under the Personal Information Protection and Electronic Documents Act. For more information on this law visit the website of the Office of the Privacy Commissioner of Canada at priv.gc.ca.
- Federal government departments, agencies and crown corporations. These bodies are governed by the federal Privacy Act and the Access to Information Act. For more information on these laws visit the websites of the Office of the Privacy Commissioner of Canada at priv.gc.ca and the Office of the Information Commissioner of Canada at oic-ci.gc.ca.
- The access, collection, use, or disclosure of your personal health information. This type of information is governed by Manitoba's Personal Health Information Act. For more information visit www.ombudsman.mb.ca.

Accessing Information

What information is available?

FIPPA applies to most records held by or under the control of a public body. A record includes any information that is written, photographed, recorded or stored.

Some examples of records are minutes, letters, memos, reports, notes, blueprints, financial transaction records, photographs, audiovisual material and emails, whether stored in hard copy or electronic format.

Not all records are subject to FIPPA. Some records excluded from FIPPA are:

- court records
- records of the Legislative Assembly of Manitoba and its officers (the speaker, clerk of the assembly, auditor general, ombudsman, information and privacy adjudicator, advocate for children and youth, and chief electoral officer)
- records of members of the legislative assembly who are not ministers
- teaching materials and research information of employees of educational institutions
- questions used on an examination or test
- publicly available records such as provincial government annual reports

Access to records may be governed by other laws that may take precedence over FIPPA, such as the Adoption Act, the Child and Family Services Act, the Mental Health Act, the Securities Act, the Statistics Act, the Vital Statistics Act, the Workers Compensation Act, and the Youth Criminal Justice Act (Canada).

It is important to remember that FIPPA is only intended to provide access to records, not answers to questions. If you have a question about a government policy you should contact the department directly.

Limits on what can be released

Access is the rule; however, there are circumstances in which a public body is required to withhold information or can choose to withhold the requested information. When a public body withholds information, it must tell you why it is doing so and refer to the specific provision of FIPPA on which its decision is based.

It is possible that part of a record may be released to you while other information is withheld or blacked out. This is what is known as severing.

How much does it cost?

In Manitoba, there is no cost to make an access to information request under FIPPA. There may, however, be costs for the search, preparation and copying of records related to the request. See the section on fees for more details.

Anyone can request information under FIPPA. You do not need to be a Canadian citizen or a Manitoba resident.

Getting started

Sometimes the information you are looking for may already be available. It is a good idea to check the website of the public body or contact them directly to see if you can get the information you want without submitting a FIPPA application. If you are a recipient of services and looking for information from the public body from which you receive services, first contact the employees you regularly deal with at the public body.

Some offices have an established process for providing information. FIPPA does not replace these existing procedures for obtaining information that is normally available to the public. For example, you will have to fill out a specific form and pay a fee if you want a copy of your birth certificate.

Contacting the public body

If you are not sure which public body holds the information you are looking for, contact the Information and Privacy Policy Secretariat (IPPS) for assistance. IPPS is part of the Manitoba government and provides procedural advice to access and privacy coordinators and officers in government departments and agencies, and to local public bodies. They can help you with questions you may have concerning information accessibility, confidentiality and privacy issues. IPPS can also help you identify what public body may hold the records you want to access. IPPS can be contacted at:

130 - 200 Vaughan Street
Winnipeg, Manitoba R3C 1T5
Phone: 204-945-1252
Toll Free: 1-800-617-3588 (Manitoba)
Fax: 204-948-2008
E-mail: fippa@gov.mb.ca
Website: www.gov.mb.ca/chc/fippa

When you contact a public body you will usually speak with an access and privacy coordinator. All public bodies are required to have an access and privacy coordinator. These coordinators are there to help you and will explain to you what information may or may not be available related to your request and whether you are required to fill out a formal application for access. They will go over the process with you and help you obtain the form.

Access and privacy coordinators have an obligation under FIPPA to help you with processing your request. Once you make a request, you may receive a follow-up phone call from a coordinator requesting additional information or clarification regarding the information you are seeking. Working with coordinators can be a helpful and effective way to get the information you want quickly. Access to information should not be an adversarial process. Access and privacy coordinators are there to help you and can provide advice and assistance.

A list of public bodies and access and privacy coordinators can be found at www.gov.mb.ca/chc/fippa/wheretosend

Tips for working with public bodies

- Try to be as specific as possible about the type of information you are seeking. It is a good idea to write this information down in advance along with any other relevant questions before contacting the public body.
- Be patient as it may take some time to clarify your request. Ask them how long it will take to deal with your concern, and if nothing happens, call them back to check on any progress. If there is a degree of urgency involved, let them know and explain why.
- If you do not understand a policy or procedure ask the coordinator for an explanation. Some policies and procedures are quite complex and you are not expected to be an expert or understand everything immediately. Ask the coordinator to identify any rules, policies, or laws and ask for copies of these.
- Some requests for information can be complicated. Take notes, and keep track of the names of people you have spoken to, when you spoke to them, and the outcome of each conversation.

Making an access request under FIPPA

When making an access request you must fill out a FIPPA Application for Access form. Forms are available at www.gov.mb.ca/chc/fippa/appforms.html

In most cases, the public body can also provide you with a FIPPA Application for Access form.

Tips for filling out the Application for Access

- Make sure you are sending your request to the public body that holds the records.
- Be as specific as possible; reference relevant dates, names of individuals and/or documents.
- Consider the scope of the request. Requests that are broader in nature may take longer to process and may incur fees.
- Make sure to include your name, address and telephone (or fax) number where you can be reached. Sign the form and keep a copy for your reference.
- Send the completed application form to the access and privacy coordinator of the public body that has the information that you are seeking.
- Keep a file of information related to your request such as any responses you may receive from the public body.

Tips for frequent requesters

Those of you who make frequent access requests under FIPPA are in a unique position to help the access-to-information system work better and more effectively, not only for you, but for other applicants and the public bodies responding to your requests. Here's how you can make it happen:

- Before making an application for access, consider other sources of information that may be available, such as websites, annual reports and other published material. If you're looking for information about the provincial government, consider talking to Manitoba's Legislative Library and/or Manitoba Government Inquiry, to see if they can either provide the information or records you are looking for or put you in touch with someone who can.
- Remember that FIPPA provides a right of access to records – a public body is not required to answer a question simply because it is posed on a FIPPA Application for Access. Be sure that your application asks for records.
- It is a good idea to talk to the public body before you make your request to find out more about the records you may want to access. Knowing how the records are kept and managed, or how statistics about a program are tracked before you submit your request can make for more efficient and effective processing of your request.

- Refer back to prior applications and access decisions so you can avoid requesting records you've recently received or requesting records that don't exist.
- If you're requesting records on behalf of an organization, consider designating a back-up person who can deal with the public body on your behalf if you're not available.
- Get back to the public body as soon as possible when they contact you for clarification about your request. Remember that once a request is made, the clock continues to tick towards the deadline for the public body to respond to your request. If it takes two weeks to clarify what records you are requesting, there is less time left for processing your application, and the public body may need to extend the deadline to respond to your request. The sooner you connect, the sooner work can begin on processing your application.
- Keep all records about your request in one place – a copy of your application, the public body's access decision and any other correspondence you've had with the public body about your request. Make a note of any discussions you've had with the public body about the request.
- If you are requesting "all records" containing a particular word, phrase or name or about a particular subject, be sure to provide as much context as possible by specifying a date range, a location, a program area, and/or any other parameters that might help the public body know where to search for records. Responding to an application often involves searching for and reviewing more records than you may have expected and the better the communication between you and the public body, the less likely it is that the response to your request is delayed by a potentially unnecessary review of large volumes of records.
- If you submit a large number of applications at once, it may not be reasonable to expect that the public body will be able to respond to all of your requests within 30 days. Consider prioritizing your applications and submitting them to the public body in order by priority.
- Think about the nature of the records you're requesting. For example, if you would like to know about expenses for a recent event or program, it's more likely for the public body to have records about the budget for the event rather than records about the actual expenses, for which invoices may not yet have been received.

Time to respond

In most cases, you should receive a response from the public body within 30 calendar days, unless the public body has transferred the request to another public body or extended the response time.

The public body may extend the time limit for responding for an additional 30 days. Longer extensions require the permission of the ombudsman. Some of the reasons for an extension include:

- if the applicant does not provide enough detail to enable the public body to identify the requested records
- if a large number of records is requested or must be searched, and responding within 30 days would interfere unreasonably with the operations of the public body
- if the public body needs time to consult with a third party or another public body before deciding whether to grant access

If the public body decides to extend the response time limit, you must be informed by the public body in writing of the reason for the extension and given the new date by which a response may be expected.

The time limit means that a public body's response must be sent to you by the 30th day, although it may still take a few days to reach you by mail.

If it has been more than 30 days and you have not received a response, contact the access and privacy coordinator to find out the status of your request. You may also submit a complaint to Manitoba Ombudsman.

Fees

There is no charge for making an application under FIPPA. However, FIPPA sets out the fees that public bodies can charge for the following:

Search and Preparation Fees

- locating the records, time to make working copies, doing any required severing

Computer Programming and Data Processing Fees

- for in-house programming or data processing, or the actual cost of having it done externally

Copying Records

- photocopies and computer printouts
- prints from microfilm
- any other copying method

Delivery Fees

- regular mail – no charge
- courier delivery – actual cost

Fees cannot be charged for time spent deciding what information can be disclosed, transferring an application to another public body, or preparing a fee estimate.

Fee estimates

If a fee applies, the public body will send you an Estimate of Costs form before doing any work. You will have 30 days to notify the public body if you will pay the cost or want to modify your request in order to possibly reduce the fee. If you want the public body to proceed with the original request, you will have to sign the Estimate of Costs form and send it with the total payment to the public body.

The public body is not required to provide a fee estimate for copying records related to your request as the total number of pages may not be known at this point.

If you receive a fee estimate that you think is unreasonable, you may want to contact the access and privacy coordinator for a further explanation. The coordinator may also be able to help you narrow your request, which may reduce fees and still allow you to get the information you want. This may involve identifying timelines for the request or modifying it to reduce duplication of records. If you are still unsatisfied and believe the fee estimate is unreasonable, you may submit a complaint to Manitoba Ombudsman.

If you do not reply to a fee estimate within 30 days, the public body may consider the application to have been abandoned.

Waiving fees

You can ask the public body to consider waiving fees associated with your request. This must be done in writing. It is up to the public body to decide whether it wants to waive fees entirely, provide a partial waiver, or require you to pay the full amount. In making its decision, the public body must consider the following:

- whether paying the fees would impose an unreasonable financial hardship on you
- whether you are requesting access to your own personal information and a waiver is reasonable and fair in the circumstances
- whether the records relate to a matter of public interest concerning public health, safety or the environment

If you have any questions about what information to provide in your request for a fee waiver, you can contact the access and privacy coordinator. The onus is on you to fully explain why you meet the criteria identified above for a fee waiver. You should provide as much detail as possible to support your request. For example, if you believe having to pay the fees will create a financial hardship, you may want to provide details about your current financial circumstances. The public body will inform you in writing of its decision about waiving the fees.

You may submit a complaint to Manitoba Ombudsman if the public body refuses to waive all or part of the fees.

Access Decisions

Access granted

The public body will reply in writing to your request. If access is granted, you should be informed when and how access to the records will be given.

Access denied

If you are denied access to all or some of the requested records, you should be advised in writing of the specific FIPPA provisions, called exceptions to disclosure, on which the refusal is based and an explanation of how the exceptions apply. The contact information for an employee of the public body who can answer questions about the refusal will also be provided and you will be informed of your right to complain to Manitoba Ombudsman.

Exceptions to disclosure

There are circumstances under FIPPA in which a public body is required to withhold information or can choose to withhold the requested information. These provisions are known as exceptions to disclosure.

When an exception to disclosure applies to part of the record, this information will not be disclosed. However, the remainder of the document should be provided to you. In most cases, a blank space or a heavy black line and the FIPPA provision for the applicable exception should appear in place of the severed information.

Mandatory exceptions

There are mandatory exceptions when it comes to withholding information. When a mandatory exception applies, a public body has no choice but to withhold the information. Mandatory exceptions include:

- unreasonable invasion of another individual's privacy (section 17)
- harm to a third party's business interests (section 18)
- cabinet confidences less than 20 years old (section 19)
- information provided in confidence by another government (section 20)

- information in a law enforcement record covered by a Canadian law which prohibits disclosure (subsection 25(2))
- information of a third party that is subject to solicitor-client privilege (subsection 27(2))

Discretionary exceptions

A discretionary exception is one in which a public body has a choice in terms of whether to disclose the information. If the public body chooses to withhold the information based on a discretionary exception, it should clearly explain the reason for its decision. Discretionary exceptions include:

- harm to intergovernmental relations (section 21)
- confidential deliberations of a local public body (section 22)
- advice to a public body (section 23)
- individual or public safety concerns (section 24)
- harm to law enforcement or legal proceedings (section 25)
- security of property (section 26)
- solicitor-client privilege of the public body (section 27)
- harm to the economic and other interests of a public body (section 28)
- testing procedures, tests and audits (section 29)
- confidential evaluations about the applicant (section 30)
- harm to the preservation of heritage resources (section 31)
- information that will be available to the public (section 32)

If you don't understand or need clarification of an exception, contact the access and privacy coordinator. The coordinator will be able to provide an explanation of the exception and how it applies to your request.

Remember, the onus is on the public body to demonstrate why information should be withheld. If you are not satisfied with the public body's response, you may want to contact the access and privacy coordinator for a further explanation. You may also submit a complaint to Manitoba Ombudsman.

Correcting Your Personal Information

FIPPA gives you the legal right to request your own personal information. If you have obtained access under FIPPA to your own personal information and you believe there is an error or omission in the information, FIPPA gives you the legal right to request that the public body correct the record.

Once again, it is always a good idea to first contact the public body and explain the type of correction you are seeking. The public body may be able to make the correction immediately if it is fairly straightforward such as a change of address or phone number.

For other corrections, the request must be made in writing to the public body. Unlike making an access request, there is no specific form required. However, your request should include:

- an explanation of why the information contained in the record is inaccurate or incomplete
- a copy of the portion of the record that you believe is inaccurate or incomplete, if possible
- an explanation of what correction you would like to have made

Your request should be sent to the access and privacy coordinator of the public body that has the personal information. Keep a copy of all the information you send to the public body. Within 30 days after receiving the request for the correction, the public body must:

- make the requested correction and notify you of the correction
- notify you that it will not make the correction and the reason for refusing the request

If the public body refuses to make the correction, it must add your request for correction to that record. You have the right to submit a complaint to Manitoba Ombudsman about a refusal to correct a record.

Protecting Your Privacy

The Freedom of Information and Protection of Privacy Act (FIPPA) is not only designed to provide you with access to records, it is also there to ensure your privacy rights are protected. FIPPA sets out rules that must be followed to protect the privacy of your information.

Privacy principles

FIPPA sets out requirements that public bodies must follow to protect the personal information they hold. In Manitoba, the legislation reflects the following principles:

Collection: Organizations must collect personal information directly from the individual concerned, unless permitted otherwise by law, and collect only what is necessary to carry out the purpose for which the personal information is collected.

Use: Personal information collected for one purpose should not be used for another purpose, except in specified circumstances or with the consent of the individual.

Disclosure: Personal information should not be released to another organization or individual, except in specified circumstances.

Information management: Records management policies and procedures must be followed to ensure that records are protected and kept only as long as necessary.

Individual access: An individual should be able to access his or her personal information and to correct this information.

Openness: Documentation about information management policies, practices and holdings should be available to the public and easily understandable.

Accountability: Organizations are accountable for their personal information policies, practices and the records in their possession.

What is personal information?

Personal information is any kind of recorded information about an identifiable individual. Below are some examples:

- your name
- your home address or home telephone number, facsimile or email address
- your age, sex, sexual orientation, marital or family status
- your ancestry, race, colour, nationality, national or ethnic origin
- your religion or creed, or religious belief, association or activity
- your political beliefs, association or activity
- your education, employment or occupation
- your source of income or financial circumstances, activities or history
- your criminal history, including regulatory offences
- your personal views or opinions, except if they are about another person
- views and opinions expressed about you by another person
- identifying numbers assigned to you such as your Social Insurance Number, driver's licence or credit card number

The privacy of your personal **health** information is governed by the Personal Health Information Act (PHIA), which also provides you with access to your personal health information. PHIA applies to health professionals, health-care facilities and health services agencies, in addition to the public bodies that fall under FIPPA. For more information about PHIA visit Manitoba Health's website at www.gov.mb.ca/health/phia or Manitoba Ombudsman's website at www.ombudsman.mb.ca.

FIPPA permits public bodies to collect, use and disclose your personal information. There are, however, privacy considerations and responsibilities under FIPPA that apply to use, disclosure, retention, security and destruction of records.

If you are concerned that a public body has collected, used or disclosed your personal information, contact the access and privacy coordinator of the appropriate public body to discuss your concerns. You may also make a complaint to Manitoba Ombudsman.

Collection of personal information

Under FIPPA, the collection of personal information requires consideration of the following factors:

Purpose of collection – Under FIPPA a public body can only collect personal information when:

- the collection of the information is authorized by law
- the information relates directly to and is necessary for an existing service, program, or activity of the public body
- the information is collected for law enforcement purposes or crime prevention

Limit on amount of collection – When a public body collects personal information, it must only collect as much information about you as is reasonably necessary to accomplish the purpose for which the information is being collected.

Manner of collection – FIPPA requires a public body to collect personal information directly from you unless another manner of collection is permitted under the act. FIPPA lists approximately 20 situations where a public body may collect your personal information from another source. This is known as indirect collection of personal information. Some of those situations include verifying your eligibility in a program, collecting a debt or fine, or enforcement of family maintenance orders.

Notice of collection – When a public body collects personal information directly from you, it must inform you of:

- the purpose for which the information is collected
- the legal authority for the collection
- the title, business address and telephone number of an officer or employee of the public body who can answer your questions about the collection

FIPPA sets out the contents of the notice for direct collection, but it does not require that the notice be in a particular form. The form of notice should be appropriate to the situation. The notice could, for example, be on a public sign or be contained in an information brochure handed to you or be set out on an application form where personal information is being collected directly from you.

Use of personal information

One of the purposes of FIPPA is to protect you against unauthorized use of personal information by public bodies, which would include the handling and sharing of recorded personal information within the public body.

It is important to note that sharing personal information between various divisions or programs of a public body is considered to be a use of personal information. Employees of a public body use recorded information when they:

- look at the information
- copy the information
- create another record containing the information, such as a letter or memo
- share the information within the public body either verbally or by email or fax

Within a public body, only an employee who needs to know your personal information in order to perform his or her job should have access to it.

If your personal information will be used to make a decision that directly affects you, the public body must take reasonable steps to ensure that the personal information is accurate and complete. The public body must also protect personal information by making reasonable arrangements to minimize the risk of unauthorized use.

The privacy protections of personal information, including those concerning use, are set out in FIPPA. The general duties of the public body concerning use are as follows:

- every use must be authorized under the act
- every use must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used
- the use of the personal information by employees must be limited to those who need to know

Disclosure of personal information

Another purpose of FIPPA is to protect you against unauthorized disclosure of your personal information by public bodies. Disclosure means revealing recorded personal information to someone outside of the public body.

Recorded information may be disclosed in a number of ways:

- providing the record itself or a copy of it
- creating another record, such as a letter or memo, containing the information
- verbally disclosing information from the record

When disclosing personal information, a public body is required to take precautions appropriate to the circumstances to ensure that the information is revealed only to the intended recipient. Every disclosure must be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.

A public body is required to assess each situation and consider the following before making the disclosure:

- the reason for making the disclosure
- whether the purpose for the disclosure is permitted under the act
- if it is appropriate in the circumstances to obtain consent even if the disclosure is otherwise authorized
- how to limit the disclosure to the minimum amount of information necessary to accomplish the purpose
- the level of sensitivity of the information
- to whom the information is being disclosed
- how the information should be disclosed

Policies and rules concerning the retention, security and destruction of records can vary between public bodies. If you have questions regarding these matters contact the public body's access and privacy coordinator.

Access and Privacy Complaints

Manitoba Ombudsman is an independent review office with broad investigative, auditing and reporting powers under FIPPA. Complaints generally fall into two categories – those that deal with access to information requests and those concerning the privacy of personal information.

Access complaints

If you have made an Application for Access under FIPPA, you may complain to our office for a number of reasons, including the following:

- the public body has not responded to your application within 30 days
- you do not believe the extension of the response time beyond 30 days is appropriate
- you believe that a fee being charged for access is unreasonable
- you have been denied access to all or part of the records for which you applied
- your request for correction of your personal information has been refused by the public body
- as a third party, you wish to contest a decision of a public body to give access to records against your wishes

Generally, the complaint must be made within 60 days after you are notified of the decision, however, different timelines may apply in certain cases. If you are unsure of the deadline for making a complaint, contact our office.

Privacy complaints

You may complain to the ombudsman if you believe your own personal information has been collected, used, or disclosed in violation of FIPPA.

While there is no specified time limit for making a privacy complaint, the ombudsman may decide not to investigate such a complaint if too much time has passed, so your complaint should be made as soon as possible.

Making a complaint to the ombudsman

The law requires that all access and privacy complaints must be made using the FIPPA complaint form. These forms can be obtained by contacting Manitoba Ombudsman at 204-982-9130 or toll-free at 1-800-665-0531. They can also be found on our website at www.ombudsman.mb.ca.

For privacy complaints it is helpful to include a completed questionnaire which is also available from our office to assist you in providing details about your complaint. Questionnaires are available on our website at www.ombudsman.mb.ca or you can contact our office at 204-982-9130 or toll-free at 1-800-665-0531.

When sending in your complaint, it is helpful if you can provide us with any supporting documents, records or correspondence relating to your complaint, including a copy of the FIPPA Application for Access form sent to the public body.

What happens once a complaint is made?

Your complaint will be reviewed to ensure it is a matter that we can investigate. You may receive a call from one of our intake analysts if clarification is required. If the office can investigate the matter, it will be assigned to an investigator.

The investigator will send an acknowledgement letter, and may also follow up with a phone call, to advise you that he or she will be making inquiries.

The investigator will provide the public body with information about your complaint including a copy of your complaint form in order to allow the public body to adequately respond to our office.

By law no one is entitled to comment on any discussions or have access to any documents provided to the ombudsman by another person or the public body. This means our office cannot provide you with a copy of the public body's response to our office about your complaint.

What happens during an investigation?

Our investigation will involve gathering information and evidence. We will review information relevant to the complaint, which may include a review of provincial legislation, policies and other relevant documents such as correspondence (written and email), contracts, and notices.

Our investigation also involves talking to you and the public body to determine whether the decision or action of the public body was in compliance with FIPPA. Both you and public body can provide additional information to our office in order to explain and/or clarify your positions.

How long does an investigation take?

FIPPA requires that an investigation be completed and a report made within 90 days after a complaint is made. We may extend this period by providing a letter to you and the public body.

Potential outcomes of complaints

When investigating a complaint, we will try to resolve your complaint with the public body informally. This may involve finding some common ground whereby the public body agrees to release some information to you, or you agree to modify your request.

In some instances our office may find that your complaint is supported. Our report will note that your complaint is supported and we will follow up with the public body to make sure it complies with our findings. In some instances, we may make specific recommendations about the action a public body should take. This could include changes to policies or increased training for employees.

It is possible that a complaint may be supported in part. For example, we may find that the public body was correct in refusing access to part of a document but that other information should have been released to you. Once again, we will work to ensure that information that should have been released is provided to you.

Finally, we may find that the complaint against the public body is not supported because the public body has complied with FIPPA. We may, for example, determine that the public body was correct in refusing to disclose information that would have been an unreasonable invasion of another person's privacy.

When we complete our investigation we will issue a written report with our findings. This report may be in the form of a letter to you and the public body or it may be a more formal report with specific headings. Both you and the public body will be advised of our findings in advance of the report being sent out. In some instances, we will make reports public if we believe the findings may help educate and inform the public. If a report is released publicly, any information that may identify the person who made the complaint will be removed.

What if you don't agree with our findings?

If you remain dissatisfied with the response of the public body after the ombudsman's investigation and report about a public body's decision to refuse access, you have the right to appeal to the Manitoba Court of Queen's Bench. An appeal may be made only after the ombudsman has issued a report and can only be made concerning refusal of access decisions. There is no appeal to court under FIPPA about other access decisions or the collection, use or disclosure of personal information by a public body.

Generally, an appeal must be filed with the Court of Queen's Bench within 30 days of receiving the investigation report from the ombudsman.

The court may dismiss an appeal if it determines the public body was authorized or required to refuse access to a record. If the court determines that the public body was not authorized or required to refuse access, it may order the release of some or all of the information.

A decision of the Court of Queen's Bench is final and binding.

The information and privacy adjudicator

If we make recommendations about an access and privacy complaint and the public body fails to act on the recommendations of our office, we may refer the matter to the information and privacy adjudicator for review.

The adjudicator has the power to order the public body to comply with our recommendations. For example, the adjudicator could order a public body to release information that has been withheld from an applicant requesting access, or could order a public body to change the way it collects, uses or discloses personal information.

For further information about the role of Manitoba Ombudsman under FIPPA and the procedure for making a complaint, visit the ombudsman's website at www.ombudsman.mb.ca or call us at 204-982-9130 or 1-800-665-0531.

The Freedom of Information and Protection of Privacy Act
<http://web2.gov.mb.ca/laws/statutes/ccsm/f175e.php>



Manitoba Ombudsman

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