

MANITOBA OMBUDSMAN

2011 Timeliness Follow-up Audit of
Manitoba Public Insurance

Audit Report under Section 49 of
*The Freedom of Information and
Protection of Privacy Act (FIPPA)*

February 2012

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ACTING OMBUDSMAN'S MESSAGE

The purpose of a timeliness audit is to assess a public body's performance in relation to the mandatory time requirements of responding to an applicant as set out in *The Freedom of Information and Protection of Privacy Act* (FIPPA).

The access to information process is time-sensitive and requires a public body to make every reasonable effort to respond in writing to an access application within 30 (calendar) days of receiving it unless the time for responding is extended as set out in FIPPA. The time requirements that a public body must follow are set out in sections 11 and 15 of FIPPA. There is also a duty to respond without delay under section 9 of FIPPA.

In 2010, we conducted an audit of Manitoba Public Insurance's (MPI) performance or timeliness in meeting the time requirements under FIPPA to respond to applications for access. As a result of the audit findings, two recommendations were made to MPI, both of which were accepted.

The recommendations made in 2010 were:

Recommendation # 1

It is recommended that MPI comply with the time requirements of the Act.

Recommendation # 2

It is recommended that effective upon notifying the Ombudsman of the acceptance of this recommendation, that MPI adopt the "Guideline on Time Frames for Processing a FIPPA Request" to facilitate compliance with time requirements of the Act.

The report on the audit, *2010 Timeliness Audit of Manitoba Public Insurance - Audit Report under Section 49 of The Freedom of Information and Protection of Privacy Act*, was released via our website in February 2011.

In November 2011, we conducted a follow-up audit at MPI to reassess its compliance with time requirements in relation to the recommendations that were made in the 2010 timeliness audit report. This report provides an assessment of the implementation of the recommendations that were made in 2010. The *Guideline on Time Frames for Processing a FIPPA Request* that is referenced in Recommendation #2 above, is reproduced in Appendix A of this report.

Our 2011 observations and findings indicate that MPI's performance improved over the 2010 audit results. My predecessor, Irene Hamilton, indicated to MPI that she was generally pleased with the progress that has been made and with the implementation of the 2010 recommendations. However, Ms Hamilton also requested MPI to establish formal procedures to deal with spikes in volume, like the spike that occurred in March 2011 (59 applications were received at one time).



In response to this request, MPI has indicated that steps will be implemented to address issues related to the timeliness of responses to applications for access, particularly when spikes in the number of applications occur. Specifically, MPI will establish and provide advanced FIPPA training to specific contacts in each of the working units that have typically received bulk applications or requests for high volumes of records. MPI will consider 30-day extensions under section 15 of FIPPA when the circumstances permit an extension. When multiple applications are received from the same source, MPI will send the responses that have been completed even though others may require additional time and consideration. MPI has also established criteria for additional staff resources to assist its Privacy and Access Office in processing large numbers of applications received in a short period of time.

Through timeliness audits and other initiatives undertaken by my office to assess the access practices of public bodies, we hope to constructively contribute to strengthening compliance and best practices with various aspects of FIPPA. We will continue these efforts with public bodies. In the interests of monitoring MPI's ongoing progress with timeliness and its new procedures to address it, we may conduct a timeliness audit in the future.

MPI now has in place procedures that can be triggered and implemented when there are clear and immediate indicators that timeliness may be of concern. These procedures will better position MPI to handle the often challenging and unpredictable FIPPA workload. These efforts though, should be balanced by responsible applicants who exercise reasonableness in the number of applications submitted to a public body at one time or within a short period of time.

We gratefully acknowledge the full cooperation and assistance provided by MPI during this audit.

Mel Holley
Acting Manitoba Ombudsman

BACKGROUND

PURPOSE OF THE AUDIT

The purpose of a timeliness audit is to assess the public body's performance in relation to the mandatory time requirements of responding to an applicant as set out in FIPPA.

The access to information process is time-sensitive and requires a public body to make every reasonable effort to respond in writing to an access application within 30 (calendar) days of receiving it unless the time for responding is extended.

The time requirements that a public body must follow are set out in sections 11 and 15 of FIPPA. There is also a duty to respond without delay under section 9 of FIPPA.

Section 11 of FIPPA states:

Time limit for responding

11(1) *The head of a public body shall make every reasonable effort to respond to a request in writing within 30 days after receiving it unless*

- (a) the time limit for responding is extended under section 15; or*
- (b) the request has been transferred under section 16 to another public body.*

Failure to respond

11(2) *The failure of the head of a public body to respond to a request within the 30 day period or any extended period is to be treated as a decision to refuse access to the record.*

The time limit may be extended where one of the circumstances in section 15 applies to permit an extension. Section 15 of FIPPA states:

Extending the time limit for responding

15(1) *The head of a public body may extend the time for responding to a request for up to an additional 30 days, or for a longer period if the Ombudsman agrees, if*

- (a) the applicant does not give enough detail to enable the public body to identify a requested record;*
- (b) a large number of records is requested or must be searched, and responding within the time period set out in section 11 would interfere unreasonably with the operations of the public body;*
- (c) time is needed to consult with a third party or another public body before deciding whether or not to grant access to a record; or*
- (d) a third party makes a complaint under subsection 59(2).*

Notice of extension to applicant

15(2) *If the time is extended under subsection (1), the head of the public body shall send a written notice to the applicant setting out*

- (a) the reason for the extension;*

- (b) when a response can be expected; and*
- (c) that the applicant may make a complaint to the Ombudsman about the extension.*

Public bodies also have a legal duty under the Act to assist applicants. This includes a responsibility to respond without delay, as prescribed in section 9 of FIPPA, which states:

Duty to assist applicant

9 The head of a public body shall make every reasonable effort to assist an applicant and to respond without delay, openly, accurately and completely.

Time requirements are mandatory provisions under the Act, therefore recommendations are made by the Ombudsman if compliance is not 100%.

If recommendations are made, the public body is subject to a follow-up timeliness audit in the following year.

AUTHORITY TO CONDUCT THE AUDIT

In addition to investigation of complaints, the Ombudsman may conduct audits and make recommendations to monitor and ensure compliance under FIPPA, as provided for in section 49 of the Act which states:

General powers and duties

49 In addition to the Ombudsman's powers and duties under Part 5 respecting complaints, the Ombudsman may

(a) conduct investigations and audits and make recommendations to monitor and ensure compliance

(i) with this Act and the regulations

THE AUDIT PROCESS

In September 2011, MPI was notified by letter of our intention to conduct the follow-up audit to the timeliness audit we conducted in 2010. Arrangements were made with the Access and Privacy Coordinator and the audit was conducted on-site, at MPI's head office in early October 2011.

The audit consisted of a review of a sample of 15 FIPPA files (i.e. the files that are set up to process applications for access) that MPI completed within the time period of April 1 to September 30, 2011. The audit was undertaken as a check-up rather than an exhaustive review. We randomly selected the sample of the 15 files. Verbal feedback about the results of the audit was provided to MPI on October 6, 2011.

A report on the audit was provided to MPI in December 2011. At that time, MPI was requested to provide the Ombudsman with a plan that could be implemented when timeliness is of concern, especially when there are spikes in volume. MPI satisfied this request and provided the Ombudsman with a reasonable and practical plan.

FINDINGS AND OBSERVATIONS

15 FIPPA files were reviewed

FINDINGS

- 80% (12 responses) of responses were compliant with time requirements; 20% of responses (3 responses) were not compliant.

This finding is a positive indicator of improvement in comparison to the findings in the 2010 timeliness audit where 68% of responses were compliant with time requirements and 32% were not compliant.

- Of the 20% (3 responses) of responses that were not compliant with time requirements, the average number of days late was approximately 8.

This is a significant improvement as compared to the 2010 audit where the average number of days late was 150.

- The 3 late responses were to an applicant from the category of "political party". Given that almost half of the 15 applications were from the category of political party, and half of the responses to applications in this category were on time, it does not appear to us that there is any serious pattern of delay related to requests from the political party category.
- The 3 late responses were related to applications for general information (i.e. not personal information).
- No time extensions under section 15 of FIPPA were taken.

Comparison of 2010 and 2011 Findings

	2010	2011
Compliant with time requirements	68%	80%
Not compliant with time requirements	32%	20%
Total	100%	100%

Timeliness by Type of Applicant (Individual, Media, Political Party, Other)

Type of Applicant	Number of Applicants	On Time	Late
Individual	7	7 (or 100%)	0
Media	1	1 (or 100%)	0
Political Party	6	3 (or 50%)	3 (or 50%)
Other	1	1 (or 100%)	0
Total	15	12 (or 80%)	3 (or 20%)



Timeliness by Type of Record Requested

Type of Record	Number of Files	On Time	Late
General Information	11	8 (or 73%)	3 (or 27%)
Personal Information	4	4 (or 100%)	0
Total	15	12 (or 80%)	3 (or 20%)

OBSERVATIONS

In the 2010 timeliness audit report, we noted that MPI faced significant challenges surrounding 15 complex applications for access involving voluminous records. In combination with staffing changes, shortages, and competing priorities, most of these, and some other applications were not processed within the required time frames because MPI was not equipped to handle the situation.

In March 2011, MPI faced another significant challenge because one applicant made 59 applications at one time. This spike in volume had an impact on MPI's ability to process some of the 59 applications on time and created challenges for responding to the other FIPPA applications that were also being processed at that time.

Of the 15 files reviewed for this audit, 5 files were related to the 59 applications. Of these 5 files, two responses to the applicant were late. The third response that was late was related to an application from the same applicant and was received several weeks after the 59 applications were received, but before they were completed.

We observed that MPI's reaction to dealing with the challenge of the bulk 59 applications in March 2011 was proactive, and that positive steps were taken to handle the situation, even though some responses were late. We note that of the 59 files, 35 were responded to on time (within 22 days), 23 were late (by 12 days) and 1 application was withdrawn.

Traditionally, MPI receives a fairly high volume of applications for access. Based on our observations from the 2010 and 2011 audits, MPI has been prone to experience spikes in volume, which by their nature will always be somewhat unpredictable as to when they will occur but seem to be somewhat predictable in the sense that they will occur. Spikes in the volume of applications can be demanding enough, but spikes can also mean a high volume of complex applications that may involve voluminous records. While planning for these challenging eventualities is difficult, it is necessary to ensure timely responses.

APPENDIX A

Guideline on Time Frames for Processing a FIPPA Request

Time Frames (Working Days)	Guidelines
Day 1 - Day 2	<ul style="list-style-type: none"> ➤ the request is received and reviewed ➤ the applicant is contacted as necessary ➤ the request is dated/date stamped ➤ the request is numbered ➤ the due date is calculated ➤ the request is logged in to the electronic tracking system ➤ a FIPPA file is set up (paper/electronic) ➤ the Manitoba Culture, Heritage and Tourism FIPPA reporting form is completed and faxed (if required) ➤ an acknowledgement letter is sent to the applicant ➤ a notification email is sent to the area that would likely have the responsive records along with a date by which the responsive records are due to the Coordinator/Officer
Day 3 - Day 7	<ul style="list-style-type: none"> ➤ the records search is undertaken ➤ by the end of day 7, the responsive records are provided to the Coordinator/Officer with the information considered harmful to release marked and pages tagged with an explanation of the harm
Day 8 - Day 10	<ul style="list-style-type: none"> ➤ a preliminary assessment of the responsive records is done ➤ the pages are numbered if necessary ➤ copies are made as needed ➤ determine if time extension is warranted ➤ determine if third parties need to be notified ➤ consult with staff as necessary ➤ determine if a fee estimate is required and if so, prepare it and send to applicant
Day 11	<ul style="list-style-type: none"> ➤ create and complete an index of the records that includes the FIPPA file number, a description of the type of record, the date of each record, the number of pages, the possible exceptions that might be applicable to part or to all of the records, and any comments
Day 12 - Day 16	<ul style="list-style-type: none"> ➤ conduct a line-by-line review of the records ➤ consult with staff as necessary ➤ consult with third parties as necessary ➤ obtain a legal opinion or comments as necessary ➤ make copies as necessary ➤ sever records if necessary and note the exceptions on the record ➤ note the exceptions and the reasons for their application on the index of the records ➤ prepare the draft response to the applicant
Day 17 - Day 18	<ul style="list-style-type: none"> ➤ final consultations and discussions within the public body, as necessary ➤ at the end of day 18, all decisions are finalized
Day 19 - Day 20	<ul style="list-style-type: none"> ➤ the response is finalized and sent out to the applicant