

# MANITOBA OMBUDSMAN PRACTICE NOTE

Practice Notes are prepared by Manitoba Ombudsman to assist persons using the legislation. They are intended as advice only and are not a substitute for the legislation.

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## PROTECTING THE PRIVACY OF ACCESS REQUESTERS

*The Freedom of Information and Protection of Privacy Act (FIPPA) and The Personal Health Information Act (PHIA) set out rules to protect individuals against unauthorized use and disclosure of recorded personal and personal health information. These rules apply to any personal or personal health information that is handled and created during and after the processing of a request for access under FIPPA or PHIA, including records that reveal the identity of the requester.*

Our office has received complaints that an access requester's personal and personal health information has been used and disclosed inappropriately. Our investigations found that the public bodies and trustees had breached the privacy of the requesters because of some action or behaviour on their part while processing a request. Some of these types of privacy breaches occur when disseminating the request to facilitate records searches without removing the identity of the requester when the recipients do not require this information to conduct searches, copying other employees on correspondence to the requester when the recipients do not need to know the identity of the requester, and revealing the identity of the requester when consulting with third parties about the request when there is no need for the third parties to know the identity.

When individuals make requests under FIPPA or PHIA, it is important that the personal or personal health information they provide (e.g. their name, address and telephone number on the request) only be shared in accordance with the need-to-know limits set out in both Acts (subsections 42(2) and 42(3) of FIPPA; and, subsections 20(2) and 20(3) of PHIA). When a request is made, public bodies and trustees must ensure that the personal and personal health information is confined only to those who need to know the personally-identifying information of the requester in order to process the request or make an access decision. Additional copies of documents with personal and personal health information that have been generated in the course of processing a request should not be retained by employees who have assisted the access and privacy coordinator/officer or individual trustee. In the majority of situations, most of the staff involved in processing a request, other than the access and privacy coordinator/officer or individual trustee, would not have a need to know anything other than the content of the request.

By assigning a request number to identify each request, a public body or trustee can track requests and communicate about the requests in the course of processing them in many instances without needing personal identifiers.

### **Requests for General Information**

Searches for general records can usually be conducted without personal identifiers. If for example, an individual makes a request for general records under FIPPA, then it is likely that only the coordinator and/or officer would have a need to know the requester's identity or any other personally-identifying information that could be linked to the requester. On the other hand, field staff who may be conducting the search for the responsive records would not have a need to know this information because ordinarily the search could be conducted without any personal identifiers. Similarly, Ministers and their office staff who do not have a need to know the personal or personal health information of a requester should not be advised verbally, nor provided with the request or copies of correspondence relating to the request unless the personal identifiers have been severed.

### **Requests for Personal and Personal Health Information**

Searches for records that are responsive to an individual's request for his/her own personal or personal health information would necessarily require knowledge of the requester's identity. In these situations, the distribution of the information request should be limited to only those who need to know, and the personal identifiers that are used should be limited to the amount necessary to process the request. For example, if a name and file number are sufficient to conduct the search, other personal information like the requester's address and phone number should be severed from the access request before photocopying and distributing it for processing.

### **TIPS FOR COORDINATORS, OFFICERS AND TRUSTEES FOR PROTECTING THE PRIVACY OF ACCESS REQUESTERS**

In each step of processing the request, establish where there is a need-to-know situation.

If there is not a need-to-know situation for processing the request or making the access decision beyond the coordinator or officer, then do not use or disclose the individual's personal or personal health information and consider these tips for best practices:

- Remove all personal identifiers on the original request and on any written communication to or from the requester when photocopying or faxing for any purpose related to the processing of the request or to the administration of FIPPA or PHIA.
- Restrict electronic access to any personal or personal health information, or documents created as a result of the request.
- Ensure that the identity or personally-identifying information (such as a connection to a specific organization or employer) of the requester is never revealed when consulting with third parties, including other public bodies and trustees.
- Ensure that any verbal or written references to current or past requests of any type do not reveal any personally-identifying information about the requester.
- Ensure that staff who administratively assist the coordinator or officer in responding to a request take steps to keep the individual's identity and any other personally-identifying information confidential.
- An access request made by an employee, or any documents associated with the request, should not be placed on the employee's personnel file.

If there is a need-to-know situation because the request is for the requester's personal or personal health information, then consider these tips for best practices:

- Share only the minimum amount of information that is related to the request and any documents created as a result of the request, with those staff who have a need to know.
- Ensure that staff who assist in responding to a written request for personal or personal health information keep the requester's identity and any other personally-identifying information confidential.
- Keep any verbal requests for personal health information under PHIA confidential and limit the use of any personal identifiers to the amount necessary to fulfill the request.