

# MANITOBA OMBUDSMAN PRACTICE NOTE

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## CHANGING THE BASIS FOR A DECISION TO REFUSE ACCESS

The purpose of this Practice Note is to address situations where, during an investigation of a complaint about a refusal of access, the public body or trustee changes the decision that had originally been set out in its response letter to the applicant\*. This can involve claiming a new exception not relied on in the response, or applying an already claimed exception to different records or parts of records.

When access to information is refused, the applicant must be informed of the reasons for the refusal and the specific provision of *The Freedom of Information and Protection of Privacy Act* (FIPPA) on which the refusal is based (s. 12(1)(c)(ii)). A trustee under *The Personal Health Information Act* (PHIA) must provide a specific reason described in subsection 7(1) of that Act.

When a refusal of access complaint is made to the Ombudsman, the public body or trustee must demonstrate how the provision relied on applies to the withheld information.

By thoroughly reviewing the records and applicable exceptions under FIPPA or PHIA before responding to an access request, errors in applying exceptions can be prevented. Before applying an exception, all subsections and clauses should be considered (see our Practice Notes *Considerations for Applying Exceptions When Refusing Access* under FIPPA and PHIA).

If a public body or trustee has provided detailed reasons in its response to the applicant to explain why the specific provision applies to refuse access, applying the appropriate provision would be reinforced (see our Practice Note *Documenting Access Decisions*).

## OUR PROCESS WHEN CHANGES TO EXCEPTIONS ARE RAISED IN A COMPLAINT INVESTIGATION

Where a public body or trustee wishes to amend the decision provided to the applicant in its response letter, our process will be:

- When we contact you to obtain your initial representations about the complaint, please notify us at that point of your intention to amend the decision.
- As well, you should clearly outline how the provision applies to the withheld information (see the section on providing representations in our Practice Notes *Responding to a Complaint about a Refusal of Access* under FIPPA and PHIA).

- If a new provision, not claimed in the initial response letter, is relied on, you will need to write to the applicant to notify of your decision to claim the new provision and to explain why it applies. The response letter should cite the new section, subsection or clause, and explain why the newly cited provision applies to the withheld information.
- If a public body or trustee repeatedly changes its original access decisions after responding to applicants we may offer our assistance through a review of the decision making processes to ensure procedures are in place to fully consider the applicability of exceptions before they are claimed.

\* “applicant” includes individuals requesting access under FIPPA and PHIA