

MANITOBA OMBUDSMAN PRACTICE NOTE

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DEALING WITH FEE WAIVERS UNDER *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)*

OVERVIEW OF FEES UNDER FIPPA

The right of access under FIPPA is subject to the payment of any fee required by the Access and Privacy Regulation (subsection 7(3)).

The Regulation sets out the following types of fees:

- search and preparation in excess of two hours (subsection 4(1) of the Regulation)
- copying fees (section 5 of the Regulation)
- computer programming or data processing fees (section 6 of the Regulation)
- actual cost of special courier delivery, if used (clause 7(c) of the Regulation)

CONSIDERING FEE WAIVERS

A public body has discretion to waive all or part of the fees payable under FIPPA (subsection 82(5)).

The Regulation sets out three circumstances in which a public body may waive fees (subsection 9(1) of the Regulation). If a public body is satisfied that one of the circumstances applies, the public body must decide whether to waive all, part or none of the fees.

The Regulation states the following:

Waiver of fees

9(1) *At the applicant's request, the head of a public body may waive all or part of the fees payable under this regulation if the head is satisfied that*

- (a) payment would impose an unreasonable financial hardship on the applicant;*
- (b) the request for access relates to the applicant's own personal information and waiving the fees would be reasonable and fair in the circumstances; or*
- (c) the record relates to a matter of public interest concerning public health or safety or the environment.*

THE FEE WAIVER PROCESS

An applicant initiates the fee waiver process by making a request for a fee waiver. FIPPA does not specify how the request is to be made (verbally or in writing) and does not specify what information an applicant should provide to a public body to support the request.

It is important that an applicant is made aware of the three circumstances in which fees may be waived and of information that should be provided to the public body in order to consider waiving the fees. This may be done proactively in a cover letter that accompanies a fee estimate, or when an applicant requests a waiver. An example of a cover letter that would accompany an Estimate of Costs form for search and preparation, computer programming or data processing costs is available on Culture, Heritage and Tourism's FIPPA web site located at www.gov.mb.ca/chc/fippa/formsletters.

If an applicant has not provided the type or extent of information needed by a public body to consider the request for a fee waiver, a public body should follow up to ensure the applicant understands the information the public body is seeking.

The public body must inform the applicant in writing of the decision about waiving the fees, either when access is granted or before it is granted (subsection 9(2) of the Regulation). It is a good practice to explain the basis of a decision to refuse to waive all or part of the fees. For example, if a public body is of the view that none of the circumstances applies, the applicant should be informed of this, or if the public body is satisfied that one of the circumstances applies but has chosen not to grant the fee waiver, an explanation for this decision should be provided.

An applicant has the right of complaint to the Ombudsman about the decision concerning a waiver of fees as it is a decision that relates to the access request. A public body's response to the request for a fee waiver should inform an applicant of the right to make a complaint to the Ombudsman, the 60 day time limit to complaint and the contact information for Manitoba Ombudsman.