

MANITOBA OMBUDSMAN PRACTICE NOTE

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PROVIDING REASONS TO AN APPLICANT WHEN REFUSING ACCESS UNDER *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)*

When a public body has refused an applicant access to information, the public body has a duty to inform the applicant of the reasons for the refusal. Subsection 12(1) of FIPPA requires that the public body's response letter to an applicant contain certain information, including the reasons for the refusal, in addition to the specific provision on which the refusal is based. The duty to provide reasons is found under subclause 12(1)(c)(ii), which states:

Contents of response

12(1) *In a response under section 11, the head of the public body shall inform the applicant*

- (c) if access to the record or part of the record is refused,*
- (ii) in the case of a record that exists and can be located, the reasons for the refusal and the specific provision of this Act on which the refusal is based*

A reason should indicate why the specific provision applies to the withheld information. A reason could consist of indicating which element(s) of the provision are relevant and explaining why they apply to the requested information.

For example, subclause 18(1)(c)(i) states: "The...public body shall refuse to disclose...information that would reveal commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to harm the competitive position of a third party." A reason for the refusal of access could include an explanation of which specific type of information would be revealed by disclosure and why disclosure could be expected to harm the third party's competitive position. An example of a reason would be:

The information you requested reveals the commercial and financial information of a third party. The disclosure of this information could harm the third party's competitive position because the details of the third party's business plan for expansion could provide a competitive advantage to other similar businesses. Therefore, subclause 18(1)(c)(i) of FIPPA requires that access to this information must be refused. This section of FIPPA states....

Some exceptions to disclosure may not require much amplification when providing a reason, such as the application of sections 17(1) and 17(2)(a). An example of a reason would be:

The information you requested is the personal health information of a third party. The disclosure of this information is deemed to be an unreasonable invasion of the third party's privacy under subclause 17(2)(a) of FIPPA. Therefore, subsection 17(1) of FIPPA requires that access to this information must be refused. These sections of FIPPA state....

From an applicant's point of view, providing reasons is probably the most important part of the response. If applicants can clearly understand why access is refused, they may not be as inclined to make complaints about the decisions to refuse access. Even if a complaint is made, a thorough explanation of the reasons for the refusal can help define and focus the issues for investigation.