

MANITOBA OMBUDSMAN PRACTICE NOTE

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SEVERING INFORMATION IN RECORDS UNDER THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA) AND THE PERSONAL HEALTH INFORMATION ACT (PHIA)

Both Manitoba's FIPPA and PHIA set out the right of access to information maintained by a public body or trustee with the following qualification:

Severing Information

7(2) The right of access to a record does not extend to information that is excepted from disclosure under Division 3 or 4 of this Part, but if that information can reasonably be severed from the record, an applicant has a right of access to the remainder of the record. [emphasis added]

Similarly, PHIA provides:

Severance of information

11(2) A trustee who refuses to permit personal health information to be examined or copied under subsection (1) shall, to the extent possible sever the personal health information that cannot be examined or copied and permit the individual to examine and receive a copy of the remainder of the information. [emphasis added]

The acts do not define or explain severing. Information on severing, including instructions on how to sever a record, is discussed in the Manitoba government's *FIPPA Resource Manual* in chapter 4. This is available on the Manitoba government's website at

www.gov.mb.ca/fippa/public_bodies/resource_manual/pdfs/chap_4.pdf

Severing is addressed in the Manitoba Court of Queen's Bench judgment of *Kattenburg v. The Minister of Industry, Trade and Tourism* (November 19, 1999; Suit No. CI 98-01-08704). A summary of the judgment and a copy of the severed record, prepared and released by the court, can be found in Manitoba Ombudsman's *1999 Annual Report on Access and Privacy* at page 17. This is available on Manitoba Ombudsman's website at

www.ombudsman.mb.ca/uploads/document/files/1999-ap-annual-report-en.pdf

Severing is governed by what is reasonable in the situation. Under both FIPPA and PHIA, severing can be reviewed by Manitoba Ombudsman.

General Considerations

- All records, regardless of format, are subject to severing.
- The objective of severing is to remove from the body of a record only the information that meets the conditions for an exception.
- It may be appropriate to sever single words, phrases, marginalia, lines or whole pages.
- When considering whether information is reasonably severable from the whole, one must bear in mind that disconnected snippets of releasable information taken from otherwise exempt passages are not reasonably severable and that severance of exempt portions should be attempted only when the result is a reasonable fulfillment of the purposes of the act (noted by the Manitoba Court of Queen's Bench in the *Kattenburg* decision with reference to the 1988 Federal Trial Division decision of *Information Commissioner (Can.) v. Canada (Solicitor General)*).

Technical Considerations

- The original record must not be altered; therefore, severing must be conducted on a copy of the original.
- When contemplating severing of information on a format other than paper, technical expertise should be considered.
- Paper records can be severed by obscuring parts of the copied original with severing tape, whitening fluid, an opaque dark marker or by using a photocopier having an appropriate edit feature. After severing is conducted, the excepted information should not be visible on the copy made available to the requester.
- Sometimes severing might not be possible (e.g. for a technical reason or because of the fragility of the original). In this case, the public body or trustee should discuss with the applicant how the request might otherwise be handled (in keeping with the duty to assist; FIPPA s. 9, PHIA s. 6(2)).
- Normally, where a portion of a page is withheld, the specific provision(s) for withholding the information under FIPPA or PHIA (section, subsection, clause, subclause) should be noted as closely as possible to the severed portion.
- Where a whole page or a series of pages is excepted, the specific exception(s) could be noted on each blank page or noted on a single page with reference to the series of pages withheld.
- The public body or trustee should retain a copy of the unsevered and severed versions of the requested record(s) to answer any questions, to meet administrative retention requirements and because the applicant may make a complaint to the ombudsman, the ombudsman may request the information and privacy adjudicator to review the matter or the complainant who has been refused access may appeal the decision to court.

Review by Manitoba Ombudsman

- In a review of a refused access complaint under FIPPA or PHIA, Manitoba Ombudsman will ask to see the severed and unsevered versions of the record(s). An efficient way to facilitate this is to provide Manitoba Ombudsman with a copy of the record with the severed portions highlighted.
- In a review of refused access, consideration is often given to whether the public body or trustee could release more information, which might include conducting severing on previously withheld pages or re-releasing the record with less severing than was done originally.