

MANITOBA OMBUDSMAN PRACTICE NOTE

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RESPONDING TO RECOMMENDATIONS MADE BY THE OMBUDSMAN UNDER *THE PERSONAL HEALTH INFORMATION ACT (PHIA)*

Under PHIA (sections 28 and 47) the Ombudsman may make recommendations to a trustee about access or privacy matters. This Practice Note has been prepared to assist trustees in responding to recommendations.

Subsection 48(4) sets out a trustee's response to the Ombudsman when a report concerning a complaint contains recommendations. Although section 28 does not set out a process for responding, the guidelines contained in this Practice Note should be followed.

Subsection 48(4) states:

Trustee's response to the report

48(4) If the report contains recommendations, the trustee shall, within 14 days after receiving it, send the Ombudsman a written response indicating

- (a) that the trustee accepts the recommendations and describing any action the trustee has taken or proposes to take to implement them; or
- (b) the reasons why the trustee refuses to take action to implement the recommendations.

Generally, a report containing recommendations would be sent by courier to the trustee. As the trustee must respond within 14 days of receiving the report, the date by which the response should be received by the Ombudsman will be indicated in the report.

If the report contains more than one recommendation, the recommendations will be numbered. The response should address each recommendation as follows:

1. indicate the recommendation number
2. state whether the recommendation is accepted
3. if the recommendation is accepted, describe any action taken or proposed to be taken to implement the recommendation within the time limit specified in subsection 48(6)
4. if the recommendation is not accepted, provide reasons why the trustee refuses to take action to implement the recommendation

The time limit for complying with recommendations is set out in subsection 48(6):

Compliance with recommendations

48(6) When a trustee accepts the recommendations in a report, the trustee shall comply with the recommendations within 15 days of acceptance, or within such additional period as the Ombudsman considers reasonable.

Subsection 48(6) permits an additional period of time to comply if the Ombudsman considers it to be reasonable. In the event that the trustee is unable to comply with the time limits, the response should indicate the reasons why and indicate the additional period needed to comply. The Ombudsman will notify the trustee if the additional period is considered reasonable.

Subsection 48.1(1) provides that the Ombudsman may ask the Information and Privacy Adjudicator to review a matter if the Ombudsman has given a report containing recommendations to the trustee concerned and:

- the trustee's response indicates that it refuses to take action to implement any of the Ombudsman's recommendations;
- the trustee's response indicates that it accepts the Ombudsman's recommendations, but the trustee does not take action to implement them within the required time; or
- the trustee fails to respond as required by subsection 48(4)

Under subsection 48(5), the Ombudsman is required to notify the complainant of the trustee's response to the recommendations, as follows:

Notice to the complainant

48(5) The Ombudsman shall notify the complainant of the trustee's response without delay. In the case of a complaint about access relating to a trustee's refusal to permit the complainant to examine or receive a copy of personal health information, the Ombudsman shall also inform the complainant

(a) as to whether the Ombudsman intends to ask the adjudicator to review the decision under section 48.1; and

(b) that, if the Ombudsman does not ask for a review, the complainant may appeal the decision to the court under section 49 and of the time limit for an appeal.

Generally, notice under subsection 48(5) is provided by letter to the complainant indicating the above-noted information.

(TRANSITIONAL PROVISION - A matter under investigation by the Ombudsman before the Adjudicator's role became effective will be handled according to the earlier version of subsection 48(5). It provides that after an investigation where the complainant has been refused to examine or have a copy of personal health information, the Ombudsman will inform the complainant that he or she may appeal the trustee's decision to Court and the time limit for an appeal.)

The trustee should notify the Ombudsman when it has complied with the recommendation(s) and provide information to demonstrate its compliance. For example, if the recommendation was to release withheld records to the complainant, the trustee should provide to our office a copy of its letter to the complainant and the released records, if we have requested a copy of them.

PHIA (subsection 48(7)) requires the Ombudsman to have recommendations made under section 48 available to the public. The Ombudsman will be publishing recommendations on the Ombudsman website at www.ombudsman.mb.ca

Additionally, PHIA (clause 37(1)(b)) requires the Ombudsman to report annually to the Legislature on recommendations and whether trustees have complied with the recommendations.