

MANITOBA OMBUDSMAN PRACTICE NOTE

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MAKING A SUBMISSION TO THE OMBUDSMAN FOR AN EXTENSION LONGER THAN 30 DAYS UNDER THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)

This practice note has been prepared to assist public bodies in making a submission to the ombudsman for a longer extension.

Under FIPPA subsection 15(1), a public body may extend the 30-day time limit to respond to an access application for up to an additional 30 days, or for a longer period if the ombudsman agrees. If the public body has determined that responding to the request will require more than a total of 60 days, the public body may ask the ombudsman for a longer extension.

When asking for a longer extension, the public body must:

- identify the clause(s) under subsection 15(1) of FIPPA that would permit an extension to be taken and explain how the clause applies to the request
- identify the amount of time being sought by the longer extension and explain why the additional time is needed
- have time remaining within its 30-day time limit or within its extended time limit (if an extension of up to an additional 30 days has already been taken)

To make a submission to our office seeking a longer extension, complete the *Form for Making a Submission to the Ombudsman for an Extension Longer Than 30 Days Under FIPPA*. [This form can be submitted online, or filled out and submitted by fax or email](#). Public bodies may contact our office prior to making a written submission, to discuss relevant factors that can help to focus the public body's written submission.

To allow enough time for our office to consider and respond to the submission, submissions that are provided with less than three business days prior to the expiry of the public body's time limit (or extended time limit) may not be considered. Submissions received after the public body's time limit (or extended time limit) for responding has expired cannot be considered.

FACTORS THAT AFFECT THE TIME LIMIT FOR RESPONDING

The submission form asks the public body to provide our office with information about factors that affect the public body's time limit for responding. These include:

- the date the public body received the access application
- whether the public body has already taken an extension of up to an additional 30 days
- whether the public body has issued an estimate of costs to the applicant (which suspends the time limit for responding until the public body is notified that the applicant wishes to proceed with the application)

This information will enable our office to assess whether the 30-day time limit has been altered by previous decisions of the public body and allows us to confirm the actual time limit for responding.

GROUNDS FOR EXTENSION UNDER FIPPA

Each clause under subsection 15(1) describes a specific circumstance under which an extension may be taken. The submission form asks the public body to identify and address these circumstances. The following outlines the clause-specific information that the public body must provide.

If relying on clause 15(1)(a), provide the following information to:

- explain why the request does not contain enough detail to enable the public body to identify a requested record
- describe the efforts made by the public body to obtain the necessary details or clarification from the applicant

If relying on clause 15(1)(b), provide the following information to:

- describe the volume of records requested or that must be searched
- explain why responding to the application within the regular extension period of up to an additional 30 days would interfere unreasonably with the operations of the public body. This would include time spent processing the request and activities left to be completed and any relevant factors such as unusual volume of concurrent requests, unusual operational challenges such as natural disaster, or seasonal operations, etc.

If relying on clause 15(1)(c), provide the following information to:

- indicate who the third party or other public body is
- explain why the consultation is necessary before deciding whether or not to grant access to a record
- explain why these consultations cannot be completed within the regular extension period of up to an additional 30 days (60 days from receipt of the request)

AMOUNT OF ADDITIONAL TIME REQUESTED IN THE LONGER EXTENSION

The submission form asks the public body to indicate the number of additional calendar days being sought in the longer extension and the proposed new due date for responding. We also

ask the public body to explain how it determined that the amount of time is reasonably required to complete the processing of the access application and respond to the applicant.

OMBUDSMAN'S REVIEW AND DECISION ABOUT THE SUBMISSION

Our office will review the public body's submission and may ask the public body for additional information or documentation to assist in determining whether the clause being relied upon is applicable and/or whether the additional time requested is reasonable in the circumstances. We may need to review a copy of the application form or correspondence between the public body and the applicant.

Further to our review of the submission, our office will advise the public body in writing of our decision. Our letter to the public body will indicate whether or not the ombudsman agrees with the longer extension and the factors considered in reaching this decision. If the ombudsman agrees to a longer extension, we will advise the public body to provide the applicant with a copy of our letter that explains the basis for our agreement to the longer extension. Our letter will also indicate that the applicant may contact our office if they have any questions or wish to make a complaint about the longer extension.

NOTIFYING THE APPLICANT OF THE OMBUDSMAN'S AGREEMENT TO A LONGER EXTENSION AND THE RIGHT OF COMPLAINT

When extending the time limit to respond to an application a public body is required to notify the applicant in writing as per subsection 15(2) of FIPPA. This requirement still applies in the case of a longer extension to which the ombudsman has agreed. The notification must inform the applicant of:

- the reason for the extension (indicate the clause under subsection 15(1) that permits the extension and provide a copy of the ombudsman's letter communicating the basis on which the ombudsman agreed to the longer extension)
- when the response can be expected (specify the number of days of the extended time period and indicate the extended due date)
- the right to make a complaint to the ombudsman about the extension (provide contact information for Manitoba Ombudsman and advise of the 60-day time limit to complain)

FACTORS THAT MAY BE CONSIDERED IN THE EVENT OF A COMPLAINT ABOUT A LONGER EXTENSION

The applicant has a right of complaint to the ombudsman about the public body's decision to take a longer extension that has been agreed to by the ombudsman. In the event of a complaint in these circumstances, our office will communicate with the public body and the applicant to ensure that there is no misunderstanding between any of the parties respecting the intended scope of the request, the records to be searched, or any other relevant factor that may impact the time needed for responding to the request.