



## Making a Submission to the Ombudsman for an Extension Longer than 30 Days Under The Freedom of Information and Protection of Privacy Act (FIPPA)

*Practice notes are prepared by Manitoba Ombudsman to assist persons using the legislation. They are intended as advice only and are not a substitute for the legislation.*

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 45-day time limit to respond to an access request 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 75 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 45-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 are encouraged to 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 request
- 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 request)
- whether the public body has requested additional information from the applicant that is necessary to process the request under subsection 12.1 (which suspends the time limit for responding until the applicant provides the additional information)

This information will enable our office to assess whether the 45-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 subclause 15(1)(b)(i), provide the following information to:

- describe the volume of records requested or that must be searched
- explain why it would be unreasonable to respond to a request for this number of records within the regular extension period.

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

- describe the number of requests made by the applicant or two or more applicants who are associated with each other

- if there are two or more associated applicants, describe the basis under which they are considered to be linked, as set out in the regulations
- explain why responding to these requests within the regular extension period would be unreasonable

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

- indicate what third party or other public body is being consulted or indicate that the public body is obtaining legal advice and from whom
- 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 (75 days from receipt of the request)

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

- describe the conversations with the applicant about the need for an extension
- provide a copy of written documentation demonstrating how consent was obtained

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

- explain the exceptional circumstances that prevent the public body from responding within the regular extension period (include specific details about what those circumstances are and how they affect the operations of the public body)
- explain how those circumstances are being addressed or mitigated within the public body and when (or if) the public body expects them to either end or permit resumed processing of the request

Note - clause 15(1)(d) applies only when a third party makes a complaint to the Ombudsman, so our office will notify the public body if an extension under 15(1)(d) is required when we notify the public body of the third party's complaint

## **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 request 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 request 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 a request 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.

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