

MANITOBA OMBUDSMAN PRACTICE NOTE

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USE UNDER *THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)*

INTRODUCTION

One of the purposes of FIPPA is to protect individuals against unauthorized use of personal information by public bodies.

The term "use" is not defined in FIPPA. "Use" is generally understood as meaning the handling of recorded personal information, including sharing, within the public body.

It is important to note that sharing personal information between various divisions or programs of a public body is a use. Employees of a public body use recorded information when, to meet their responsibilities working for a public body, they for example:

- examine the information
- copy the information
- create another record containing the information, such as a letter or memo
- share the information within the public body by verbally communicating its contents, emailing it, or faxing it

If personal information about an individual will be used to make a decision that directly affects the individual, the public body must take reasonable steps to ensure that it is accurate and complete. The public body must also protect personal information by making reasonable arrangements against risks, including unauthorized use.

GENERAL DUTIES OF PUBLIC BODIES UNDER PART 3 OF FIPPA

The privacy protections, including those concerning use, are set out in Part 3 of FIPPA. The general duties of public bodies concerning use are:

- every use must be authorized under the Act,
- every use must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used, and

- the use of the personal health information by employees must be limited to those who need to know

AUTHORIZATION FOR USE

A public body may only use personal information for the purpose for which it was collected or collated, or as otherwise permitted in the circumstances set out under section 43. It is important to carefully consider the wording of the provision to ensure it applies.

CONSENT TO USE

Consent from the individual is one of the authorizations for use under clause 43(b) of FIPPA. Consent is not necessary where use is permitted under another clause. In some circumstances, a public body may still wish to obtain consent from the individual even if the use is otherwise authorized.

FIPPA does not specify the form or content of consent. A public body should take whatever steps are necessary to ensure it has the informed consent of the individual. If consent is obtained in writing, the following elements of consent could be considered for inclusion in a consent form:

- a description of the personal information
- the purpose for the use
- the date of the consent
- the date the consent expires
- a statement that the consent may be revoked or amended at any time
- the name and signature of the individual

CONSIDERATIONS FOR USE

A public body should analyze each situation and consider the following before using personal information:

- the reason for using the information
- whether the purpose for the use is permitted under the Act
- if it is appropriate in the circumstances to obtain consent even if the use is otherwise authorized
- how to limit the use to the minimum amount of information necessary to accomplish the purpose; is it restricted to the necessary information handled by the necessary person(s) in the particular circumstances?