

MANITOBA OMBUDSMAN

2012 Access Practices Assessment of
the City of Winnipeg (Winnipeg Police
Service)

Audit Report under Section 49 of
*The Freedom of Information and
Protection of Privacy Act (FIPPA)*

June 2012

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OMBUDSMAN'S MESSAGE

In 2011, we conducted an audit of the City of Winnipeg under our FIPPA Access Practices Assessment initiative. The report on that audit is available on our website at http://www.ombudsman.mb.ca/pdf/2011_FIPPA_access_practices_winnipeg.pdf

Time constraints prevented the inclusion of the Winnipeg Police Service (WPS) in the City of Winnipeg audit. As a result, the WPS audit was conducted afterwards. This report provides our findings and observations on the WPS audit.

The purpose of the audit is to examine the public body's due diligence in processing Applications for Access through a review of the contents of the completed FIPPA files (i.e. the files that are set up to process applications for access) from the previous year where decisions have been made to refuse access to records in full or in part, or where records do not exist or cannot be located. The audit does not assess the correctness of access decisions because applicants can complain about that to the Ombudsman.

The audit examines four key components in the public body's processing of FIPPA applications: (1) compliance with the requirements of a response to an applicant under section 12 of the Act; (2) compliance with time requirements of the Act; (3) adequacy of records preparation; and, (4) adequacy of the contents of the FIPPA file. These components are examined and assessed because they are pivotal to an efficient, thorough and accountable access decision. Where weaknesses are found during the course of the audit, recommendations are made to improve the particular weakness that was identified.

The assessment is based on our view that a good access practices process is one that is:

- ◆ efficient to satisfy the time requirements of FIPPA;
- ◆ thorough so that all relevant provisions of the Act are fully considered in the course of the access decision deliberations; and,
- ◆ well-documented to account for decisions that are made under the Act.

With an overall performance of 97%, the findings of the 2012 audit of the access practices of the WPS indicate that the department has an organized, efficient, thorough and generally, a well-documented FIPPA process. Many strengths and good practices were observed throughout the review of 101 FIPPA files. The WPS's performance suggests that its access practices are extremely good and that only minor modifications are indicated.

Recommendations have not been made to the WPS because the audit found that recommendations were not necessary. As no recommendations have been made, WPS will not be subject to a follow-up audit.

The audit was conducted with the cooperation and assistance of the WPS.

Mel Holley
Acting Manitoba Ombudsman



BACKGROUND

AUTHORITY TO CONDUCT THE AUDIT

In addition to investigation of complaints, the Ombudsman may conduct audits and make recommendations to monitor and ensure compliance under FIPPA, as provided for in section 49 of the Act which states:

General powers and duties

49 In addition to the Ombudsman's powers and duties under Part 5 respecting complaints, the Ombudsman may

(a) conduct investigations and audits and make recommendations to monitor and ensure compliance

(i) with this Act and the regulations

THE AUDIT PROCESS

In April 2011, the Ombudsman formally notified the City that an audit of its FIPPA access practices would be undertaken. That audit took place in May and June 2011. Due to time constraints, the WPS portion of the audit was postponed.

The WPS audit occurred in early 2012. Prior to assessing the WPS files, the audit process was discussed with the FIPPA Coordinator who was also interviewed to obtain her perspective on the FIPPA process.

The audit reviewed and assessed the WPS's 101 FIPPA files that were completed in 2010 where the access decision was to refuse access to records in full or in part, or where records do not exist or cannot be located.

Verbal feedback was provided to the WPS after the audit was completed. The feedback provided the general findings of the audit through the perspective of the strengths and weaknesses that were observed in examining the contents of the FIPPA files.

Compliance with section 12 (contents of the response to an applicant) and time requirements are mandatory provisions under the Act, therefore recommendations are made if compliance is not 100%. Recommendations for the adequacy of record preparation and contents of the FIPPA file may be made if compliance is less than our threshold of 90%.

AUDIT RESULTS

FINDINGS

101 FIPPA files were reviewed

- ◆ Compliance with Section 12 - 100% of responses were compliant with section 12.
- ◆ Compliance with Time Requirements - 98% of responses were completed within the required time frames (99 responses were compliant; 2 responses were not compliant).
- ◆ Adequacy of Records Preparation - 99% of the files had adequate records preparation (of the 72 files that had responsive records, 71 files were adequate; 1 file was inadequate).
- ◆ Adequacy of the Contents of the FIPPA File - 92% of the files had adequate contents/documentation (93 files had adequate contents; 8 files had inadequate contents).

Average 97%

As background, typically, the WPS receives the highest volume of FIPPA applications within the City. In 2010 the WPS received 138 applications; this was more than one third of the total number (383) of FIPPA applications received by the City of Winnipeg in 2010.

The WPS FIPPA Coordinator spends the majority of her time processing FIPPA applications. More recently, additional staff has been assisting with FIPPA responsibilities.

Our review indicates that WPS does an excellent job processing FIPPA requests. The files that were reviewed reflect an efficient, organized and thorough process. Based on the four key component areas that we assessed, it seems that FIPPA applicants are well-served.

STRENGTHS

Section 12 compliance is excellent.

All but two applications for access were processed within the required time frames. This is an excellent achievement, particularly given the volume of applications that WPS processed in 2010. In our view, with 98% compliance for timeliness, no recommendation is necessary.

Records preparation is adequate. Other than one file which was found to be inadequate, it appears that responsive records are reviewed on a line-by-line basis. The files contain severed and unsevered records. Exceptions are noted on the severed records where they apply.

The contents of the FIPPA files are adequate even though the documentation of the process in some files could be improved by noting why and how each exception claimed applies, especially when relying on exceptions to disclosure other than section 17 - *Privacy of a Third Party*.

Searches for records are thorough, meticulous and well-documented.

The department's dedication to good public service is demonstrated through a variety of positive access practices. For example, we observed that the Coordinator:

- communicates constructively with applicants to clarify requests, resolve issues, or obtain further information that may be necessary to conduct a search for records. These communications or discussions are typically confirmed and detailed in a follow-up letter to the applicant;
- researches and provides additional information/referrals to applicants which may be useful, but outside the scope of FIPPA;
- provides records to applicants in the format that is most practical, economical and helpful to the applicant, i.e. paper or CD/DVD format, and often communicates with applicants to confirm receipt of the FIPPA package that was sent; and,
- delivers service that is especially thoughtful and compassionate to applicants who may be in difficult, sensitive or tragic situations.

We observed that during the processing of applications, the FIPPA Coordinator also provides excellent service internally to other WPS staff by providing educational information about FIPPA, clear instruction on what information is needed, why it is needed, and a date by which it is needed. During consultations throughout the processing of the request, discussions and meetings with staff are subsequently confirmed in an email by the Coordinator to verify accuracy and the conclusions reached as a result of discussions. The Coordinator is also diligent in communicating internally with staff to keep the process on track and on time.

The work environment is almost paperless and extremely efficient: the FIPPA files are electronic; severing of records is done electronically and most searches for records can be carried out electronically. The electronic FIPPA files contain scanned-in paper documents, emails, faxes, severed and unsevered records, correspondence and any variety of other file-related documents. The files are well-organized with sub-folders in many of the files.

The Coordinator has created and implemented a FIPPA Application Worksheet (as well as a separate FIPPA Complaint Worksheet for Manitoba Ombudsman complaints). The FIPPA Application Worksheet documents the FIPPA request number, date received, due date, date of completion, date worked on, time spent working on the file, comments, chargeable time, and number of photocopies and or CD/DVDs provided. Typically, fee estimate calculations are documented on the Worksheet in substantial detail. The Coordinator also records notes on the FIPPA Application Worksheet about the process, decisions made, and actions taken.

The worksheet is an excellent tool that can effectively keep track of dates, actions, reasoning and decisions made. The Coordinator also, at times, documents on the FIPPA Application Worksheet why an exception was considered but rejected and why severing was contemplated but rejected - these are particularly good practices because they enrich and inform corporate memory.

The documents in each electronic FIPPA file (some files had over 100 documents) are aptly named, making them easily identifiable and therefore easy to locate; in files with many documents, this becomes a valuable time-saving practice. Additionally, there are no "version" control issues because documents are aptly named. For example, final and signed response letters to the applicant are scanned in and named accordingly and draft letters are named as draft and watermarked "Draft".

A public body's FIPPA file should exist as a stand-alone corporate memory without any reliance on any one individual's memory. The WPS's FIPPA files seem to reflect this standard quite well.

WEAKNESSES

Recommendations have not been made to the WPS because any weaknesses that were identified were not systemic or substantive enough to warrant a recommendation. However, there are some areas where improvements to the process are suggested:

- When relying on an exception to disclosure, for example, section 24 or 25, there should be explicit notes in the FIPPA file about why and how each clause applies. There were instances where this type of documentation was not observed.
- If some information has been withheld (or records do not exist or cannot be located), the access decision is "granted in part". We observed that some response letters say "access has been granted" when some information had been withheld. For greater clarity, the response letter should clearly capture and indicate the access decision for the applicant at the outset of the response letter; therefore if some information has been withheld, then the applicant should be informed that access has been granted in part; and,
- When considering whether it is reasonable to seek consent from third parties for disclosure, *where possible*, it is a good practice to first determine if another exception (other than, for example, section 17 or 18) applies to the same information. If another exception applies and the WPS does not intend to release the information, it may not be reasonable or useful to seek consent. We observed three situations where consent from third parties was sought and given, but access was refused because the WPS determined afterwards that another exception applied.

KEY COMPONENTS

COMPLIANCE WITH SECTION 12

What is Required

Section 12 of FIPPA sets out the mandatory contents of a response to an applicant:

Contents of response

12(1) In a response under section 11, the head of the public body shall inform the applicant

- (a) whether access to the record or part of the record is granted or refused;*
- (b) if access to the record or part of the record is granted, where, when and how access will be given; and*
- (c) if access to the record or part of the record is refused,*
 - (i) in the case of a record that does not exist or cannot be located, that the record does not exist or cannot be located,*
 - (ii) in the case of a record that exists and can be located, the reasons for the refusal and the specific provision of this Act on which the refusal is based,*
 - (iii) of the title and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and*
 - (iv) that the applicant may make a complaint to the Ombudsman about the refusal.*

What was Assessed

In assessing compliance for the audit, if one or more required element was missing from the response letter, it was determined to be not compliant.

What We Found

All responses were determined to be in compliance with section 12.

COMPLIANCE WITH TIME REQUIREMENTS

What is Required

Compliance with the time frames set out in FIPPA is required.

For a request to be processed within the time limit of 30 calendar days, we devised *The Guideline on Time Frames for Processing a FIPPA Request* (in Appendix A). The Guideline uses working days, of which there are about 20 per month, as the average number of days in which to complete the processing of a request. The Guideline also sets out the main steps involved in the processing of a request. As some requests are

more complex than others, any guideline adopted would need to be flexible, including situations where an extension of the time limit is permitted.

For a guideline on time frames to be effective, full cooperation is needed from all staff who may be involved in processing a request, regardless of position in the organization. All staff involved in processing a request have a role and a responsibility to ensure that timelines are met. Any weak link, especially in terms of missing deadlines, will delay the process and may lead to complaints. This in turn will then require the Coordinator to expend time in responding to Manitoba Ombudsman inquiries. Ultimately, the applicant could have to wait longer for a response and new access requests coming in will probably be delayed.

What was Assessed

If the response from the WPS was sent to the applicant within the time limits required by FIPPA, (taking into account any extensions taken or fee estimates), the response was determined to be compliant.

What We Found

All but two, or 98% of the responses were on time. In our view, a recommendation is not necessary.

ADEQUACY OF RECORDS PREPARATION

What is Expected

Each Application for Access should result in a search for responsive records and if responsive records are located, a line-by-line review should be undertaken.

When access to part of the records is refused, the FIPPA file should contain a copy of the severed and unsevered records. If there is a large volume of records or the records are necessarily held electronically, (for example, a database), and they need to be stored outside of the FIPPA file, a note should be placed in the file indicating where the records are located. A complete package of severed and unsevered records should exist regardless of location, but the location must be known to staff who have an authorized need to use the FIPPA file.

Where information has been severed, the applicable section of FIPPA should be cited beside the passage that is being withheld. When information is withheld in whole, if all the exceptions apply to each word, then the exceptions can be noted on the first page. If not, then the exceptions should be noted beside the information to which they apply. It should also be clear to anyone using the file, what was released to the applicant. There should be a FIPPA file copy of the exact package that the applicant received attached to the FIPPA file copy of the response letter. If information was severed, there should be copy of the severed information with the exceptions fully cited and noted beside the excepted information kept in the FIPPA file.

What was Assessed

Although responsive records do form part of the basic contents of a FIPPA file, the audit assessed the adequacy of records preparation separately. This is because properly prepared records are an indicator that a public body has fulfilled its obligation to conduct a line-by-line review of each record to determine whether exceptions apply.

Generally, in assessing adequacy of records preparation, if records existed and the severed and unsevered records were in the FIPPA file with the exceptions fully cited and noted where they applied, the records preparation was determined to be adequate.

What We Found

With the exception of one file, we observed that line-by-line reviews are undertaken and exceptions relied upon are noted beside the withheld information for each record. A recommendation is not necessary because adequacy of records preparation is 99% and over the threshold of 90%.

ADEQUACY OF THE CONTENTS OF THE FIPPA FILE

What is Expected

The content of the FIPPA file is critically important because it is the public body's permanent corporate record and memory of the actions and decisions that made up the processing of the Application for Access. Thorough documentation during the decision-making process is essential to keep track of how, why and by whom decisions were made.

It should be clear why the access decision was made, who was involved in the decision and their contribution, why an exception applies, and where applicable, the consideration of any limits to the exception and the exercise of discretion. It is also important to document the search that was undertaken especially where the decision is that records do not exist or cannot be located.

Ultimately, the FIPPA file should exist as a stand-alone corporate memory and there should not be any reliance on any one individual's memory.

Under FIPPA, the processing of an access request occurs over the course of up to 30 days (or 60 days if an extension is taken under FIPPA), often incrementally, in the midst of doing other work. During the decision-making process, other employees, third parties, public bodies or trustees may be consulted. Documenting this contact and the determinations made at the time can help to keep track of the decisions and assist in explaining the basis for decisions at a later time.

In our Practice Note, *Documenting Access Decisions*, we underscore the particular importance of having well-documented decisions within a FIPPA file as it enables a public body to properly:

- support the basis for access decisions internally;
- explain the basis for decisions to an applicant;
- provide information to support those decisions when responding to complaints being investigated by Manitoba Ombudsman;
- prepare for a review by the Information and Privacy Adjudicator if requested by the Ombudsman;
- prepare evidence for court if an appeal of a refusal of access decision is made by the applicant;
- complete reports under FIPPA for Manitoba Culture, Heritage and Tourism; and
- maintain the access request file so that any absences by the Coordinator or other key staff, will not affect any action that needs to be taken.

In our view, adequacy of the contents of the FIPPA file can be achieved by adopting the guideline, *The Standard Contents of a FIPPA File* (see Appendix B).

What was Assessed

In terms of assessing the adequacy of the FIPPA file contents for the audit, if a file contained sufficient information and documentation to explain, support, or substantiate each aspect of the access decision, the file documentation was determined to be adequate.

What We Found

Generally, with a performance of 92%, documentation is detailed and thorough. However, there were several instances where the documentation of the access decision was not adequate. These instances related to insufficient notes explaining the application of the exceptions relied upon. A recommendation is not necessary because adequacy of the contents of the FIPPA file is 92% and over the threshold of 90%.

APPENDIX A
Guideline on Time Frames for Processing a FIPPA Request

Time Frames (Working Days)	Guidelines
Day 1 - Day 2	<ul style="list-style-type: none"> ➤ the request is received and reviewed ➤ the applicant is contacted as necessary ➤ the request is dated/date stamped ➤ the request is numbered ➤ the due date is calculated ➤ the request is logged in to the electronic tracking system ➤ a FIPPA file is set up (paper/electronic) ➤ the Manitoba Culture, Heritage and Tourism FIPPA reporting form is completed and faxed (if required) ➤ an acknowledgement letter is sent to the applicant ➤ a notification email is sent to the area that would likely have the responsive records along with a date by which the responsive records are due to the Coordinator/Officer
Day 3 - Day 7	<ul style="list-style-type: none"> ➤ the records search is undertaken ➤ by the end of day 7, the responsive records are provided to the Coordinator/Officer with the information considered harmful to release marked and pages tagged with an explanation of the harm
Day 8 - Day 10	<ul style="list-style-type: none"> ➤ a preliminary assessment of the responsive records is done ➤ the pages are numbered if necessary ➤ copies are made as needed ➤ determine if time extension is warranted ➤ determine if third parties need to be notified ➤ consult with staff as necessary ➤ determine if a fee estimate is required and if so, prepare it and send to applicant
Day 11	<ul style="list-style-type: none"> ➤ create and complete an index of the records that includes the FIPPA file number, a description of the type of record, the date of each record, the number of pages, the possible exceptions that might be applicable to part or to all of the records, and any comments
Day 12 - Day 16	<ul style="list-style-type: none"> ➤ conduct a line-by-line review of the records ➤ consult with staff as necessary ➤ consult with third parties as necessary ➤ obtain a legal opinion or comments as necessary ➤ make copies as necessary ➤ sever records if necessary and note the exceptions on the record ➤ note the exceptions and the reasons for their application on the index of the records ➤ prepare the draft response to the applicant
Day 17 - Day 18	<ul style="list-style-type: none"> ➤ final consultations and discussions within the public body, as necessary ➤ at the end of day 18, all decisions are finalized
Day 19 - Day 20	<ul style="list-style-type: none"> ➤ the response is finalized and sent out to the applicant

APPENDIX B

The Standard Contents of a FIPPA File

- the assigned FIPPA file number;
- a tracking document that tracks the date with the actions taken on the file;
- the Application for Access and the date it was received;
- all correspondence and communications, including emails, faxes sent (with transmission reports and covering sheets) and faxes received, that are related to the file;
- notes with dates of the substance of consultations (emails and attachments, faxes, telephone conversations, meetings) with the applicant, third parties, public body staff, another public body's staff, and legal counsel;
- legal advice and legal opinions, if applicable;
- if fees applied, notes about how the fees were calculated including the activities for which a fee was charged, how much time was estimated for each chargeable activity, the basis for deciding that the amounts of time are reasonable in relation to the request, and, the amount of the fee;
- if an extension was taken, notes about why a specific provision under section 15 applies;
- notes about the search for the records indicating the locations searched, especially where the conclusion is that records do not exist or cannot be located;
- notes of why and how each exception applies and who made the decision;
- where applicable, notes of the consideration given to any limits to the exception (often identified as exceptions to the exception);
- for discretionary exceptions, notes about the reasons why the choice was made to not release;
- a copy of the records, and if information is withheld, a copy of the severed records with the applicable exceptions placed beside the withheld information, and the unsevered records;
- a copy of the response letter to the applicant; and,
- any correspondence, notes and documents relating to a complaint to the Ombudsman or to a review by the Information and Privacy Adjudicator, if requested by the Ombudsman.