

# WHAT TO EXPECT FROM AN INVESTIGATION BY THE MANITOBA OMBUDSMAN

Under The Freedom of Information and Protection of Privacy Act (FIPPA) and The Personal Health Information Act (PHIA)

## 1 What happens after a complaint is received at the office of the Manitoba Ombudsman?

A complaint and any accompanying documents are reviewed to ensure that it is a matter we can investigate. We may contact the complainant if clarification is required. If we can investigate the matter, the complaint is assigned to an investigator who reviews it. The investigator then contacts the complainant and/or sends a letter advising that he/she will make inquiries and investigate the matter.

The investigator will provide the public body/trustee with information about the complaint as well as provide the complainant's name and the reason(s) for the complaint. This is done to allow the public body/trustee to adequately respond to our office during an investigation.

## 2 Does the complainant have the opportunity to provide information about a complaint during the investigation?

Both FIPPA and PHIA require that the Ombudsman give the complainant and the public body/trustee an opportunity to make representations to the Ombudsman. This means that both parties can submit information during the investigation in order to explain and/or clarify their position in the matter.

## 3 Can the complainant review information provided by the public body/trustee about the complaint?

No, FIPPA and PHIA state that no one is entitled to have access to or comment on representations made to our office by another person.

## 4 Can communication between the complainant and the public body/trustee take place during the investigation?

Yes. In some circumstances a resolution of the matter can be achieved through this communication.

## 5 What happens during an investigation?

We review information relevant to the complaint that has been provided to us by the complainant and the public body/trustee. We may speak to, or meet with any employee of the public body/trustee who may be able to provide any information we require. In an investigation, we determine whether the decision or action of a public body/trustee was in compliance with the requirements set out in FIPPA or PHIA (for example, whether a refusal of access was authorized under the Act or whether a disclosure was permitted under the Act).

## 6 What sort of outcome can be expected from an investigation?

If we support a complaint, we take steps to ensure that the Act is followed. Upon completing an investigation, a report containing our findings is prepared and provided to both the complainant and the public body/trustee. The report may also contain recommendations the Ombudsman considers appropriate respecting the complaint.

## 7 How long does an investigation take?

FIPPA requires that an investigation be completed and a report made within 90 days after a complaint is made. Under PHIA, the time limit is 45 days for an investigation of an access complaint and 90 days for a privacy complaint. We may extend these time periods by providing a letter to the complainant and public body/trustee, notifying of the anticipated date for providing the report.

## 8 Can the public body's/trustee's decision be appealed?

If the Ombudsman finds that a complaint relating to the refusal of access to information is unjustified, the report will inform the complainant of the right to appeal the decision to the Court of Queen's Bench.

## 9 What happens if the Ombudsman makes recommendations?

If the report contains recommendations, the public body/trustee must, within a certain period of time, send a written response to us indicating whether it accepts the recommendations and, if so, what will be done to implement them. If the recommendations are not accepted, the written response must provide reasons for the refusal.

## 10 What happens if the public body/trustee doesn't follow the recommendations?

The Ombudsman may ask the Information and Privacy Adjudicator to review the matter if the recommendations are not followed. A request for a review can only be made by the Ombudsman, and not by the public body/trustee or complainant. Upon completing a review, the Adjudicator makes an order, a copy of which is provided to the public body/trustee, the complainant and the Ombudsman.

# Steps in a FIPPA and PHIA Investigation

