



**MANITOBA
OMBUDSMAN**

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT INVESTIGATION REPORT

Manitoba Justice

Refusal of Access

**CASE# MO-10136
Public Report with
Recommendations and
Referral to Adjudicator**

**Public Issue Date:
October 7, 2025**

**Provisions considered:
FIPPA -20 (1)(a)**



SUMMARY

The complainant submitted an application to Manitoba Justice for access to any documents related to the Exchange of Service Agreement with the Correctional Service of Canada to hold federally sentenced offenders in Manitoba Correctional Centers. The public body refused access in full, informing the complainant that any information provided to Manitoba Justice from Justice Canada would have been shared in confidence. Our office received a complaint about the decision of Manitoba Justice.

Manitoba Ombudsman concluded that the public body had not fulfilled its duty to conduct a reasonable search for records responsive to the complainant’s request, beyond the Exchange Service Agreement. We also found the public body has not provided sufficient justification for withholding the Exchange of Service Agreement under clause 20(1)(a) of FIPPA. The public body has not demonstrated that any part of the agreement was provided by Justice Canada in confidence, and since the agreement resulted from negotiations between the two parties, only specific content shared by Justice Canada with a clear expectation of confidentiality may qualify for exemption.

Our report with recommendations was issued to the public body July 30, 2025 advising that it was to respond to the recommendations by August 14, 2025. No response to recommendations, indicating if recommendations were accepted or not, was received by the required date. The matter was referred to the Manitoba Information and Privacy Adjudicator on August 28, 2025.

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BACKGROUND

On October 17, 2024, the complainant submitted a request under The Freedom of Information and Protection of Privacy Act (FIPPA) to Manitoba Justice (the public body) for access to the following records:

"Any documents related to the Exchange of Service Agreement with the Correctional Service of Canada to hold federally sentenced offenders in Manitoba Correctional Centers. Versions of this agreement have been in place since 1974, and it was renewed in 2021/22. We are seeking a copy of the Agreement, any documents related to its implementation (for example, how many inmates were exchanged under this Agreement each year and where they were incarcerated). If the Agreement has been canceled or not renewed, we are also seeking any documents related to its cancellation/nonrenewal."

The public body contacted the complainant on October 21, 2024, to seek clarification about the records being requested. The complainant later narrowed the request to the following:

Any documents related to the 2021/22 or the most recent Exchange of Service Agreement with the Correctional Service of Canada to hold federally sentenced offenders in Manitoba Correctional Centers. And any documents related to the number of inmates exchanged under this agreement each year and related to the gender divide. Date range: September 30, 2021 - September 30, 2024

In a response dated December 13, 2024, the public body refused access to the narrowed request in full, informing the complainant any information that may have been provided to Manitoba Justice from Justice Canada would have been shared in confidence. The response stated that the requested records would therefore be withheld under clause 20(1)(a) of FIPPA:

20(1) The head of a department or government agency shall refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal information provided, explicitly or implicitly, in confidence by any of the following or their agencies:

(a) the Government of Canada...

The public body further asserted that Justice Canada is the owner of the requested information and that it remains under their control.

On December 27, 2024, the Manitoba Ombudsman received a complaint about Manitoba Justice's decision to refuse access to records requested under FIPPA. The complainant stated the Exchange of Service Agreement (the Agreement) with the Correctional Service of Canada, constitutes a contract between the governments of Manitoba and Canada and is not confidential in nature. The complainant said the updated Agreement was publicly acknowledged in Manitoba Justice's 2021-2022 annual report. The complainant further noted that the revised request of October 21, 2024, also included records relating to the number of inmates exchanged annually under the Agreement. According to the complainant, this information should not be considered confidential, as Statistics Canada regularly publishes similar data and maintains a public dashboard containing inmate-related statistics.

INVESTIGATION

On February 10, 2025, our office requested a copy of the withheld records and written representations from the public body outlining the factors it considered in the decision that disclosure of the information could reasonably be expected to reveal information provided in confidence from Justice Canada, as under clause 20(1)(a) of FIPPA. In addition, we asked the public body to confirm whether it considered the requirement to sever the information from the records to allow for as much information as reasonably possible to be provided to the applicant. Subsection 7(2) sets out this requirement:

7(2) The right of access to a record does not extend to information that is excepted from disclosure under Division 3 or 4 of this Part, but if that information can reasonably be severed from the record, an applicant has a right of access to the remainder of the record.

On March 10, 2025, the public body submitted written representations setting out its rationale and provided a copy of the Exchange of Service Agreement with the Correctional Service of Canada for our review. However, the submission did not provide additional information to clarify the reasoning behind the refusal, or its consideration to severing the information. As a result, our office requested further clarification on April 23, 2025.

We asked the public body to respond by May 9, 2025. Our office did not receive a response or communication by that date and our subsequent requests to Manitoba Justice were not answered.

Accordingly, in the absence of a complete response in which to determine the public body's compliance with FIPPA, our analysis of the limited information provided to us, and the requirements of the Act, follow below.

OUR ANALYSIS

Adequacy of Search

The public body asserted that information related to custody counts and inmate exchanges are of a highly sensitive nature and its disclosure could adversely affect future intergovernmental relationships and agreements. However, the representations do not clearly establish whether Manitoba Justice conducted a proper search to identify records responsive to the complainant's request, apart from the Exchange of Service Agreement, which was provided to our office for our review.

In its written representations, we noted that the public body applied clause 20(1)(a) of FIPPA to the requested information pertaining to custody data. However, it appears no such records were identified or disclosed to the applicant nor to our office for review. This raises concern as to whether clause 20(1)(a) was applied in the absence of actual responsive records.

It is critical under FIPPA that a public body undertake a thorough and documented search for responsive records prior to making a determination on access. The application of an exception to disclosure, such as clause 20(1)(a) must be based on the actual content and nature of identified records.

Without first establishing whether responsive records exist, and reviewing their contents, a public body cannot reasonably assess the applicability of any exception to access. It also cannot reasonably fulfill its requirements to consider whether the excepted information could be reasonably severed from the record to provide the applicant with the right of access to the remainder of the record.

In our follow-up letter dated April 23, 2025, we asked the public body to provide documentation detailing the search efforts undertaken, including when and how such searches were conducted. We also sought confirmation as to whether a search was conducted specifically for records relating to the number of inmates exchanged under the Agreement each year, including any gender-based data for the complainant's

requested time span. It is not clear to us whether any records exist created by Manitoba Justice containing data on custody counts, or inmate exchange, within and from provincial institutions, which respond to the request.

However, despite this request and our attempts at further follow-up, the public body did not provide a response.

Custody and Control of the Requested Records

In its response to the complainant, the public body indicated that the requested information was withheld on the basis that it is under the control of Justice Canada, referring to that entity as the "owner" of the information. However, FIPPA does not rely upon the concept of "ownership" in determining whether records are subject to access under the Act. The appropriate legal standard, as set out in section 4 of FIPPA, is whether the record is in custody or under the control of the public body.

Custody refers to physical possession of the record, whereas control encompasses the authority to manage, direct, or regulate the record's use, disclosure, or disposition, even in the absence of physical possession.

In this case, the Exchange of Service Agreement is a negotiated document between Manitoba Justice and Justice Canada, and it is held by Manitoba Justice in the course of its institutional functions. As such, we are satisfied that the public body exercises both custody and control over the agreement within the meaning of FIPPA.

Application of Clause 20(1)(a)

Clause 20(1)(a) is a mandatory exception to disclosure that protects a specific type of information. For the exception in this clause to apply, the information must have been furnished, either explicitly or implicitly, in confidence by the Government of Canada, by a government of another province or territory of Canada, or by an organization representing one or more governments.

The public body asserted that any information potentially provided to Manitoba Justice by Justice Canada was exchanged in confidence and therefore falls within the protection of clause 20(1)(a) of FIPPA. As stated above, clause 20(1)(a) mandates information supplied, explicitly or implicitly, in confidence by the Government of Canada or its agencies must be withheld from disclosure. However, the mere origin of the information from Justice Canada does not, by itself, satisfy the requirements of clause 20(1)(a). For

this exception to be appropriately invoked, there must be clear evidence that the information was imparted under an express or implied obligation of confidentiality. Without such evidence demonstrating the confidential nature of the information at the time of disclosure, reliance on clause 20(1)(a) is premature and unsupported by the Act.

Furthermore, clause 20(1)(a) was applied to deny access to the entirety of the Exchange of Service Agreement. We noticed the Agreement was the result of bilateral negotiations between Manitoba Justice and Justice Canada. Under FIPPA, for clause 20(1)(a) to apply, the information must be “provided” by the Government of Canada or its agencies. Negotiated agreements differ fundamentally from information simply supplied by one party; they are jointly created documents reflecting contributions from both sides. Therefore, the entire Agreement cannot be considered as having been unilaterally “provided” by Justice Canada. Consequently, the application of clause 20(1)(a) to the entire Agreement is inconsistent with the statutory interpretation of “information provided in confidence,” as it fails to acknowledge the shared nature of the document’s origin.

In addition, while the public body claims the Agreement was provided in confidence, it has not demonstrated how this confidentiality was established or expected. Under the terms of clause 20(1)(a), confidentiality must be either explicitly declared such as through confidentiality clauses or formal agreements or reasonably inferred from the context or through the sufficient explanation from the public body. Our review of the Agreement revealed vague reference to confidentiality as limited by applicable freedom of information and privacy law. We cannot determine what this means. The absence of explicit or implicit confidentiality clauses undermines the public body’s position. Without clear evidence of confidentiality and an explanation from the public body about its origin and scope, if it exists, the exception cannot be justifiably applied.

Further, subclauses 20(3)(b)(i) and (ii) of FIPPA limit the applicability of withholding access to records subject to clause 20(1)(a). The Act states that clause 20(1)(a) does not apply if Justice Canada consents to the disclosure of the requested record or makes the information public. Therefore, when a public body receives a request for access to information that was provided in whole or part by a government, organization or a local public body, it is critical the public body consult with that government or organization. Consultation is needed in order to confirm the intended confidentiality of the information and whether consent for release will be given or the information is made public. This is especially important in the event of a complaint, such as in the current investigation, as the public body bears the burden of demonstrating the information was in fact provided in confidence. We have no evidence to suggest Manitoba Justice contacted Justice

Canada to determine consent for disclosure of the records, in whole or part, or if any of the information is public.

Given the public body's submissions and the independent review of the Exchange of Service Agreement, there is not enough evidence to support the conclusion that the Agreement falls within the scope of clause 20(1)(a) of FIPPA. The Act requires exemptions be applied narrowly and with proper evidentiary basis. Because the Agreement is a negotiated instrument reflecting input from both parties and lacks explicit confidentiality provisions, it does not meet the legal standard necessary for exemption under this clause. Accordingly, we conclude that the public body's decision to withhold the Agreement under clause 20(1)(a) is not supported under FIPPA, based on the information provided to us.

INVESTIGATION CONCLUSION

Upon careful consideration of the limited information provided, our office concludes Manitoba Justice has not fulfilled its duty to conduct a reasonable search for records responsive to the complainant's request, beyond the Exchange Service Agreement. Despite multiple follow-ups, the public body did not provide any documentation outlining the steps taken to identify other potentially responsive records, such as the scope of the search, when it was conducted, or what search criteria were used. In the absence of such evidence, we are unable to confirm a proper search took place and must therefore find that Manitoba Justice failed to meet its obligations under FIPPA to respond openly, accurately, and completely.

In addition, the public body has not provided sufficient justification for withholding the Exchange of Service Agreement under clause 20(1)(a) of FIPPA. While we recognize that clause 20(1)(a) is a mandatory exception to disclosure, Manitoba Justice has not provided information to demonstrate how any portion of the Agreement was provided by Justice Canada in confidence, as required under the provision. As the Agreement was the product of negotiation between the two parties, only specific content Justice Canada provided, under a clear expectation of confidentiality, may qualify for exemption. Our review did not identify any terms in the Agreement marked as confidential, nor did the public body offer a clear explanation or evidence to support the application of clause 20(1)(a). Therefore, we find that the exemption was not properly applied.

Lastly, we did not receive information to indicate whether Manitoba Justice considered the release of the withheld records on a severed basis, as is required under subsection 7(2) of the Act.

RECOMMENDATIONS & REQUIREMENT TO RESPOND

Based on the above findings and analysis, the following recommendations are made pursuant to the provisions of The Freedom of Information and Protection of Privacy Act (FIPPA):

Recommendation 1:

The Ombudsman recommends Manitoba Justice respond to all items raised, regarding adequacy of search and evidence demonstrating how confidentiality applies to identified records, in our April 23, 2025 letter. The response is to be provided no later than August 15, 2025.

Recommendation 2:

The Ombudsman recommends Manitoba Justice contact Justice Canada to seek consent for the release of the records and to determine what information is public.

Recommendation 3:

The Ombudsman recommends Manitoba Justice apply subsection 7(2) to all records to determine what can be released with severing to the applicant.

Recommendation 4:

The Ombudsman recommends that Manitoba Justice respond to the applicant within 45 days of this report indicating: the nature and types of all records in its custody or control that respond to the complainant's narrowed request, the result of its considerations of section 7(2) and provide a revised decision on whether access is granted, in accordance with section 12 of FIPPA.

Requirement to Respond to the Recommendations

Under subsection 66(4), Manitoba Justice must provide written response to the Ombudsman's recommendations in writing within 15 days of receiving this report. As this report is being sent by email to the public body on July 30, 2025, the Head shall respond by August 14, 2025.

The Head's response must indicate whether it accepts the recommendations and identify any actions to implement them. They shall provide written notice and information to demonstrate that Manitoba Justice has complied with the recommendations and did so within the specified time period outlined in subsection 66(6) of FIPPA. If the Head does not accept the recommendations, then the Head must indicate the reasons why the public body refuses to take action to implement the recommendations.

HEAD'S RESPONSE TO THE RECOMMENDATIONS

The head failed to respond to the recommendations issued by the Ombudsman by the required date of August 14, 2025.

In a letter from the public body dated August 8, 2025, it acknowledged receipt of the final report and advised of the department's intent to review and respond to the recommendations by the due date. However, our office did not receive a written response to the recommendations.

Under subsection 66(5) the Ombudsman has an obligation to notify the complainant about the head's response to the recommendations without delay and advise on whether the matter will be referred to the Access and Privacy adjudicator to review the department's decision under section 66.1.

Request re access

66.1(2) The Ombudsman may ask the adjudicator to review

(a) any decision, act or failure to act by the head of a public body relating to a request for access to a record or for correction of personal information

FIPPA requires that a referral to the adjudicator be made within 15 days after the deadline for response has expired. Manitoba Ombudsman referred the matter to the Manitoba Information and Privacy Adjudicator on August 28, 2025.

The adjudicator is required to hold a written or oral hearing and make an order on the issue referred. The head of the public body concerned must comply with the adjudicator's order subject to judicial review. Copies of orders are made available to the public by the adjudicator.

Jill Perron

Manitoba Ombudsman

July 30, 2025

This report is available in alternate formats upon request.

300 - 5 Donald Street, Winnipeg, MB R3L 2T4 | 1-800-665-0531

ombudsman@ombudsman.mb.ca | www.ombudsman.mb.ca

