



MANITOBA
OMBUDSMAN

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT INVESTIGATION REPORT

Manitoba Justice

Refusal of Access

CASE# MO-08759
Final Report with
Recommendations

Issue Date:
January 13, 2026

Provisions considered:
FIPPA -13(1)(d)



SUMMARY

The complainant submitted an application under The Freedom of Information and Protection of Privacy Act (FIPPA) to Manitoba Justice for access to all records related to the review of the current youth justice system in Manitoba and its connections to the child welfare system. Manitoba Justice refused to grant access to the request, on the basis that responding would unreasonably interfere with the operations of the public body under clause 13(1)(d) of the Act.

Upon investigation of the complaint, the Manitoba Ombudsman concluded the public body has not provided sufficient evidence to support the conclusion that clause 13(1)(d) applies. In this instance, the public body was not able to demonstrate it made reasonable efforts to identify and search for responsive records. Our review of the FIPPA file noted a lack of documentation on its search efforts, duty to assist obligations, and reasons for its decision to exercise discretion to disregard the access request.

The authority to disregard a request must be exercised with careful consideration of all relevant contextual factors, providing evidence that it considered the purpose of the act and that the decision to apply the clause was informed by fully considering the types of records at issue, and not solely on the basis the clause appears to apply. Accordingly, we concluded the public body's decision to withhold the records under clause 13(1)(d) is not supported under FIPPA, based on the information provided to us. The report details three recommendations.

BACKGROUND

On June 4, 2024, the complainant submitted a request under The Freedom of Information and Protection of Privacy Act (FIPPA or the Act) to Manitoba Justice (the public body, the department, or Justice) for access to the following records:

2425-JUS-0424 - Please provide all records related to the review of the current youth justice system in Manitoba and its connections to the child welfare system as announced here
<https://news.gov.mb.ca/news/index.html?item=45038&posted=2019-02-15> Date range: January 1, 2019 - June 4, 2024

In its response dated August 6, 2024, the department informed the applicant the request is refused under clause 13(1)(d) of FIPPA which states:

Public body may disregard certain requests

13(1) The head of a public body may disregard a request for access if the head is of the opinion that ...

(d) responding to the request would unreasonably interfere with the operations of the public body.

The department provided rationale for refusing the access request. It stated in the response to the applicant that due to the significant number of staff throughout the department who are engaged in the youth justice system review, and the volume of records requiring search, collection, and preparation, it is unable to provide a response without substantial impact to its operations and its ability to provide service to internal and external stakeholders.

Manitoba Justice also explained a minimum of 30 hours would be required to search for and collect the requested records. Justice said each staff involved in this review would need to search five years (January 1, 2019 to June 4, 2024) worth of electronic and hard-copy files, e-mails, and documents to identify records responsive to the request. It further indicated this estimate did not include the preparation of the records for analysis and release.

INVESTIGATION

On August 12, 2024, the Manitoba Ombudsman received a complaint about the public body's decision to disregard a request for access to records under clause 13(1)(d) of FIPPA. We notified Manitoba Justice on August 22, 2024, of our investigation.

After several follow up communications, the public body provided us with their written representation on April 11, 2025. This representation explained the general procedures needed to locate the responsive records, if the request was processed.

The department advised access requests are directed to the Assistant Deputy Minister responsible for the area subject to the request. The Assistant Deputy Minister then forwards the access request to all relevant units, branches, offices or staff. Each Justice employee who receives the request searches for both physical and electronic records, including hard copy files and electronic platforms such as Teams, Outlook, and shared drives using keyword searches. Additionally, the public body said many of the employees involved hold high-level security clearances and have access to restricted systems. Only those authorized individuals with security clearance can search those restricted areas.

Manitoba Justice explained how it determined the estimated amount of time for the described records search above:

The department determined at a minimum 30 employees would need to conduct a search. There were two streams of cross departmental working groups plus all the senior management. The department concluded it would take a minimum of 30 hours. This was calculated by referencing the number of employees required to conduct the search and the various locations each individual would need to search including email accounts and location of their electronic files.

Our office asked if there was a terms of reference, or other documentation, assigning responsibility for managing the review of the youth justice system and its connections to the child welfare system and associated records. Justice said the review group comprised of senior staff from both Manitoba Justice and Manitoba Families and did not establish a terms of reference. It also explained that since the review included several areas and offices, there was no centralized records repository.

In its representations, Justice mentioned the review group began meeting prior to the COVID-19 pandemic but ceased its activities during the pandemic and the group did not move forward with the initial review plan.

The public body did not explain how one hour of search time for each of the 30 employees would be an unreasonable interference with its operations. It also did not specify the date when the review group ceased its activity nor clarify why searches would need to be conducted for a five-year period if Justice suspended the work during the pandemic¹.

From our perspective, if the work did not continue after that point, or only resumed following the applicant's request for access, the scope of the records search may be limited to the period prior to the suspension of activities. To assess whether a post-pandemic records search was necessary, clarification from the public body was required. In our June 18, 2025, clarifying letter, we asked the public body to advise if the working group resumed its activities at any point following the onset of the COVID-19 pandemic.

¹ Covid-19 Pandemic was declared March 2020 and final public health orders were lifted March 2022. <https://news.gov.mb.ca/news/?archive=&item=47137>; <https://news.gov.mb.ca/news/index.html?item=53777&posted=2022-03-14>

When we did not receive a response to our inquiry, we notified the head about the public body's lack of response to the queries made by our office under Part 5 of FIPPA.

On August 8, 2025, Justice provided a response to our inquiry, reiterating the public body's reliance on clause 13(1)(d) of FIPPA to inform its access decision. The response failed to clarify whether the working group resumed its activities in the post-pandemic period. It also did not indicate how the scope of the search and the public body's estimate of time required to process the request would be impacted.

Based on the absence of further clarification from Manitoba Justice, our office conducted a review of the FIPPA file associated with this complaint. Public bodies typically create a FIPPA file to help process an access request. Adequate documentation in a public body's FIPPA file about the processing of an access request is important for effectively managing the request, including addressing any issues that arise during or after the process, including in an investigation of a complaint.

Our review of the FIPPA file did not yield any results that would help our office understand the department's search or considerations when it exercised its discretion to disregard the access request. Our file review revealed gaps in documented information that would normally be expected to exist in order to respond to an applicant under FIPPA, and to our office when needing to explain the reasons for an access decision.

These gaps included:

- no evidence of duty to assist the applicant (such as narrowing the scope of the request with the applicant, requesting the applicant break down their request into smaller requests),
- no evidence of a preliminary search, no evidence of a sample search, no responsive records on file,
- no evidence of Justice's consultation with the Department of Families on identifying applicable records, and
- no evidence of fees considered.

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

Application of Clause 13(1)(d) of FIPPA

Section 13 of FIPPA is a discretionary exception that allows a public body to disregard a request in limited and exceptional circumstances. Clause 13(1)(d) provides public bodies the discretion to disregard an access request where fulfilling the request would result in an unreasonable interference with its operations.

As explained in our letter to the department dated June 18, 2025, it is the duty of the public body to demonstrate how responding to the access request interferes with its core operations. This includes showing how fulfilling the response to an access request diverts resources away from critical responsibilities or places an excessive burden on staff. We believe opinion alone is not sufficient; there must be a reasonable and evidence-based explanation that links the request directly to unreasonable operational disruption to the public body's core activities.

Justice explained that allocating the estimated 30 hours to search for records would significantly impair or delay other essential departmental functions, impacting the Correctional Services Division (CSD) the most, as that area has the largest volume of records to search. According to the public body:

CSD helps protect society by enforcing orders and sentences given by the courts. They manage offenders with appropriate control, supervision and support and provide programs and services that help offenders learn to become productive members of society. They operate six adult correctional facilities, one youth facility and 27 community corrections offices to supervise probation and conditional sentences for adult and youth offenders. On a daily basis, the CSD is tasked with a high level of complex operational work where any mistake can result in life and death situations.

The public body explained CSD cannot set aside the estimated number of hours to respond to this access request without compromising the priority tasks above.

However, when assessing the public body's explanation of its approach to searching for records over a five-year timeframe, we found each individual employee would be spending no more than an hour searching for records. This is based on the public body's determination that, at minimum, 30 employees would be required to conduct a search, resulting in a minimum of 30 hours. It is not clear how 30 hours of work is required to

search for the records, and even if the public body could provide our office verification, we are not satisfied this constitutes unreasonable interference with its operations. For a department such as Manitoba Justice, with resources and staffing capacity, one hour of work per employee to process a request does not appear disproportionate.

We also note it appears likely that the relevant timeframe for potentially responsive records is shorter than initially assumed. In our view, the public body should be able to explain how this affects its estimate of the time required to process the request to search for records from the post-COVID period. Manitoba Justice did not provide responses to our requests for further clarification on this matter.

In our view, there is no evidence or reasoning provided by the public body to support how responding to this request impairs its ongoing work or its ability to meet statutory responsibilities. Our office acknowledges Justice's position that allocating 30 hours to search for records could impair or delay other essential department functions in CSD. However, we note that its response did not offer any further information about how its essential functions would be impaired if it conducted the preliminary search required to fulfill its access to information obligation. To demonstrate interference in operations, we would expect the department to consider factors such as: the number of active requests the public body is processing, the number of pages and records to be searched in this request, the position of the people who would be involved in the search, their workload, or specific information about the functions or services they perform that would be impaired by responding to the request for access.

Discretion to Disregard a Request for Access

The analysis and findings in the remainder of the report focus on whether the public body fulfilled its duty to assist obligations under section 9 of FIPPA when it exercised its discretion to disregard.

Section 13 of FIPPA balances the right of access with the responsible exercise of that right, providing a public body with the authority to exercise its discretion to disregard an access request in specific circumstances. Discretion must be exercised with consideration of all relevant factors, including fairness, context, and the purpose of the Act.²

² A fundamental principle of FIPPA is set out in section 2 of the Act: "The purposes of this Act are (a) to allow any person a right of access to records in the custody or under the control of public bodies, subject to the limited and specific exceptions set out in this Act; ..."

The ability to disregard a request for any of the reasons outlined in section 13 should be exercised sparingly, and on strong grounds. Before deciding to disregard a request, public bodies must fulfill their duty to assist obligations to “make every reasonable effort to assist” the requestor and to “respond without delay, openly, accurately and completely.”.

Working with the requestor to discuss the processing of the request and gathering additional information can help clarify or narrow the request. It can also enable the development of a strategy to conduct an adequate search for responsive records consistent with the requestor’s intent before making a decision to disregard. This is an important step that can help avoid unnecessary processing time, one that also demonstrates fairness to the individual seeking access to information. In this instance, there is no documentation in the FIPPA file to indicate Justice communicated with the applicant to clarify the activities of the review group were suspended during the pandemic or that it attempted to narrow the scope of the request to make the search for responsive records more manageable.

While FIPPA does not mandate a specific method for conducting searches, public bodies must demonstrate they have made a diligent effort to locate all responsive records. This includes consulting relevant staff, searching appropriate systems, and ensuring all potential sources of information are considered. A public body must be able to explain their process and provide sufficient evidence to justify its decision to disregard the request.

In this case, Manitoba Justice told the applicant in its response that it “reviewed the request and conducted a preliminary analysis on the volume of records involved” before it exercised its discretion to refuse access.

We did not receive any evidence through the public body’s representations or our review of the FIPPA file to indicate the public body made reasonable efforts to fulfill its duty to assist obligations. It also did not provide evidence that a preliminary search for records was conducted, or whether any records were actually viewed, in estimating the time to complete the search. It appears that, in considering the context of the request, the public body only focused on the number of employees who might have responsive records.

Although section 13 permits discretion to disregard a request for access under specific circumstances, it is not evident how the present request satisfies the necessary threshold for its application. Moreover, the authority to disregard a request must be exercised with

careful consideration of all relevant contextual factors, and not solely on the basis that applying the clause appears to be met.

Given the information provided by the public body, its representations and our analysis of the provisions of FIPPA, there is not enough evidence to support the conclusion that clause 13(1)(d) applies in this case. The act requires exemptions be applied narrowly and with proper evidentiary basis. Accordingly, we conclude the public body's decision to disregard this request under clause 13(1)(d) is not supported under FIPPA.

CONCLUSION

A decision by a public body to disregard a request pursuant to section 13 must be carefully considered on a case-by-case basis. As with all decisions by public bodies, there should be file documentation supporting the decision and setting out the underlying rationale for the decision to disregard an application for access.

Upon careful consideration of the limited information provided, and the results of our audit of the FIPPA file, our office concludes the public body has not provided sufficient justification for disregarding this request under clause 13(1)(d) of FIPPA.

We also conclude Manitoba Justice has not fulfilled its duty to assist or its duty to conduct a reasonable search for records responsive to the complainant's request.

Despite multiple opportunities, 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 was 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.

RECOMMENDATIONS

Recommendation 1:

The Ombudsman recommends Manitoba Justice re-process the access request in its entirety, conduct an adequate search for responsive records, collaborate with the Department of Families to identify any related records in their possession, and fulfill its duty to assist obligation to respond openly, accurately and completely.

Recommendation 2:

The Ombudsman recommends Manitoba Justice issue a revised access decision to the applicant. The access decision should provide details of the search undertaken, identify the nature and types of responsive records related to the applicant's request and provide evidence-based reasons for its decisions.

Recommendation 3:

The Ombudsman recommends Manitoba Justice maintain a complete FIPPA file for all future access requests by documenting the processing of the request, its communications with the applicant, its search and the considerations informing its decision.

THE PUBLIC BODY'S RESPONSE TO THE RECOMMENDATIONS

The Ombudsman requests that the Head respond to the recommendations in writing within 15 days of receiving this report. As this report is being sent by email to the public body on January 13, the Head shall respond by January 28. The Head's response must indicate whether the Head accepts some or all of the recommendations.

THE PUBLIC BODY'S COMPLIANCE WITH RECOMMENDATIONS

If the Head accepts the recommendations, the head of the public body should provide written notice to the Ombudsman and information to demonstrate that the public body has complied with the recommendations and did so within the specified time period. 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.

This report is available in alternate formats upon request.

MANITOBA OMBUDSMAN

300 - 5 Donald Street, Winnipeg, MB R3L 2T4
1-800-665-0531 | ombudsman@ombudsman.mb.ca
www.ombudsman.mb.ca