Offices and staff

An independent office of the Legislative Assembly of Manitoba established in 1970 to support and promote principles of fairness, equity and accountability

Staff of 36, with two divisions:

- Access and Privacy Division
- Ombudsman Division
  - includes dedicated PIDA team
- Also Administration and Corporate Services

In three offices:

- Winnipeg – 500 Portage Avenue
- Brandon – 1011 Rosser Avenue
- Thompson – City Centre Mall (opening March 2019)
Ombudsman oversight

The ombudsman has broad powers of investigation established by law under:

- *The Ombudsman Act* (1970)
- *The Personal Health Information Act* (1997)
  - (City of Brandon and City of Winnipeg)
Municipal investigations

Municipal investigations under the Ombudsman Act

2014: 41
2015: 28
2016: 26
2017: 25
2018: 57

Municipal investigations under FIPPA and PHIA

2014: 99
2015: 54
2016: 77
2017: 44
2018: 74

Note: 2018 numbers are preliminary
The Ombudsman Act

Investigations

The Ombudsman may, on a written complaint or on his own initiative, investigate...

...any decision or recommendation made, including any recommendation made to a council, or any act done or omitted, relating to a matter of administration in or by any municipality or by any officer or employee of a municipality, whereby any person is or may be aggrieved.
“The phrase ‘a matter of administration’ encompasses everything done by governmental authorities in the implementation of government policy, regardless of whether the implementation of those policies involves matters of proprietary, commercial or business concern. Only the activities of the legislature and the courts are excluded from the Ombudsman’s scrutiny.”

British Columbia Development Corporation v. Friedmann (Ombudsman)  
[1984] 2 S.C.R. 447  
Supreme Court of Canada 1984
In practical terms...

Is there a matter of administration to be investigated?

- A practice, procedure or decision that is inconsistent with or contrary to policy, regulation or statute or by-law.

- An act, decision or omission that is procedurally, substantively, or relationally unfair.

- A failure to fulfill a statutory mandate or obligation.
Fairness defined

- **Procedural fairness** relates to how decisions are made – the steps to be followed before, during and after decisions are made;

- **Substantive fairness** relates to the fairness of the decision itself; and

- **Relational fairness** relates to how people are treated during the decision-making process and now they feel about the process and the outcome.

For more details on the three aspects of fairness, see our guide *Understanding Fairness: A Handbook on Fairness for Manitoba Municipal Leaders.*
## Most complained-about issues

<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council procedures (e.g. minutes, closed meetings, special meetings, video-recording)</td>
<td></td>
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<tr>
<td>Bylaws and enforcement</td>
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<td>Local improvements (e.g. wastewater)</td>
<td></td>
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<td>Tendering processes</td>
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<tr>
<td>Conflict of interest</td>
<td></td>
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<tr>
<td>Conditional use issues</td>
<td></td>
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<tr>
<td>Land development (e.g. agreements, leases)</td>
<td></td>
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<tr>
<td>Drainage and road maintenance</td>
<td></td>
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<tr>
<td>Property assessment</td>
<td></td>
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<tr>
<td>Billing practices (e.g. water use)</td>
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</tbody>
</table>
A complaint to the ombudsman

Here’s what to expect:

- Attempt at informal resolution
- Written notice
- Thorough investigation – impartial and courteous
- No surprises
- Goal of improved administration
Findings and recommendations

- Findings are made based on the analysis of evidence and facts
- We compare decisions and actions against the established benchmarks (in law, in policy, in procedures)
- We can recommend...
  - e.g. that reasons should be given for any decision, that a decision be reconsidered, that an omission be rectified
- When we make recommendations, we report in writing to the head of council
- Council must then consider the recommendations and respond to our office as to what steps they will take
One of our goals is to help municipal and provincial governments improve administration. Sharing our investigative findings and conclusions can help us achieve that goal.
Media interest

- Investigations are conducted in private
- A Manitoba Ombudsman news release *may* be issued when reports are posted publicly. New web reports are noted in our quarterly newsletter.
For more information

Available in print and online

www.ombudsman.mb.ca
The Public Interest Disclosure (Whistleblower Protection) Act (PIDA) facilitates the disclosure and investigation of significant and serious matters in or relating to the public service while protecting those who make disclosures.

As a public body under PIDA, you have the opportunity to demonstrate and maintain a culture that supports employees who make disclosures in good faith; and to detect and remedy wrongdoing.
Roles and responsibilities of Manitoba Ombudsman under PIDA

- Review and investigate disclosures of wrongdoing
  - May facilitate resolution within the public body
  - May refer the disclosure to the designated officer
  - May refer to the Auditor General
- Provide advice to employees, designated officers and the public
- May request a copy, review and make recommendations regarding procedures established under the act (NEW)
- Review and investigate complaints of reprisal (NEW)
# PIDA statistics

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Disclosures</th>
<th>Number of Investigations Opened¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>2008</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>2009</td>
<td>-</td>
<td>-</td>
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<tr>
<td>2010</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>2011</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2012</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>2013</td>
<td>47</td>
<td>7</td>
</tr>
<tr>
<td>2014</td>
<td>16</td>
<td>2</td>
</tr>
<tr>
<td>2015</td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>2016</td>
<td>23</td>
<td>4</td>
</tr>
<tr>
<td>2017</td>
<td>32</td>
<td>3</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>155</strong></td>
<td><strong>24</strong></td>
</tr>
</tbody>
</table>

¹ Multiple disclosures can form the basis for the same investigation.
Examples of allegations where wrongdoing was found by Manitoba Ombudsman

- Mismanagement of public funds within a personal care home, as well as conflict of interest and failure to follow tendering procedures (wrongdoing found)
- Unauthorized use of government equipment and property for an employee’s personal profit (wrongdoing found)
- Danger to patients caused by faulty hospital equipment and inadequate procedures to address equipment failure (wrongdoing found)
FIPPA and PHIA

- Manitoba Ombudsman oversees compliance with Manitoba’s provincial information access and privacy laws – FIPPA and PHIA.
  - *The Freedom of Information and Protection of Privacy Act* (1998) - provincial, municipal, school divisions, universities, large health care facilities/institutions, etc.
  - *The Personal Health Information Act* (1997) - all of the above plus medical clinics, health professionals, health services agencies, etc.

- The ombudsman has the same role in Manitoba as an information and privacy commissioner would have in another jurisdiction.

- The Access and Privacy Division is responsible for investigating complaints and promoting compliance with our provincial legislation.
FIPPA overview

- FIPPA applies to most records held by or under the control of a public body. A record includes any information that is written, photographed, recorded or stored.

- Access is the rule, however, there are circumstances in which a public body can withhold information or can choose to withhold information.

- If you choose to withhold information, you must explain why you are doing so and refer to the specific provision of FIPPA on which your decision is based.

- A response to an access request must be provided within 30 days, unless the time period for responding is extended for a reason outlined in FIPPA.

- FIPPA also applies to the collection, use and disclosure of personal information.
FIPPA complaints

- No response to application in 30 days
- The extension beyond 30 days is not appropriate
- Denial of access to all or parts of records
- Request for correction of personal information was denied
- Refusal to waive part or all of fees
- Request was disregarded
- Personal information was collected, used or disclosed inappropriately
PHIA overview

- PHIA applies to all recorded personal health information, regardless of format (paper, electronic).
- PHIA gives a person the right to:
  - See and get a copy of their personal health information with limited exceptions, within certain time frames.
  - Name another person to access personal health information on their behalf.
  - Request a correction to personal health information if inaccurate or incomplete.
- PHIA also requires that trustees protect the privacy of personal health information.
PHIA complaints

A complaint can be made to the ombudsman if a trustee of personal health information:

- Did not respond to an access request within the time period required by PHIA
- Refused access (did not let you see or provide a copy) of personal health information
- Refused to correct personal health information
- Collected, used or disclosed personal health information inappropriately
Complaint investigations

- Broad powers of investigation
- Informal process
- Investigate in private
- Notify public body/trustee of complaint
- Right of complainant and public body/trustee to make representations
- Written report of findings to complainant and public body/trustee
- Power to make recommendations
FIPPA: for more information

Manitoba Ombudsman website: www.ombudsman.mb.ca
- Practice notes on various access and privacy issues
- Brown bag talks on access and privacy issues
- Investigation reports and reports with recommendations
- Special reports on various investigations and audits
- Annual reports with case summaries and statistics
- Your Information Rights Under FIPPA (formerly User’s Guide to FIPPA)

Information and Privacy Policy Secretariat website:
www.gov.mb.ca/chc/fippa/
- FIPPA Resource Manual
PHIA: for more information

Manitoba Ombudsman website: www.ombudsman.mb.ca
- Practice notes on various access and privacy issues
- Investigation reports and reports with recommendations
- Annual reports with case summaries and statistics
- Know Your Health Information Rights: eChart Manitoba
- Health Information Access and Privacy: A Guide to The Personal Health Information Act
  (co-published with Manitoba Health)

Manitoba Health website: www.gov.mb.ca/health/phia/

Manitoba Health, Healthy Living and Seniors has developed a PHIA Online Training Program. See http://www.gov.mb.ca/health/phia/training.html for more details.
Tips for councils and CAOs

- **Dealing with citizen complaints**
  - Don’t be defensive
  - Get it in writing
  - Delegate administrative responses
  - Respond from a place of fact and policy, not from emotion
  - Refer citizens to Manitoba Ombudsman

- **Responding to access to information requests**
  - Pre-emptive proactive disclosure

- **Delegate. This is an administrative function**
- **Learn the rules**
- **Ask for advice – Manitoba Ombudsman, Information & Privacy Policy Secretariat (IPPS)**

- **Transparent decision-making**
  - You’ve got nothing to hide...
  - Don’t be afraid
  - Make your life easier through standard procedures and practices
Contact us

ombudsman@ombudsman.mb.ca
1-800-665-0531 (toll free in Manitoba)

www.ombudsman.mb.ca
www.fb.com/manitobaombudsman
www.youtube.com/user/manitobaombudsman