

Manitoba Ombudsman

Jurisdiction and Practice

Once Elected.....What's Expected?

Elected Municipal Officials Training Seminar 2019



Offices and staff

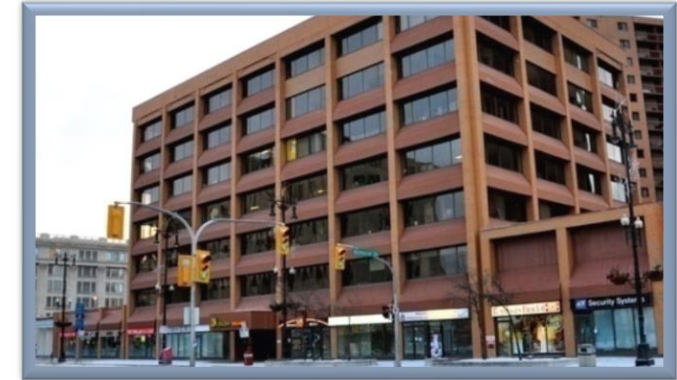
An independent office of the Legislative Assembly of Manitoba established in 1970 to support and promote principles of fairness, equity and accountability

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

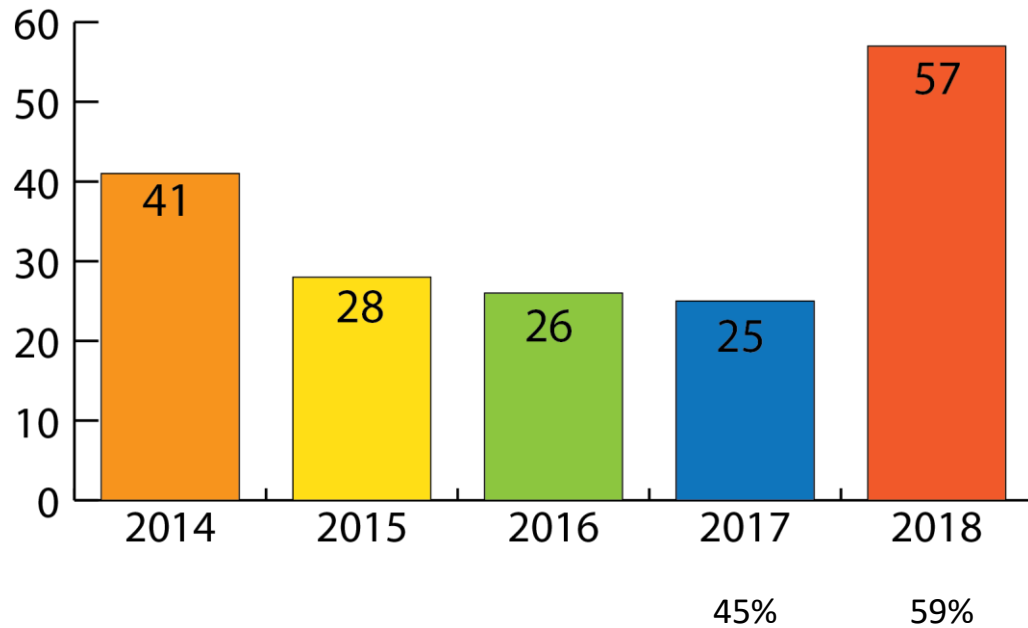
The ombudsman has broad powers of investigation established by law under:

- ***The Ombudsman Act*** (1970)
- ***The Personal Health Information Act*** (1997)
- ***The Freedom of Information and Protection of Privacy Act*** (1998)
- ***The Public Interest Disclosure (Whistleblower Protection) Act*** (2007)
 - (City of Brandon and City of Winnipeg)

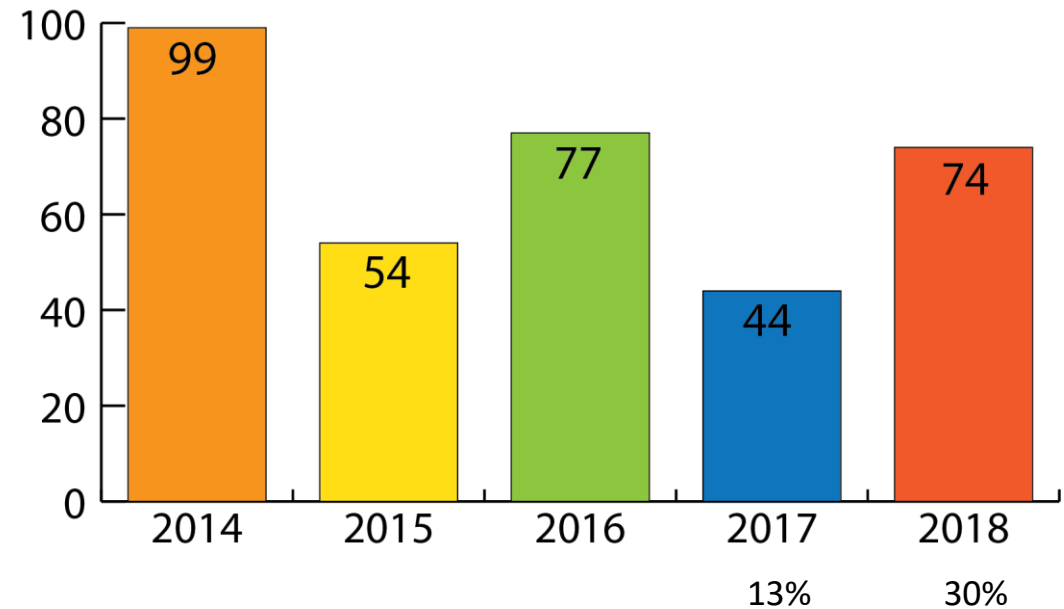


Municipal investigations

Municipal investigations under the Ombudsman Act



Municipal investigations under FIPPA and PHIA



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.



“Matters of administration”

“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 how 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

Most complained-about issues (2018)
Council procedures (e.g. minutes, closed meetings, special meetings, video-recording)
Bylaws and enforcement
Local improvements (e.g. wastewater)
Tendering processes
Conflict of interest
Conditional use issues
Land development (e.g. agreements, leases)
Drainage and road maintenance
Property assessment
Billing practices (e.g. water use)



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



Public reporting

- 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.

The screenshot displays the Manitoba Ombudsman website. The header includes the Manitoba Ombudsman logo, a search bar, and links for 'About the Office', 'Access and Privacy Division', 'Français', 'Dial-Up & Satellite', and a mobile icon. The main navigation menu on the left lists various services: The Ombudsman Act, Ombudsman Act FAQ, Make a Complaint, Municipal Investigation Reports (highlighted), Provincial Investigation Reports, Systemic Investigation Reports, The Public Interest Disclosure Act, PIDA FAQ, Make a Disclosure, Requesting an Exception, Special Reports, Inquest Reports, Brochures, Fact Sheets and Guides, Presentations, and Links. The main content area is titled 'Municipal Investigation Reports' and includes a search bar for documents. It lists three reports: 'City of Winnipeg, Handi-Transit Service: Case 2016-0057 – 2019-01-08', 'Municipality of North Cypress-Langford: Case 2016-0228 – 2018-12-17', and 'City of Winnipeg Parking Authority: Case 2017-0313 – 2018-05-16'. Each report entry includes a brief summary and a 'Download' button with a PDF icon. The right sidebar contains 'Follow Us' (Facebook, YouTube), 'QuickLinks' (Newsletters, Annual Reports, News, Teachers and Students, Social Media Policy), and a 'Follow Us' section.



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.

The screenshot displays the Manitoba Ombudsman website. The header includes the Manitoba Ombudsman logo, a search bar, and links for 'Français' and 'Dial-Up & Satellite'. Below the header is a navigation bar with 'Access and Privacy Division' and 'Ombudsman Division'. The main content area is titled 'About the Office' and features a 'News' section. The News section lists three recent reports: 'Manitoba Ombudsman releases investigation report on the City of Winnipeg's Handi-Transit service' (Jan 8, 2019), 'Manitoba Ombudsman releases new privacy breach resources for public bodies and trustees' (Dec 4, 2018), and 'Manitoba Ombudsman investigates administrative actions related to the release of information about soil testing in St. Boniface' (Sep 18, 2018). A fourth report, 'Canada's access to information and privacy guardians call for privacy regulation and oversight of political parties' (Sep 17, 2018), is also visible. The right sidebar contains 'Follow Us' links for Facebook and YouTube, and a 'QuickLinks' section with links to 'Newsletters', 'Annual Reports', 'News', 'Teachers and Students', and 'Social Media Policy'.

Manitoba Ombudsman

Access and Privacy Division | Ombudsman Division

↑ About the Office

News

Manitoba Ombudsman releases investigation report on the City of Winnipeg's Handi-Transit service – Jan 8, 2019

Manitoba Ombudsman has released its investigation report on the City of Winnipeg's Handi-Transit service, now called Transit Plus. The service provides transportation for approximately 7,500 clients who are unable to use the fixed-route transit system because they are legally blind or have a physical disability that significantly impairs their mobility.

Manitoba Ombudsman releases new privacy breach resources for public bodies and trustees – Dec 4, 2018

Manitoba Ombudsman has developed new privacy breach resources for Manitoba public bodies and trustees, including an online reporting form and new guidance documents.

Manitoba Ombudsman investigates administrative actions related to the release of information about soil testing in St. Boniface – Sep 18, 2018

Acting Manitoba Ombudsman Marc Cormier has determined that his office will investigate whether the decision-making process related to the release of information about 2017 soil testing in St. Boniface was consistent with applicable policy and legislation, such as the Election Financing Act.

Canada's access to information and privacy guardians call for privacy regulation and oversight of political parties – Sep 17, 2018

In a joint resolution, Canada's information and privacy ombudspersons and commissioners have called on governments to pass legislation requiring political parties to comply with globally recognized privacy principles, to provide Canadians with access to the personal information they hold about them, and to provide for independent oversight to verify and enforce privacy compliance.

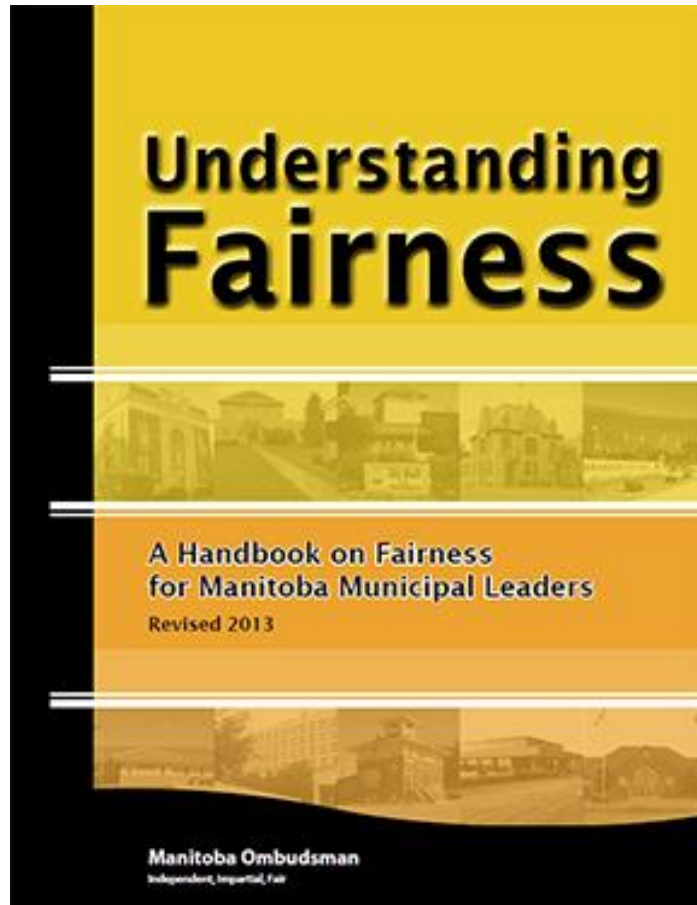
Follow Us

QuickLinks

- Newsletters
- Annual Reports
- News
- Teachers and Students
- Social Media Policy



For more information



Conflict of Interest for Municipalities

Manitoba Ombudsman

What is conflict of interest?

Simply stated, conflict of interest occurs when the personal interest of a council member conflicts with the public interest (what is in the best interest of the entire municipality, or with his or her duty as a public official). Conflict can arise from pecuniary (financial) interests, where a council member might benefit financially from a decision or action of council. This could involve using insider information gained in the course of their official duties for financial gain,

or purposefully influencing council to enter into a contract or some other transaction for financial gain. Conflict, or the perception of conflict, can also occur even when there is no financial interest, such as when a council member is seen to be too close to the parties on one side of a dispute or proposal, or when a council member is seen to be at odds with one of the parties. In any situation where a council member has a personal interest in a matter beyond

the interest that they have in common with other citizens of the municipality, it could be concluded that the interest might influence the exercise of his or her public duties.

In many cases, the appearance or perception of conflict can be as harmful to public confidence as actual conflict. Once a connection between personal interests and public decisions is made, it can be difficult to demonstrate that a decision was not influenced by personal interest.

Why does conflict of interest matter?

Fair decision making

All decision making bodies, including municipal councils, are required to afford procedural fairness to those affected by their decisions (see the side box for standards of procedural fairness).

When making a procedurally fair decision, a decision maker must be impartial or unbiased and without a personal interest in the outcome of a decision. This standard means that when decisions are made by council, each individual council member must be impartial, unbiased and without a personal interest in the matter under consideration.

If a council member has a personal interest in the matter under consideration by council, and that council member participates in the decision making process, it could be determined that such a decision was made in a procedurally unfair manner or the decision itself was unfair, if scrutinized by the courts or the ombudsman.

Under The Ombudsman Act, Manitoba Ombudsman has the authority to investigate actions or decisions relating to matters of administration made by a municipality, its employees or officers. At the conclusion of such an investigation in which conflict of interest has been alleged, the ombudsman could find that the participation of a council member was sufficiently well intentioned or tainted by bias so to render the decision or the process by which it was made unreasonable, unjust, oppressive or improperly discriminatory. The ombudsman could also determine that such a decision was contrary to law. If the ombudsman makes any of these findings, the ombudsman can then make recommendations to a municipal council that any decision be cancelled or varied, or that any other steps be taken to remedy the situation.

Procedural fairness relates to the process by which a decision is made. At a minimum, procedural fairness requires that:

- persons who will be affected by a decision are given advance notice that a decision will be made
- persons affected by a decision are given the information that will be considered when a decision is made
- persons affected by a decision are given a meaningful opportunity to state or present their case
- persons affected by a decision are given an opportunity to challenge or dispute any information that might be contrary to their position when a decision is being made
- the decision maker be thorough and thoughtfully review all the information provided by persons affected by a decision
- the decision maker be impartial, unbiased and without a personal interest in the outcome of the decision and open to persuasion
- the decision maker give meaningful reasons for the decision that are understandable to persons affected

www.ombudsman.mb.ca

Municipal Issues Series: Fact Sheet 1 (November 2014)

Public Hearings for Municipalities

Manitoba Ombudsman

A public hearing is a forum in which the public can express their views and opinions on matters that affect them. See below for the circumstances in which formal public hearings must be held. In addition to the requirements set out in law, a municipality may also hold a public hearing for any other matter it chooses.

Generally, council members conducting a public hearing will hear presentations from individuals and delegations and ask questions about information presented at the hearing, or necessary. Public hearing procedures should guide the process to ensure that a hearing is conducted fairly. Public hearing procedures are typically established in a municipality's procedures by-law.

A closer look at public hearings

Public hearings generally fall into two types.

Some public hearings occur when council is seeking input from citizens on financial plans, budget matters, local improvements, development plans, and so on. Public hearings of this type tend to be for matters that affect a wider number of citizens, possibly the entire municipality. At these types of public hearings, council might state its position on a certain matter, or present its plans, for the purpose of obtaining public input. After obtaining public input, council will be in a better position to make an informed decision.

A different kind of public hearing occurs when council is sitting in an administrative tribunal-like capacity to hear opposing positions of parties related to a specific matter, for example, an application to vary zoning or for a conditional use application. These situations involve the legal rights of specific parties. In situations such as these, council will be making an impartial decision based on the information presented by parties and witnesses at the hearing, and will not state a position but rather render a decision at the end of a hearing process.

Understanding the context of the public hearing is important to ensure that each type of public hearing is conducted fairly.

Tips for conducting fair public hearings

Before the hearing

Give notice. Both The Municipal Act and The Planning Act specify when and how notice about a public hearing must be given in certain situations. The Municipal Act specifies that notice for a public hearing regarding a local improvement plan must be sent to each potential taxpayer 21 days in advance of the hearing. The Planning Act requires that notice to the applicant and any affected parties be given 14 days in advance of a hearing related to a variance, conditional use, application for subdivision, and other situations.

Public hearings must be held under The Municipal Act:

- Presentation of the annual financial plan of the municipality (subsection 142(2))
- Decisions to the operating budget that increases transfers from surplus and reserves, increases tax revenues, or increases estimates in the capital budget (subsection 142(3))
- Intention to spend from a special purpose reserve for a different purpose (subsection 148(2))
- Proposal to close a municipal road (section 290)
- Proposal for local improvements/special services (section 310)

Public hearings are required under The Planning Act for:

- A proposal to adopt or amend a development plan (section 46)
- A proposal to adopt or amend a zoning by-law (subsection 141(1))
- An application to subdivide property which results in the creation of a new public road (subsection 125(2))
- An application to vary requirements of a zoning by-law (section 94)
- An application for conditional use (section 101)

www.ombudsman.mb.ca

Municipal Issues Series: Fact Sheet 2 (November 2014)

Available in print and online
www.ombudsman.mb.ca



The Public Interest Disclosure (Whistleblower Protection) Act

- **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

Disclosures Made to Manitoba Ombudsman 2007-2017

Year	Number of Disclosures	Number of Investigations Opened ¹
2007	2	1
2008	3	-
2009	-	-
2010	8	1
2011	1	1
2012	5	2
2013	47	7
2014	16	2
2015	18	3
2016	23	4
2017	32	3
TOTAL	155	24

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

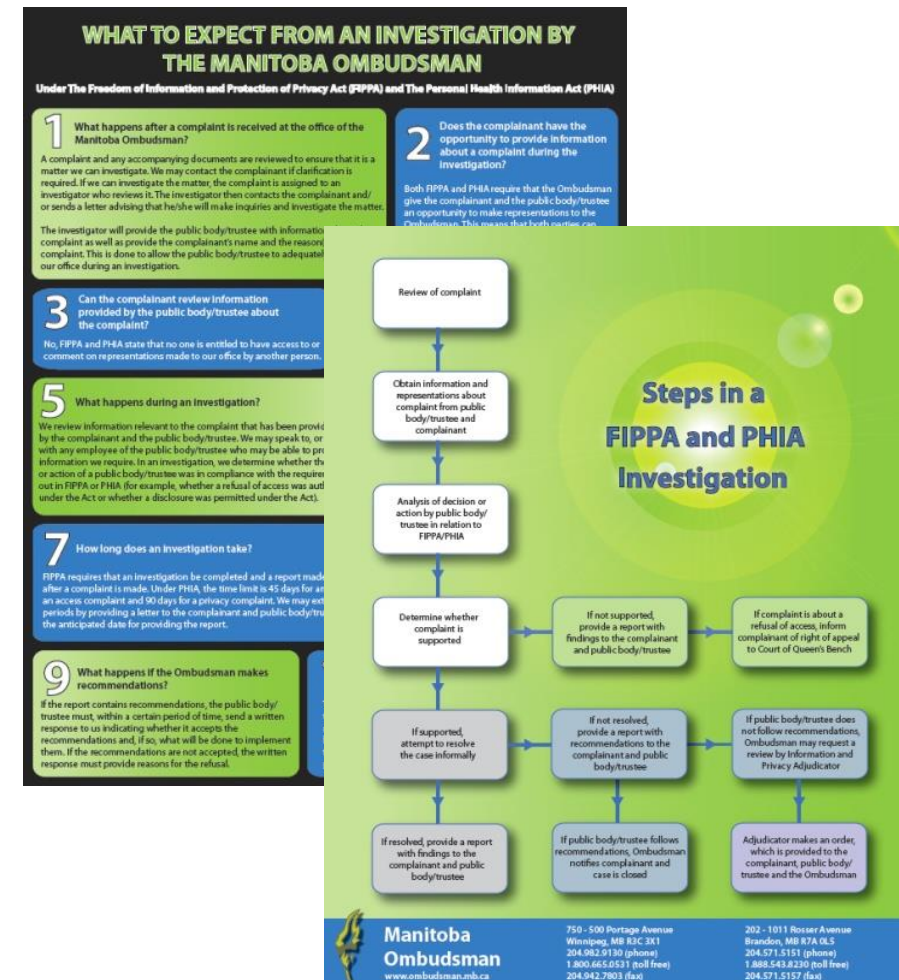
A complaint can be made to the ombudsman if a trustee of personal health information:

- 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

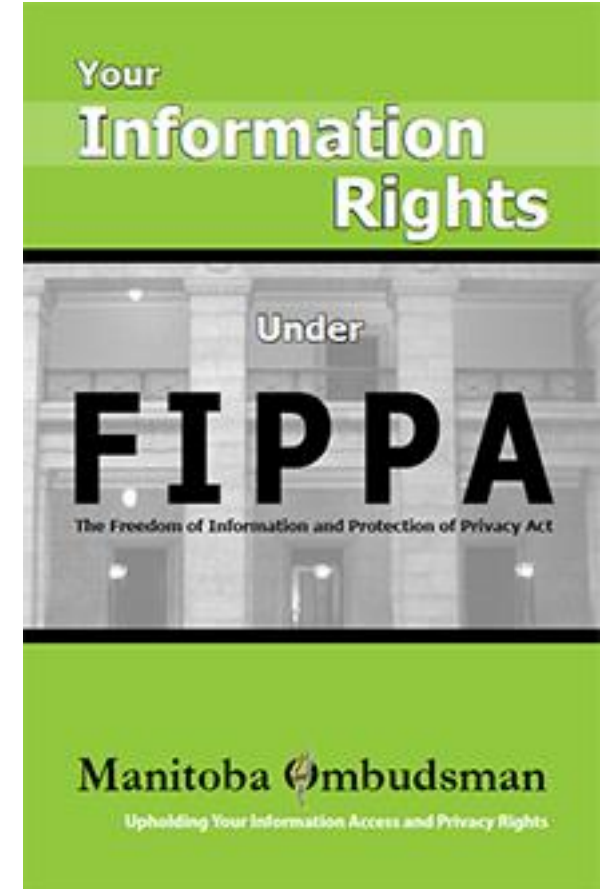
Manitoba Ombudsman website: www.ombudsman.mb.ca

- 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*





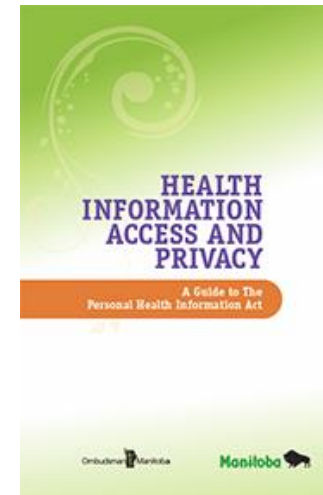
PHIA: for more information

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

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www.youtube.com/user/manitobaombudsman