



Manitoba Ombudsman Serving the Public – Access to Information

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JILL PERRON, OMBUDSMAN

ROBYN OSMOND, INVESTIGATOR/INTAKE

Outline

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The Ombudsman in Manitoba

- An independent office of the Legislative Assembly of Manitoba established to support and promote principles of fairness, equity and accountability
- Broad mandate, jurisdiction and investigative authority
- Manitoba Ombudsman
 - Must be non-partisan and impartial
 - appointed for a 6 year term
 - 36 staff
 - Offices in Winnipeg, Brandon and Thompson

Manitoba Ombudsman's Mission and Mandate

Mission – to promote and foster openness, transparency, fairness, accountability, and respect for privacy in the design and delivery of public services.

Broad mandate established 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)

Oversight Role of the Ombudsman

Citizens expect government, other public bodies and trustees to act in a fair, open, and transparent manner.

What if citizens believe they haven't?

Manitoba Ombudsman can investigate complaints about access to information and privacy matters, the fairness of government actions or decisions, or serious “wrongdoings” that someone believes may have occurred.

Oversight Role of the Ombudsman

What we also do:

- Assist the public
- Support good administration – improve compliance with laws and policy
- Ensure people are treated fairly
- Comment on privacy implications of new programs or initiatives
- Raise/elevate administrative fairness and privacy issues that impact citizens, broadly

What we don't do:

- Advocate for an individual's position/interest
- Mediate between parties
- Over turn decision of public bodies

Why Access to information matters

Providing information helps citizens to:

- Be informed about matters that affect them and their community
- Better understand issues and enable them to participate in democratic processes
- Be in control of how their personal and personal health information is handled

Citizens seek access to information both formally and informally

Why Access to information matters

Providing information helps municipalities be:

- Transparent – easier to see and understand why and how decisions are made
- Open – Its common practice to engage citizens about important public decisions and services
- Accountable – Good governance is promoted and citizen are able to hold public bodies to account.

Citizen Rights – Informal Requests for Information

Best Practices for responding to informal requests

- Set reasonable service delivery standards
- Provide status update
- People-centred service

Available information

- Municipal Act 263(1) states that upon request, a CAO must provide access to a variety of documents within a reasonable time period. These include:
 - (a) assessment rolls;
 - (b) financial plans;
 - (c) financial statements;
 - (d) reports of the auditor;
 - (e) [repealed] S.M. 1997, c. 53, s. 4;
 - (f) the minutes of meetings of the council and council committees, except the minutes for any part of a committee meeting that was closed under subsection 152(3);
 - (g) by-laws and resolutions of the council and resolutions of council committees;
 - (h) a report of the Ombudsman received by the council under clause 37(2)(b) of *The Ombudsman Act*;
 - (i) an election finance statement filed by a registered candidate in an election.

Citizen Rights – Access and Privacy Laws

The Freedom of Information and Protection of Privacy Act (FIPPA) is based on two fundamental rights of people in a democratic society:

- The right to access information held by government and other public bodies, including information about ourselves, subject to certain limited specified exceptions
- The right to privacy for personal information collected, stored, used and disclosed by public bodies

The Personal Health Information Act (PHIA) provides people with a right of access to their personal health information held by trustees and requires trustees to protect the privacy of personal health information contained in their records.

FIPPA Overview

The Freedom of Information and Protection of Privacy Act 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 45 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.

Formal Requests under FIPPA

- Formal requests for information under FIPPA must be in writing
- Changes to FIPPA of January 1, 2022, means that the prescribed form is no longer required.

Duty to Assist

A municipality must reasonable effort to assist an applicant and respond without delay, openly, accurately and completely (FIPPA section 9)

How can municipalities provide assistance?

- Communicate with applicant
- Explain what information is available
- Tell them where it can be found

Disregarding requests under FIPPA

Under section 13 of FIPPA a public body may disregard a request for access if it is determined:

- a) The request is trivial, frivolous, or vexatious;
- b) The request is for information already provided to the applicant;
- c) The request is unduly repetitive or systemic, excessively broad or incomprehensible, or not made in good faith
- d) Responding to the request would unreasonably interfere with operations of the public body

Records provided to council

- Letters from citizens
- Petitions



Common Access and Privacy Complaints

- No response to a request in 30 days (PHIA) and 45 Days (FIPPA)*
- Denial of access to all or parts of records*
- Request for correction of personal or personal health information was denied
- Refusal to waive part or all of fees
- Request was disregarded
- Personal information or personal health information was collected, used or disclosed inappropriately*

* most common for municipalities

Investigation of complaints

- Broad powers of investigation
- Informal process
- Investigate in private
- Notify public body of complaint
- Right of complainant and public body to make representations
- Written report of findings to complainant and public body
- Power to make recommendations

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 a 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 and the public body? the investigation?**

Yes. In some circumstances a resolution is 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 from an investigation?**

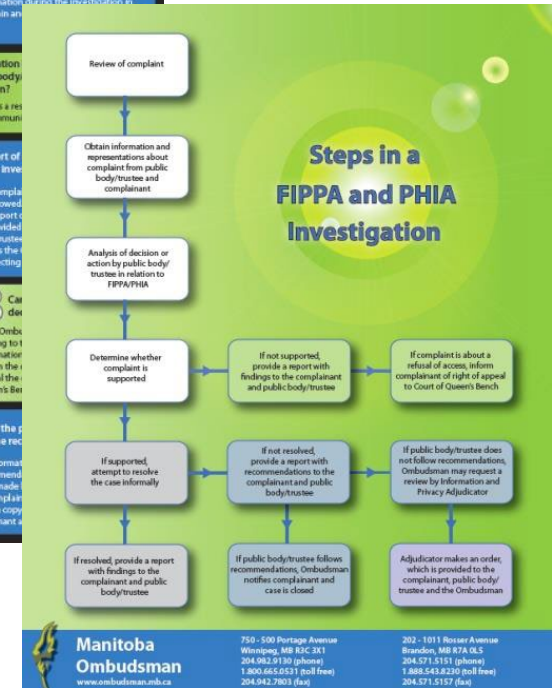
If we support a complaint that the Act is followed, a report is prepared and provided to the public body/trustee with recommendations that are appropriate respecting the matter.
- 7 How long does an investigation take?**

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 I appeal the decision?**

If the Ombudsman's decision is not supported, the complainant may appeal the decision to the Queen's Bench Court.
- 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 complainant to request a review of the matter from the Adjudicator. The Adjudicator makes an order, a copy of which is provided to the complainant and public body/trustee.



Your role in complaint investigations

- Responding to inquiries
- Providing information about an access or privacy matter
- Preparing thorough written responses about complaints
- Remembering that it is a time-sensitive process
- Recognizing that various practice notes are available to assist in responding to various types of complaints
- Be prepared to discuss options to resolve the complaint



Investigation Reports

- An investigation report explaining our findings is provided to both the complainant and the public body
- We may find that the complaint is unjustified or not supported
- If we find that a complaint is justified or supported, we try to resolve it informally
- The Ombudsman may make any recommendations considered appropriate.

Recommendations

A public body must respond to the Ombudsman's recommendations and indicate:

- Whether it accepts the recommendations and what it has or will be doing to implement them, or
- The reason why it refused to take action to implement them

The Ombudsman must:

- Notify the complainant of the public body's response.
- Advise of adjudicator review or the right of appeal PB decision to court
- Make the recommendations available to the public on our website



Tips for Municipalities

Proactive disclosure – post documents (by-laws, policies, reports, etc.) on your website

Communication – FAQ's, news releases, etc.

Put it in writing – develop written policies, standard procedures and practices. This helps to ensure actions of government are consistent.

Go public – hold public meetings as needed; not just when required by law. Sometimes issues arise where it's helpful to gather the community together to discuss.

Tips, continued

Handling access requests and complaints

- get it in writing
- designate a staff member to handle requests and complaints (access coordinator)
- learn rules under legislation, keep a file that documents receipt of complaint, response timeline, record of reasons for decisions and the outcome.
- respond to requests and complaints from place of fact and policy

Seek advice – consult with legal counsel, AMM & other municipalities, the MB Information & Privacy Policy Secretariat, Manitoba Ombudsman



Ways We Help: Resources & Education

Resources available from Manitoba Ombudsman:

- Practice notes on various access and privacy issues
- Investigations, audits and special reports and with recommendations
- Annual reports with case summaries and statistics
- Mandatory privacy breach reporting guidance FIPPA/PHIA
- Informal consultations with public bodies to provide guidance on challenging access and privacy issues, fairness best practices and PIDA procedures
- “Brown bag talks” or tailored sessions on access and privacy matters (for example, responding to privacy breaches or documenting the access process)

Questions?

For more information:

- www.ombudsman.mb.ca
- ombudsman@ombudsman.mb.ca
- 1-800-665-0531 or 204-982-9130
- Social media:
 - Twitter: @MBOmbudsman
 - Facebook: fb.com/manitobaombudsman