

# **A Review of The Freedom of Information and Protection of Privacy Act**

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**Report on Statutory Review**

**April 2019**







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**MINISTER OF  
SPORT, CULTURE AND HERITAGE**

Room 118  
Legislative Building  
Winnipeg, Manitoba CANADA  
R3C 0V8

The Honourable Myrna Driedger  
Speaker of the Legislative Assembly  
Province of Manitoba

Madam Speaker:

In accordance with section 98 of The Freedom of Information and Protection of Privacy Act (FIPPA), I am pleased to present this report on the recent review of the operation of the act.

At this time, I want to thank all those individuals and groups who took the time to consider this important legislation and to make thoughtful suggestions. This feedback is an important contribution to the review processes of my department and Manitoba Health, Seniors and Active Living.

Respectfully submitted,



Honourable Cathy Cox  
Minister of Sport, Culture and Heritage



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## **BACKGROUND**

The Freedom of the Information and Protection of Privacy Act (FIPPA) provides a right of access to records held by public bodies and regulates how public bodies collect, use and disclose personal information. FIPPA came into force for provincial government departments and agencies and the City of Winnipeg in 1998. It was expanded to include local governments, educational bodies and health care bodies in 2000. Currently, more than 340 public bodies are subject to FIPPA.

FIPPA requires the minister responsible to undertake a comprehensive review of the act, which involves public representations. The review of FIPPA was coordinated with the review of The Personal Health Information Act (PHIA). PHIA is companion legislation that relates specifically to personal health information maintained by trustees, which include not only public bodies under FIPPA but also other health professionals, health care facilities and health services agencies. The Minister of Sport, Culture and Heritage is responsible for the FIPPA review and the Minister of Health, Seniors and Active Living is responsible for the PHIA review.

The previous FIPPA review commenced in 2004, with amendments to the legislation coming into force in 2011.

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## **REVIEW AND CONSULTATION PROCESS**

A discussion paper, *A Review of The Freedom of Information and Protection of Privacy Act 2017: Tell Us What You Think*, was developed to facilitate the public consultation process. The discussion paper provided an overview of the legislation and its administration in Manitoba. It also requested submissions on the views and experiences of Manitobans using and administering FIPPA to assist the government with the process of reviewing and updating the act.

On March 29, 2017, the Minister of Sport, Culture and Heritage issued a call for public input to the FIPPA review. The discussion paper was also distributed to stakeholders such as the Manitoba Ombudsman's office and the Information and Privacy Adjudicator, as well as the more than 340 public bodies that fall under FIPPA.

Between March 29 and June 30, 2017, the minister received 31 written submissions: eight from individuals, nine from stakeholder groups and other organizations, and 14 from public bodies. All written submissions are available in the Legislative Library at 200 Vaughan Street in Winnipeg. Some written submissions were anonymized to protect the identities and other personal information of individuals who provided personal opinions.

To date, additional consultations have been held with Access and Privacy Coordinators from Manitoba government departments and agencies, the Partnership of the Manitoba Capital Region, the Legal Services Branch of Manitoba Justice and the Manitoba Ombudsman's office.



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## **PARTICIPANTS IN THE FIPPA REVIEW**

### **Individuals**

Eight individuals provided written submissions.

### **Media**

Manitoba Legislative Assembly Press Gallery

### **Organizations**

Association of Manitoba Municipalities  
Economic Development Winnipeg Inc.  
Manitoba Government and General Employees' Union  
Manitoba Ombudsman  
National Association for Information Destruction – Canada  
Otterburne Rate Payers Association  
Partnership of the Manitoba Capital Region  
The Manitoba Bar Association

### **Public Bodies**

Archives of Manitoba  
City of Brandon  
City of Dauphin  
City of Winnipeg  
Manitoba Agriculture  
Manitoba Finance  
Manitoba Finance - Business Transformation and Technology  
Manitoba Housing and Renewal Corporation  
Manitoba Hydro  
Manitoba Municipal Relations  
Manitoba Public Insurance  
Prairie Mountain Health  
Public Guardian and Trustee of Manitoba  
University of Winnipeg

## **WHAT WE HEARD**

The Information and Privacy Policy Secretariat (IPPS) received all submissions from FIPPA users and administrators, including citizens, academics, public bodies, media and the Manitoba Ombudsman's office.

IPPS reviewed the submissions and found that the wide range of issues raised generally fell within the following categories:

- A) Managing and Responding to Requests for Records
- B) Managing and Protecting Personal Information
- C) Oversight Powers and Duties
- D) Modernization
- E) Open Government
- F) Other Issues

### **A) Managing and Responding to Requests for Records**

Many of the submissions focused on Part 2 of FIPPA, Access to Information.

The submissions received from individuals, organizations and the media reflected an increased expectation of transparency, accountability and timely access to information. Submissions from public bodies focused on challenges in meeting applicant expectations and the ability to fulfill their obligations under the act with limited resources.

We heard from public bodies that FIPPA needs to strengthen the balance between the right of access and the daily operations of public bodies. Public bodies reported that some applicants frequently make high volumes of requests. This impacts their ability to respond to all applicants within the time limits provided under the act and affects the delivery of public services.

Presently, the act includes several tools intended to provide public bodies some ability to manage requests. These tools are the ability to: extend the time limit for response under certain circumstances; assess a fee for the search and preparation of records if the time to process the request exceeds two hours; and disregard a request under very specific circumstances if it is deemed that the request amounts to an abuse of the right of access.

Public bodies submitted that these provisions under the act are useful in individual circumstances. However, they also reported that these tools provide limited ability to manage the administration of the act while maintaining operations.

In their submissions, public bodies provided recommendations to improve the tools in FIPPA to help public bodies manage access to information requests. These recommendations related to: increasing the time limit for responding to requests; changes to fees; and giving public bodies the ability to limit the number and scope of concurrent requests.

### **Time Limit for Response and Extensions**

Public bodies must make every reasonable effort to respond to access requests within 30 calendar days. The time for responding may be extended only under certain circumstances such as if there is a large number of records requested or there is a need to consult with a third party.

Some public bodies submitted that responding within 30 calendar days was often challenging and recommended that this provision in the act be amended from calendar days to business days, as is the case in some other jurisdictions. It was also submitted that public bodies should be able extend the time limit for response to access applications during exceptional circumstances such as disasters, emergencies, labour disruptions and situations that affect public health and safety.

### **Fees**

Currently there is no cost to applicants for submitting an access to information request. A public body may require an applicant to pay fees associated with the processing of a request such as search, preparation or copying. The types of fees, along with fee amounts, are provided in the Access and Privacy Regulation of FIPPA.

Fees are not meant to be a barrier to access, but rather a tool for the public body to help the applicant focus their request to their specific records of interest. The intention is to balance the right of access without unnecessarily interfering with the daily operations of a public body. Fees typically only apply to requests for records containing general information as opposed to an applicant's own personal information.

Public bodies reported that some requesters divide large requests for records into several smaller requests in order to avoid or eliminate fees. Without the ability to assess fees for smaller requests or other authorized recourse, a public body is left with the challenge of managing the high volume of requests.

The regulated rates for fees have not changed since the act came into force in 1998. Submitters indicated that the types and amounts of fees do not sufficiently reflect the work of completing an access to information request. There is significant work involved with the processing of an access request such as reviewing the responsive records and consulting with the applicant, third parties and/or within the public body. These time-consuming activities are not included in the chargeable time under the regulation.

Several submissions noted that the implementation of an application fee would mitigate the filing of numerous requests for related information. It was also suggested that there be a limit on the number of requests an applicant can submit to a public body at one time.

## **B) Managing and Protecting Personal Information**

While most submissions focussed on the Access to Information part of FIPPA, there was also feedback on the Protection of Privacy part of the act. This part of FIPPA sets out rules that must be followed by public bodies with respect to the collection, use, disclosure and security of personal information.

### **Authority to Use/Disclose Personal Information**

Recommendations were made to amend or clarify some of the circumstances that authorize the use and/or disclosure of personal information. The meaning of “consistent”, disclosure to regulatory bodies, fundraising by educational institutions, and the responsibilities of contracted information managers are some of the topic areas for which changes were discussed.

Recommendations were also made about a requirement to notify individuals or the Manitoba Ombudsman of breaches of personal information.

### **Security Arrangements**

Currently, FIPPA leaves the onus on each public body to determine what security arrangements should be made to reasonably protect personal information. Public bodies need to consider physical, technical and administrative safeguards that will reasonably protect the personal information, taking into account the sensitivity of the information and how it is stored, handled, transmitted or transferred.

Several submissions included comments that FIPPA needs to be updated and strengthened with respect to how personal information should be protected. Suggestions included articulating specific measures such as mandatory training, secure destruction of paper and electronic records, conducting record of user activity audits, and conducting privacy impact assessments on new or modified systems or programs.

### **Offences**

FIPPA includes limited circumstances for which an individual may be charged with wilful offences under the act. Suggestions were submitted to consider adding other offences such as unauthorized use, access to or attempted access to another individual’s personal information. It was noted that such activity, referred to as “snooping”, is an offence under PHIA.

### **C) Oversight Powers and Duties**

In Manitoba, responsibility for the oversight of FIPPA and PHIA resides with the Manitoba Ombudsman. The Ombudsman's Access and Privacy Division investigates complaints and reviews compliance under FIPPA and PHIA. The Ombudsman submitted a number of recommendations on how to improve access to information and protection of privacy rights.

Among the recommendations were ways to clarify and strengthen the powers and duties of the Ombudsman. It was proposed, primarily for clarity and cross-jurisdictional consistency, that the act be amended to rename the Ombudsman's role under FIPPA and PHIA to the Information and Privacy Commissioner. This reflects the title of the equivalent position in all other jurisdictions in Canada. The proposal also seeks to authorize the designation of a deputy commissioner.

#### **Investigative Powers**

The Ombudsman's submission cited instances where FIPPA does not permit specific disclosures of information by their office, which would improve the effectiveness of their work. They also noted that they require authority to disclose information which they reasonably believe necessary to prevent or lessen the risk of serious harm to an individual.

The Ombudsman recommended providing the right to have their office act as an intervener in an appeal to court or review of a matter in which they conducted an investigation, consistent with the provision under PHIA. Their submission also requested amendments that would provide specific powers to access documents covered by solicitor-client privilege in the course of a complaint investigation.

### **D) Modernization**

Since the last review of the act, there have been significant technological advances in the delivery of government information and public services. Public bodies and organizations submitted that the administration of FIPPA should be modernized to better use technology and enable more online access to public information, including the access to information process.

#### **Access to Information - Requests and Responses**

Currently requests for access must be made using a form prescribed in the Access and Privacy Regulation. This limits the ability of public bodies to develop online applications that might facilitate the ability to request and receive information electronically.

Feedback from public bodies also suggested that the process for submitting requests for access to records should be re-examined in order to modernize and improve the process.

It was noted that the act should be clarified related to providing records in formats requested by applicants.

## **E. Open Government**

Open Government is about increasing transparency and making government information more accessible. In addition to providing a right of access to information through FIPPA, public sector websites provide access to a wide range of information, publications, reports and services.

### **Proactive Disclosure**

Most information that is proactively disclosed is not legislated through FIPPA. In many cases, it is a result of policy or it is provided to assist in the delivery of programs and services. Currently, FIPPA requires the publication of an annual report about administration of the act as well as disclosure of certain ministerial expenses.

Some submissions to the review recommended increasing such disclosures. Suggestions were made related to records schedules or information that describes records held by a public body, all payments made by a public body to a third party over a threshold amount, and information that is repeatedly requested. Other submissions recommended the creation of public facing open data portals of de-identified or non-sensitive data.

### **Limitations on Exceptions to Disclosure**

Many submissions urged greater transparency by placing limitations on the application of mandatory and discretionary exceptions to disclosure under the access to information provisions of the act. Of particular interest were exceptions to disclosure related to cabinet confidences and advice to a public body.

Some recommendations included shortening the duration of the cabinet confidentiality exception from the current period of 20 years and specifying that the exceptions to disclosure do not apply to background and factual information.

Another common recommendation was to consider adding a “public interest override” provision to the act. This would entail granting access to information where it is clearly demonstrated that the public interest in disclosure of the information outweighs any applicable exception to disclosure.

## **F) Other Issues**

Lastly, submissions contained feedback on issues that are outside the scope of FIPPA but affect the successful administration of the act. These issues include records management processes and training, the duty to document key activities and decisions of government, cataloguing of records, and accessing archival records for research purposes.

This feedback has been captured and will form the basis of ongoing review of policy and practices in records management and other areas of government operations.