



Did you know?

In Canada, there are two jurisdictions where the same person serves as Ombudsman and Information & Privacy Commissioner - Manitoba and Yukon.

Manitoba Ombudsman has oversight authority over provincial information privacy legislation including *The Freedom of Information and Protection of Privacy Act (FIPPA)* and *The Personal Health Information Act (PHIA)*. Under FIPPA and PHIA, the Ombudsman investigates complaints from people who have concerns about any decision, act, or failure to act that relates to their requests for information from public bodies or trustees, or a privacy concern about the way their personal information was handled.



Canadian Survey on Privacy, Health Information and Patient Confidence

A recent opinion survey suggests that Canadian patients change their behaviour in seeking health care if they perceive a risk to their privacy. Of the 1002 individuals who participated in the survey in October 2011, 98% also responded that the chief executives and top managers of health care providers have a legal and ethical responsibility to protect patients' personal health information.

Some of the findings in the survey, *Canada: How Privacy Considerations Drive Patient Decisions and Impact Patient Care Outcomes*, available at <http://www.FairWarning.com> were:

- 43.2% of the participants would withhold information from their health care providers based on privacy concerns
- 31.3% would postpone seeking care for a sensitive medical condition due to privacy concerns
- 42.9% would seek care outside of their community due to privacy concerns

Among other findings, it was suggested that senior personnel of health care providers should be accountable for privacy protection:

- 83.5% of the survey participants agreed that patient data security should be regularly discussed at board meetings to make sure that the chief executive and senior managers know of any risks
- 90.6% agreed that where there are significant risks of privacy breaches, the chief executives and top management should take appropriate action to mitigate or eliminate the risks
- 83.9% agreed if the chief executive and senior management were made aware of risks but failed to act and there is a serious breach, they should be fined or lose their jobs

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Canadian Survey on Privacy, Health Information and Patient Confidence (continued)

These survey results may cause Manitobans to consider taking action to protect their own personal health information. Individuals should feel free to discuss privacy with their health care providers. Only with full trust can the best possible health care be provided. If privacy does not seem to be taken seriously or questions are not answered, the individual should pursue this further with the health professional and, in a facility setting, the Privacy Officer. In Manitoba, responsibility for privacy protection does in fact rest with senior personnel in a setting where health professionals are employed or work under contract, as in a hospital.

Individuals, too, can play a significant role in their own privacy protection. As reported in the previous edition of *OmbudsNews* (2011-4), Manitobans can determine who has viewed their information on eChart, Manitoba's electronic health record (EHR) by requesting a log of user activity. This information is automatically recorded by the system.

EChart, however, is just one source of personal health information. Manitobans have the right under *The Personal Health Information Act* (PHIA) to request access to any record of their own personal health information held by various health care professionals and from regional health authorities, hospitals, medical clinics and hospitals. A record may possibly indicate to the individual who has handled their personal health information.

If the individual does not receive access to their personal health information requested under PHIA or has reason to believe that the privacy of their personal health information has been breached, he or she can make a complaint to the Ombudsman. The Ombudsman has the authority to investigate complaints under PHIA.

Giving reasons for decisions

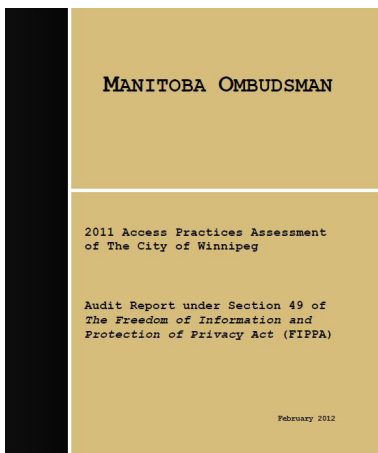
The importance of giving reasons for decisions recently made national headlines when the federal Veterans Ombudsman issued a report on his review of how Veterans Affairs Canada informs applicants of its decisions relating to their application for disability pensions or disability awards. As part of the review, the Veterans Ombudsman examined 213 decision letters sent out by the department between 2001 and 2010. He found that none of the letters contained adequate reasons that clearly explained the decision of the department. While some of the letters provided information to veterans, the Ombudsman made a distinction between simply providing information, and the need to establish a rational connection between the evidence presented and the conclusions reached by the decision maker. As the Ombudsman explained in his report, veterans need to know the basis upon which disability benefit decisions are made in order to make informed decisions about whether or not to initiate the appeal process.

Our office also receives complaints about inadequate reasons for decisions. In one case profiled in our upcoming 2011 annual report, a municipality denied a request by residents to build a dock for river access on public reserve land. When the applicants asked for reasons for the denial, the municipality informed them

that council has the authority to make such decisions - a response that prompted the residents to make a complaint to the Ombudsman. In our review of the matter, the municipality was willing to explain to us why they made the decision they did, despite their reluctance to explain their decision to the residents. Taking the time to explain to the residents why their request was denied may have prevented the complaint to the Ombudsman.

As we explain in *Understanding Fairness: A Handbook on Fairness for Manitoba Municipal Leaders*, if the information and/or arguments that decision makers have accepted and relied upon in making a decision are not explained, people are free to speculate about the reasons for the decision and they may second-guess a decision on the basis of incomplete information or erroneous assumptions. If there are people who are disgruntled and looking for a reason to complain, issuing clear and comprehensive reasons for decisions can make it difficult for them to read motives into the decision, or to argue that their views have not been considered, or to speculate about why the decision was made. Providing reasons can help prevent groundless complaints. As the Veterans Ombudsman reminds us, "good reasons benefit all parties".

City of Winnipeg FIPPA audit report released



We completed an audit of the City of Winnipeg under our FIPPA Access Practices Assessment initiative, which examined key components of a public body's processing of applications for access made under *The Freedom of Information and Protection of Privacy Act*. It included a review of 150 FIPPA files where

The findings indicated that all departments performed well in some categories, but that improvements are needed to address weaknesses that were identified. Overall, the City's performance was 79%. As a result of the audit, 21 recommendations were made to the City. All recommendations were accepted. A follow-up audit in the summer of 2012 is planned to review the implementation of the recommendations.

Read the report on our website at http://www.ombudsman.mb.ca/pdf/2011_FIPPA_access_practices_winnipeg.pdf

access was refused in full or in part, or where records did not exist or could not be located. The audit was conducted with the full cooperation and assistance of the City throughout the process.

Law Day 2012



Manitoba Ombudsman staff participated in Law Day 2012 activities at the Law Courts building on April 15. Law Day is a national event celebrating the signing of Canada's Charter of Rights and Freedoms and is aimed at educating and informing the public about the role and importance of the law. This year's event marked the 30th anniversary of the charter.



FIPPA: An Introduction



For the last three years Manitoba Ombudsman has participated in the delivery of introductory FIPPA sessions to local public bodies. These popular sessions are offered by the Information and Privacy Policy Secretariat of Culture, Heritage and Tourism, the department responsible for the administration of FIPPA. This April, 29 participants attended a session held in Brandon. If you are interested in attending this event, watch for an announcement of an additional session to be held later this year in Winnipeg.

New posters: Less is more: some things are better left unshared



To celebrate Data Privacy Day in January 2012, the Office of the Privacy Commissioner of Canada issued a new series of bilingual posters. The posters - each with a different cartoon - are available from our office. Call 982.9130 or 1.800.665.0531 or email ombudsman@ombudsman.mb.ca if you would like a set mailed to you.

Upcoming events

April 30-May 1

Western Canada Health Information Privacy Symposium (formerly Prairie Health Information Privacy Day), Coast Plaza Hotel, Calgary, Alberta. Hosted by Manitoba Ombudsman, the Information & Privacy Commissioner of Alberta, the Information & Privacy Commissioner of British Columbia and the Information & Privacy Commissioner of Saskatchewan, the symposium is intended for health information trustees of all sorts and is focused on giving practical guidance to both beginners and seasoned privacy experts.

May 9

2012 Forum of Canadian Ombudsman Learning Symposium, Ryerson University, Toronto.

June 13-15

Access and Privacy Conference 2012, Edmonton, Alberta.

June 20

Brown Bag Talks for Access and Privacy Coordinators and Officers. Please consult our website for topics. 12:05 - 12:50 p.m., our office. Call 982-9130 for details or to register.

Manitoba Ombudsman: Ombudsman and Access and Privacy Divisions

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Winnipeg Office
750 - 500 Portage Ave.
Winnipeg, MB R3C 3X1
Phone: 204-982-9130
Fax: 204-942-7803

WEBSITE: www.ombudsman.mb.ca

Toll Free in MB: 1-800-665-0531

Brandon Office
202- 1011 Rosser Ave.
Brandon, MB R7A 0L5
Phone: 204-571-5151
Fax: 204-571-5157

Toll Free in MB 1-888-543-8230