

Manitoba Ombuds News

2015-1 Ombudsman, Access and Privacy Newsletter

PRIVACY Guidelines for Administrative Tribunals *Publishing Decisions Online*

One of the ways in which public organizations, including Manitoba Ombudsman, try to accomplish the goals of openness, accountability and transparency is by making more information available online. At Manitoba Ombudsman, for example, we've been adding more investigation reports to our website over the last couple of years in an attempt to share more information about the work that we do and the decisions that we make.

The Manitoba government has established many agencies, boards and commissions to carry out a range of functions and services, such as the Automobile Injury Compensation Appeal Commission, the Manitoba Labour Board, the Manitoba Municipal Board, and the Securities Commission. And these are just a few. There are many specialized boards and commissions (also known as administrative tribunals) that Manitobans come into contact with in their dealings with government. Some of these entities have started posting their decisions online or are in the planning stages to do this. As public bodies, administrative tribunals are subject to FIPPA and PHIA.

To help administrative tribunals ensure that they are complying with privacy laws when posting decisions online, we've developed *Privacy Guidelines for Administrative Tribunals on the Online Publication of Decisions*. The guidelines address a number of considerations, including:

- the need to consider relevant legislation and public interest
- the need for decision-writing policies
- minimizing, anonymizing or removing personal information
- notifying individuals about information-handling rules, and
- using technology to minimize privacy risks.

The guidelines are available at:

PRIVACY GUIDELINES FOR ADMINISTRATIVE TRIBUNALS ON THE Online Publication of Decisions

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Introduction

Administrative tribunals are using the Internet more frequently as an efficient and effective tool to communicate their decisions to the public. Online publication of decisions can be a useful means to accomplish the goals of openness, accountability and transparency. It can also increase the public's knowledge about the work of the tribunal and how it has decided prior cases.

Administrative tribunals, as public bodies, are subject to the protection of privacy requirements under Manitoba's *Freedom of Information and Protection of Privacy Act (FIPPA)* and *Personal Health Information Act (PHIA)*. In many cases, a tribunal can accomplish the goals of openness, accountability and transparency and comply with FIPPA and PHIA through the publication of decisions that do not contain personally identifying information.

Publishing tribunal decisions online makes those decisions widely available. As a result, any personal information of parties or witnesses contained in the decisions becomes available to unlimited persons to use in unlimited and unforeseen ways, which can be harmful to individuals.

It is important that the content of tribunal decisions published on the Internet reflect the reality that once a decision is posted online, anyone can take an individual's information and use it out of context for a variety of purposes. When decisions contain personally identifying information, those individuals lose control over their information and can be exposed to harm to their reputation, discriminatory practices, identity theft, fraud and data mining. A real concern is that individuals may be reluctant to participate in a tribunal proceeding due to concerns about the loss of their privacy.

Given the diversity of tribunals and their enabling legislation, there cannot be a one-size-fits-all approach to the publication of decisions online. These guidelines outline factors to consider when publishing decisions online.

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Video Surveillance Guidelines



Are you ready for your close up? It seems common these days to install video surveillance cameras, thinking that they will increase safety and security, and deter crime. Sometimes cameras can

have positive benefits, but at the same time they also capture unnecessary information about employees and citizens as they go about their daily lives.

For public organizations, the installation of video surveillance technology comes with responsibilities and obligations set out in Manitoba's access and privacy laws – FIPPA and PHIA. To help public bodies and trustees make informed decisions about implementing video surveillance, we've released *Video Surveillance Guidelines* that set out ten considerations that public bodies need to make, including:

- demonstrating the need for and value of video surveillance versus less privacy-intrusive options
- collection of personal and personal health information
- developing a surveillance system policy
- design and implementation of a surveillance system
- notifying the public
- using and disclosing surveillance records
- retention and destruction of surveillance records
- security of surveillance records
- access to surveillance records
- auditing surveillance systems



You'll find the guidelines at:

<https://www.ombudsman.mb.ca/uploads/document/files/video-surveillance-guidelines-en.pdf>

Guidance for the use of body-worn cameras

Should police officers be recording while they work? The use of police body worn cameras raises several serious issues for the public. Are the cameras always on or only when there is an interaction with someone? Who decides when they are on? If you are caught on camera simply walking by a police interaction being recorded, can you protect your privacy? Who safeguards police recordings from improper use and disclosure? If the police record you, do you have access to that recording? Is the cost of body worn cameras worth the benefits? Who decides that, and on what basis? These are serious questions, for police agencies, for governing bodies, and for the public. There needs to be an informed discussion.

To facilitate that discussion, we released *Guidance for the use of body-worn cameras by law enforcement authorities*. The document was developed by the Office of the Privacy Commissioner of Canada in collaboration with the provincial and territorial privacy oversight offices, including Manitoba Ombudsman. In it, law enforcement agencies are urged to consider privacy and personal information protection before adopting body-worn cameras.

The Office of the Privacy Commissioner of Canada is responsible for enforcing the RCMP's compliance with the federal Privacy Act. Manitoba Ombudsman is responsible for ensuring compliance with provincial privacy laws, FIPPA and PHIA, which would apply to provincial and municipal bodies, including municipal police forces.



This guidance document aims to identify some of the privacy considerations law enforcement authorities should take into account when deciding whether to outfit law enforcement officers with body-worn cameras. Also described is the privacy framework that should be part of any law enforcement body-worn camera program in order to ensure compliance with Canada's personal information protection statutes.

This document is endorsed by:

Office of the Privacy Commissioner of Canada
 Office of the Information and Privacy Commissioner of Alberta
 Office of the Information and Privacy Commissioner for British Columbia
 Manitoba Ombudsman
 Office of the Access to Information and Privacy Commissioner - New Brunswick
 Office of the Information and Privacy - Newfoundland and Labrador
 Office of the Information and Privacy Commissioner of the Northwest Territories
 Nova Scotia Freedom of Information and Protection of Privacy Review Office
 Office of the Information and Privacy Commissioner of Nunavut
 Office of the Information and Privacy Commissioner of Ontario
 Office of the Information and Privacy Commissioner of Prince Edward Island
 Commission d'accès à l'information du Québec
 Office of the Saskatchewan Information and Privacy Commissioner
 Office of the Yukon Information and Privacy Commissioner

The 13-page guidance document is available on our website at:

<https://www.ombudsman.mb.ca/uploads/document/files/final-guidance-e-en.pdf>

New investigation reports

Our collection of online investigation reports continues to grow! In the last few months, we've added four Ombudsman Act reports, 14 FIPPA reports and five PHIA reports.

Ombudsman Act reports

Case 2013-0414: If you stay in a hotel in The Pas, Manitoba, you will be charged a special accommodation tax intended for the purpose of promoting the town via a destination marketing strategy. We received a complaint that the Town of The Pas was using the special tax revenues it had collected for purposes other than destination marketing.

Case 2011-0064: For individuals affected by a decision, understanding the reasons for the decision can help them make a choice about exercising their right of review or appeal. We received a complaint from a City of Winnipeg resident that the city's Board of Adjustment rejected a variance application without explaining why it believed the application did not meet the criteria for approving variances, as set out in The City of Winnipeg Charter.

Case 2014-0176: If you are a game bird hunter and plan to share your harvest beyond our borders, it's important to understand the rules around inter-provincial transport/export. We received a complaint about Manitoba Conservation and Water Stewardship from a hunter who gave two legally-harvested game birds to his son, who then transported the birds to another province where it was determined that the son did not have an export permit for the birds.

Case 2013-0089: Decisions made by the Workers Compensation Board (WCB) can significantly affect the life of an injured worker. We received a complaint from an injured worker whose family physician and occupational health physician disagreed with the WCB's policy that range of motion be measured on a passive range (a practitioner manipulates the worker's joint through the range of motion), rather than an active range (the worker moves their joint without assistance from the practitioner).

PHIA reports

Cases 2014-0050, 2014-0052 and 2014-0254: An individual was involved in a motor vehicle accident which resulted in a claim to Manitoba Public Insurance for Personal Injury Protection Plan benefits. The individual believed that MPI had collected additional health information about her, without authorization. MPI assured the individual that the unauthorized information had been removed from her claim file. The individual later discovered that the information had been disclosed to the Automobile Injury Compensation Appeal Commission.

Case 2014-0053: An individual complained that the Workers Compensation Board Appeal Commission disclosed records containing personal health information to the individual's employer.

Case 2014-0451: A Health Sciences Centre in-patient requested access to her chart. The hospital did not provide access within the 24-hour response time required by PHIA. After a complaint was made to our office, the hospital advised that it would make a copy of the chart available for a fee of \$90.50, which was later revised to \$25.

Case 2014-0153: An individual requested access to her personal health information maintained in the electronic patient record at St. Boniface General Hospital. A \$25 fee was assessed for processing the request, which the individual believed was unreasonable.

Case 2013-0419: A health professional (psychologist) refused access in response to an individual's request to view and receive copies of the individual's own personal health information. The ombudsman found that the trustee did not respond to the request and did not provide reasons for refusing access. The trustee did not accept the ombudsman's recommendations and the matter was referred to the information and privacy adjudicator for review.

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REPORT WITH RECOMMENDATIONS ISSUED ON OCTOBER 27, 2014

AND

RESPONSE TO THE RECOMMENDATIONS

UNDER THE PERSONAL HEALTH INFORMATION ACT

New investigation reports, continued

FIPPA reports

Case 2014-0029: A complainant alleged that after a call to the City of Winnipeg's 311 service, an employee of the city's Water and Waste Department disclosed her name and phone number to a third party business that was doing infrastructure work in the complainant's neighbourhood.

Case 2013-0314: A complainant wrote a letter to their municipality requesting assistance with a neighbourhood noise issue. The complainants believed that the content of their letter had become known to a neighbor despite their request that the municipality keep the information confidential.

Case 2014-0129: An applicant requested access to records from Manitoba Agriculture, Food and Rural Development about a complaint investigation made under The Animal Care Act. The applicant received a copy of a report, but the department denied access to information that would have revealed the identity of the informant.

Case 2014-0431: An applicant requested access to maps of mosquito fogging buffer zones within the City of Brandon. While the applicant clearly stated that he was not seeking names and addresses, the city explained that it would not be possible to generate maps of buffer zones without revealing the addresses of individuals who had applied for those buffer zones.

Case 2014-0400: An applicant requested access to three Winnipeg Police Service reports related to police visits to buildings that the applicant owns. The WPS refused access on the basis that the applicant was not a party to the incidents that precipitated the reports.

Case 2014-0407: A complainant alleged that the University of Manitoba inappropriately disclosed his personal information to a third party without his consent by providing his information to the U.S. service provider that handles the library's web-based management system.

Case 2013-0285 and 2013-0286: An applicant requested a report created by an outside law firm for the City of Winnipeg about a review of a city land sale/swap. The applicant also asked for the contract with the law firm and any invoice generated as a result of the review. The city refused access on the basis that the information was subject to solicitor-client privilege.

Case 2014-0159: An applicant requested access to all email correspondence between a City of Winnipeg official and the city's legal services. The city refused access on the basis that the information was subject to solicitor-client privilege.

Case 2014-0025: An applicant requested documents from a municipality related to a proposed water diversion, specifically documents between the municipality and its lawyer. The municipality refused access on the basis of solicitor-client privilege.

Case 2013-0350: Manitoba Public Insurance responded to an applicant's request for his personal information related to his applications for a driver's licence, providing three pages of records. While the applicant believed there should be more records, MPI's search did not locate them.

Case 2013-0245: An individual requested any records related to the quality of Gladue reports (a specific type of report related to sentencing of Aboriginal offenders) or the creation of a Gladue court in Manitoba. Manitoba Justice initially advised the applicant that it did not categorize documents by subject, which would necessitate a broad search of documents. The department further told the applicant that a fee would apply, but that it was impossible to determine the fee and undertake a search with current staff in place. The application for access was refused.

Case 2014-0269: An applicant sought access to board meeting minutes of the University of Winnipeg Community Renewal Corporation. The university advised that the records were not in the custody or control of the university, and refused access to the records.

Cases 2014-0250 and 2014-0251: An applicant requested records related to two calls to the City of Brandon's 911 Emergency Service. The city initially refused access, stating that the recordings were made with an obsolete recording system that was no longer in use. The city later determined that the CD containing the recordings in question had been lost or misplaced.

Case 2014-0099: The City of Winnipeg responded to an access application for information about renovations to the Public Safety Building and Canada Post building by refusing access in full, relying on an exception in FIPPA that allows a public body to refuse access if releasing the information could be expected to reveal advice, opinions, proposals, recommendations, analyses or policy options developed by or for a public body.

New investigation reports, continued

Ombudsman Act reports are posted in the Ombudsman Division (orange) part of our website. Select either “municipal investigation reports” or “provincial investigation reports” from the left navigation menu:

<https://www.ombudsman.mb.ca/info/ombudsman-division.html>

FIPPA and PHIA reports are posted in the Access and Privacy Division (blue) part of our website. Select either “FIPPA Investigation Reports” or “PHIA Investigation Reports” from the left navigation menu:

<https://www.ombudsman.mb.ca/info/access-and-privacy-division.html>

Talking about our work

Acting Manitoba Ombudsman Mel Holley gave a presentation to Crown attorneys from Civil Legal Services as part of their continuing legal education program. The session was a great opportunity to share some information about Manitoba Ombudsman’s jurisdiction and practice with Crown lawyers who might, at some point, be working with government departments on issues that are the subject of complaint investigations. Civil Legal Services is a special operating agency within Manitoba Justice that provides legal services to all government departments, agencies, boards, commissions, committees and government corporations that do not have their own legal counsel.



Acting Manitoba Ombudsman Mel Holley and Access and Privacy Manager Jacqueline Bilodeau gave a presentation about our video surveillance guidelines to the Manitoba chapter of ASIS International, an organization for security professionals. Many in the audience – information and security managers, policy makers and security system supervisors – have responsibility for the security of information about thousands of Manitobans dealing with or passing through public entities that use video surveillance. The presentation dealt with the applicable law in Manitoba, and also provided some best practice advice.

(L-R) Jacques Gagné (WRHA), Jacqueline Bilodeau, Mel Holley

All Charities Award!

Investigators Mary Loepp and Marie MacLellan accepted an award on behalf of the office for achieving 100% participation in the All Charities Campaign, for the second year in a row. Although we are a small office we raised almost \$8700.00 through payroll deduction, casual Fridays, and special activities such as pizza day and our annual Halloween costume contest. All Charities supports thousands of charities in Manitoba and across Canada. In 2014/15, the campaign raised more than \$2 million.



Upcoming events

- April 19 Law Day, Law Courts building, Winnipeg – noon-3:30 p.m.
- April 22 *Providing Representations to the Ombudsman in Complaints of Refused Access.* Brown Bag Talk for access and privacy coordinators and officers. 12:05 - 12:50 p.m., our office. Call 204-982-9130 for details or to register.
- June 17 Brown Bag Talk. Topic TBA.

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Manitoba Ombudsman: Ombudsman and Access and Privacy Divisions

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