

Manitoba OmbudsNews

2020-1 Ombudsman, Whistleblower, Access and Privacy Newsletter

Our services during the COVID-19 pandemic

Our offices are currently open to the public. Should public health orders around the pandemic change in the months ahead, we'll keep everyone informed about changes to the way we deliver our services—watch our website and social media pages for updates.

How to reach us:

- » We encourage you to email us at ombudsman@ombudsman.mb.ca or call our office at [1-800-665-0531](tel:1-800-665-0531) with your questions or concerns. If you call, you will be asked to leave a message in the voicemail box that you think best suits your question/concern. One of our employees will get back to you as soon as they are able to.
- » If you choose to visit our office to speak with one of our staff, we encourage you to wear a mask (it's optional). We also have enhanced cleaning protocols in place for health and safety.
- » If you have a complaint, we encourage you to visit our complaints page on the web at www.ombudsman.mb.ca/info/complaints.html, which has information about the different kinds of complaints we handle and links to various complaint forms, some of which are online.

If you make an inquiry or complaint by any method, we will contact you to discuss your question or concern and let you know what the next steps may be.

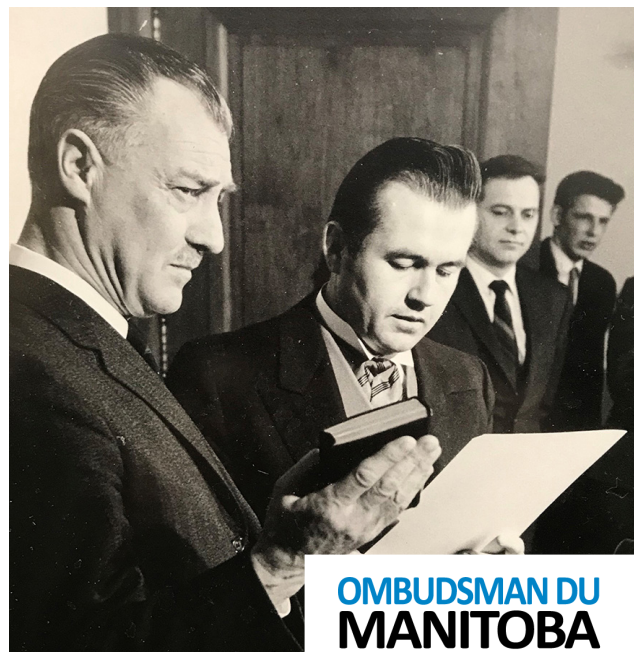
We thank everyone for your patience and understanding as the COVID-19 pandemic continues.

DID YOU KNOW?

Manitoba Ombudsman turned 50!

Did you know that our office celebrated its 50th anniversary in April 2020? We celebrated quietly, as we were focused on business continuity planning to ensure that we could continue to deliver our services differently during the pandemic. We plan to celebrate our anniversary in a more public way this fall.

Our office opened on April 1, 1970, with George Maltby as Manitoba's first ombudsman.



George Maltby (left) was sworn in as Manitoba's first ombudsman, with Speaker Ben Hanuschak administering the oath.



New reports

FIPPA privacy report: Case 2019-0345: The complainant made similar requests for access to information under FIPPA to a number of different educational bodies. A request to one educational body was later withdrawn. Subsequently, the complainant was contacted by a different educational body about the withdrawal, leading the complainant to believe that the public body had made an unauthorized disclosure of the complainant's personal information. Our investigation concluded that the public body had inadvertently disclosed personal information about the complainant; therefore, the complaint was supported.

FIPPA access report: Case 2019-0070: An individual requested access to records of payments to a law firm related to a third party's lawsuits against the Manitoba government. The department refused access on the basis of solicitor-client privilege and that disclosure would be harmful to law enforcement or legal proceedings. Our office concluded that the records would reveal information that is subject to solicitor-client privilege, and since this provision applied, our office did not consider whether disclosure would be harmful to law enforcement or legal proceedings. The complaint was not supported.

FIPPA investigation reports are on our website at:

www.ombudsman.mb.ca/documents_and_files/investigation-reports.html

Manitoba Ombudsman initiated an investigation under the **Ombudsman Act** after seven individuals complained to our office about the length of time it took the Manitoba Human Rights Commission to investigate the matters they brought to its attention.

When we looked at how long it took the commission to deal with our complainants' matters, we concluded that the length of time was inconsistent with the principles of fairness. All of our complainants had expectations about how the process would unfold based on information provided to them by the commission itself, and none of their expectations were met. For complainants, the consequences of administrative delays can be significant, including potentially hindering access to other avenues to address their concerns.

While the Human Rights Code does not legislate a time frame within which the commission must complete its work, it is reasonable to expect that the commission, in the interest of delivering its services fairly, would ensure that information provided to the public and complainants about time frames be clear, current, accurate, complete, and accessible. As a result of our review, we recommended that the commission:

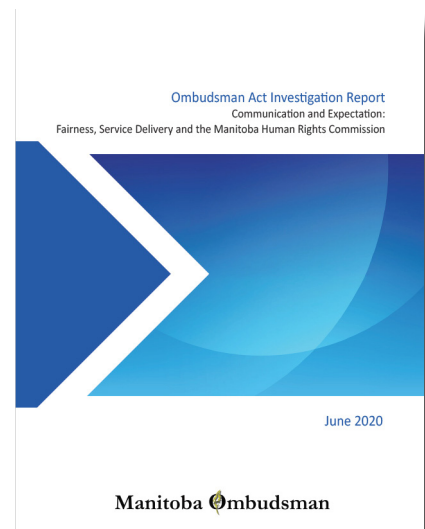
- Clarify its process and identify key points to routinely track processing times.
- Ensure public information regarding process and time frames is accurate and current.
- Develop procedures to standardize:
 - when and how complainants are updated throughout the process, and
 - when and how complainants are updated if there are changes to the anticipated time frame.

The commission advised us that it has implemented changes and is working to reduce the total average time to complete the formal review process of a complaint to 12 months in 2020 – a reduction of 58 per cent from 2017.

Our office is pleased the commission is adopting our recommendations and we believe these steps will allow the commission provide more transparent and timely service.

The investigation report, *Communication and Expectation: Fairness, Service Delivery and the Manitoba Human Rights Commission*, is available at:

www.ombudsman.mb.ca/uploads/document/files/mhrc-report-2020-en.pdf



FIPPA audit report

We released an audit report under FIPPA into the access to information practices of four public bodies – Manitoba Finance, Executive Council Office, the Civil Service Commission and Manitoba Crown Services. We initiated the audit in response to a number of concerns brought forward to our office.

FIPPA staff play an important role in processing and coordinating the responses to access requests. FIPPA services for the four public bodies are centralized with Manitoba Finance.

The audit of 120 FIPPA files over a six-month period ending in May 2018 examined:

- The public bodies' **timeliness** and **compliance** in meeting the legislated timelines under FIPPA when responding to requests. FIPPA sets out a time limit of 30 days to respond to access requests, which may be extended in certain circumstances.
- Whether the public bodies communicated with applicants after receiving the requests, in keeping with the **duty to assist** applicants. Public bodies must make every reasonable effort to clarify requests, search for records and respond without delay to each applicant in an open, accurate and complete manner.

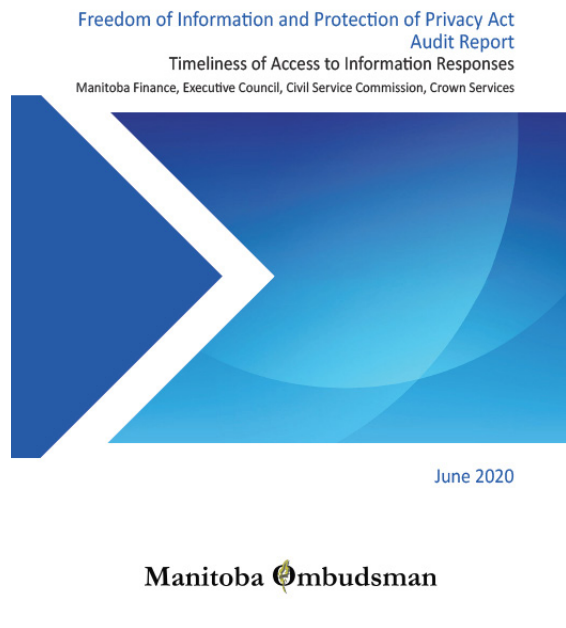
The audit identified the following issues:

- Response times in many cases exceeded the legislated time limit and time extensions for responses were not used.
- Communication with applicants throughout the access to information process was limited.
- Documentation about the management of information, processing of access requests and decisions in the FIPPA files was inconsistent and not centralized.

The ombudsman made five recommendations to improve the public bodies' response times and aid in strengthening communication with applicants and compliance with FIPPA, including that the public bodies:

- Not reveal the type of applicant if it is not necessary for processing the access request or may reveal the applicant's identity.
- Assess FIPPA processes and resource needs, in order to comply with legislated time limits.
- Acknowledge the receipt of FIPPA applications and provide a FIPPA reference number and point of contact for applicants.
- Standardize FIPPA process documentation and maintain it in a centralized location.
- Routinely assess and consider releasing access records through proactive disclosure.

The public bodies accepted all five recommendations. Implementation of the recommendations will help to promote the right of access for Manitobans.



“The right of timely access to information enables citizens to meaningfully participate in government decision making. Under FIPPA, a delay in access is a refusal of access.”
Ombudsman Jill Perron

The FIPPA audit report, *Timeliness of Access to Information Responses: Manitoba Finance, Executive Council, Civil Service Commission, Crown Services*, is at www.ombudsman.mb.ca/uploads/document/files/fippa-audit-report-june-2020-en.pdf

Updated eChart brochure

This spring we updated our *Know your health information rights: eChart Manitoba* brochure. EChart is Manitoba's electronic health information system that pulls together existing electronic health information already collected at different points of care (for example, prescriptions filled at retail pharmacies, immunizations and test results from participating labs). Our personal health information can only be collected, used and disclosed for purposes authorized under Manitoba's Personal Health Information Act. The brochure highlights the rights we all have with respect to our personal health information in eChart.

The brochure is available at various health-care sites around the province. If you would like us to send you some bilingual print copies, please contact us. You'll also find the brochure on our website at:

www.ombudsman.mb.ca/uploads/document/files/echart-brochure-rev-en-en.pdf

Joint statement from privacy commissioners on privacy principles for contact tracing and similar smartphone apps

In early May, Manitoba Ombudsman joined with other federal, provincial and territorial privacy commissioners in issuing a joint statement on the privacy principles that should guide decisions about using contact tracing and similar smartphone applications as public health tools to help address the COVID-19 pandemic. The joint statement and description of privacy principles is available at:

www.ombudsman.mb.ca/data/files/joint-fpt-statement-contact-tracing-apps-en.pdf



Know your health information rights

eChart Manitoba
A Shared Health Service

Manitoba's
Electronic
Health Information
System



This month we're saying farewell to another long-time employee. Felicia Palmer retires after 33 years of *OmbudService* and 38 years of public service. We wish Felicia a very happy retirement!

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