



Ombudsman Oversight: A Practical Perspective

Charlene Paquin, Manitoba Ombudsman
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Purpose

- To create understanding about how the complaint process can lead to opportunities to strengthen and improve municipal practices and procedures.
- To identify some steps that municipalities can take in the effort to become more accountable, open and transparent.



Manitoba Ombudsman's Mandate

The ombudsman's mandate includes broad powers of investigation under:

- ***The Ombudsman Act (1970)***
- ***The Personal Health Information Act (1997)***
- ***The Freedom of Information and Protection of Privacy Act (1998)***
(Replaced *The Freedom of Information Act, 1988*)
- ***The Public Interest Disclosure (Whistleblower Protection) Act (2007)***
(PIDA does not currently apply to municipalities)



Manitoba Ombudsman's Mandate

Established in 1970 as an independent office of the
Legislative Assembly of Manitoba,

Manitoba Ombudsman's mission is to promote and foster
openness, transparency, fairness, accountability, and
respect for privacy in the design and delivery of public
services.



Complaints

**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.



Complaints

The Manitoba Ombudsman's office can provide an opportunity to:

- give citizens an avenue to express their concerns
- revisit an issue with fresh and impartial eyes
- change the status quo
- help public bodies improve policies, procedures or practices
- communicate the public body's decisions and actions in an open and transparent way



How We Investigate

- Impartial
- No assumptions
- Evidence based
- View to improvement – goal is improved administration



Access and Privacy Complaints



Access and Privacy Legislation

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.



Under FIPPA, access is the rule; however, there are circumstances in which a public body is required or may choose to withhold the requested information on the basis of two types of exceptions:

- **Mandatory exceptions**
- **Discretionary exceptions**



A Common Concern

- Business contracts and related records are subject to the right of access under FIPPA, and must be disclosed to an applicant unless an exception applies.
- Often when public bodies receive access requests about contracts, they rely on the “harmful to a third party’s business interests” exception in FIPPA, and refuse access.
- After an investigation, Manitoba Ombudsman will often find that contracts can be released with certain limited information severed. The exception does not apply to the entire record.
- This process delays disclosure and consumes time and resources.
- Instead, consider being proactive. Make contracts and agreements available, with limited severing. Ensure contractors are aware of this practice before the contract is entered into.



Proactive Disclosure and Open Government

Proactive disclosure is the release of information in anticipation of the public's needs and interests and is a key **open government** practice.

FIPPA does not prohibit the **proactive disclosure** of information about government decision making that could allow citizens to fully understand and participate in the activities of government.




What is the Benefit?

- It can **strengthen transparency and accountability** around municipal decision making, including spending, while **providing practical benefits** to organizations:
 - Improve public trust and confidence
 - Reduced administrative costs
 - Reduce the number of requests for access to information under FIPPA, and associated costs
 - Reduce the number of complaints, including complaints to the ombudsman



Things to Consider in Disclosing Proactively

- Are many people interested in the information?
- Will it likely prevent multiple requests for the same information?
- Is there any personal information involved? Is disclosure of the personal information permitted under FIPPA?
- Can part of the document be disclosed by redacting what cannot be released?



Balancing Openness and Transparency With Protecting Individual Privacy

Use FIPPA when considering whether to proactively make records available.

Openness and transparency are important.

At the same time, municipalities must balance openness and transparency with the need to ensure that individuals' personal information is only disclosed when permitted by FIPPA.




What Can I Consider Disclosing?

- Items required to be available under municipal legislation
- Policies and procedures
- Routine business of council and council committees – **meeting agendas, meeting minutes, committee reports**
- Municipal information, **ex. budgets, audited financial statements, financial plans, council member expenses, invoices, tendering and procurement documents, contracts, etc.**
- Some reports prepared for or by the municipality to assist in decision making



Proactive Disclosure Steps

- Commit
- Be up-front
- Be transparent
- Protect personal information
- Make records available



Administrative (Ombudsman Act)
Complaints



The Ombudsman Act

Manitoba Ombudsman investigates complaints from people who believe they have been treated unfairly by government.

Administrative complaints tend to fall into one of three categories:

- A practice, procedure or decision that is inconsistent with or contrary to policy, regulation or statute or by-law.
- A failure to fulfill a statutory mandate or obligation.
- An act, decision or omission that is procedurally, substantively, or relationally unfair.



Case Examples

- 1: A resident's variance application was rejected without an explanation of why the application did not meet the criteria for approval. The resident did not know how (or whether) to proceed with an appeal of the decision or a new application.
- 2: Residents wanted to build a dock for river access on public reserve land and the municipality denied their request. 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.



Case Example

- Manitoba Ombudsman received a complaint that a borrowing by-law for a local improvement project was defeated in a tied vote at third reading. The complainants believed that council did not have the legitimate authority to proceed with the project.
- In this case there was a great deal of procedural confusion at the meeting and no definitive record of what occurred.
- An audio recording of the meeting may have helped to provide a definitive record, in addition to good minutes and a proper recording of the vote.



Case Examples

- 1: Manitoba Ombudsman received several complaints regarding conflict of interest in the tendering and construction of a major capital project.
- 2: Manitoba Ombudsman also received a complaint that a council member placed himself in a conflict of interest situation at two meetings of council where an item in which the council member had a personal interest was discussed.



Building Accountability

Although each of these cases is unique – they all relate to issues of accountability and fairness. These include:

- Reasons
- Processes
- Best Practices
 - Fair decision making
 - Conflict of Interest



Building Accountability: Reasons for Decisions

- We sometimes hear that municipalities are not legally required by *The Municipal Act* to provide reasons.
- Explaining reasons has a number of benefits:
 - It demonstrates that decision makers have **listened and understood**.
 - It demonstrates that decision makers have **considered the evidence and criteria** that are the basis for the decision.
 - It **reduces the possibility of speculation** about why decision makers have accepted one position over another.
 - It helps to demonstrate that councils and administrators know what it means to make **fair decisions**.
 - It helps to create **positive relationships**.



Building Accountability: Good Process

- An accurate record of what was discussed at council meetings can assist in determining what occurred after the fact:
 - In addition to complete minutes (with written motions at meetings and documented in minutes), consider audio (or video) recording council meetings to keep on file.
 - Audio recordings can protect council members from rumour/innuendo/misinformation as to who said or did what at a council meeting.
 - Good process can help build accountability.



Building Accountability: Best Practices

- Make decisions that are **fair**. Consider all aspects of fairness in the decision-making process:
 - Procedural
 - Substantive
 - Relational



Building Accountability: Best Practices

- Consider legislative requirements as the minimum standard that must be met.
- For example, *The Municipal Council Conflict of Interest Act*:
 - Deals primarily with conflicts arising from financial (pecuniary) interests.
 - Requires all council members to disclose matters where they (or their spouse or dependents) might have a direct or indirect financial interest.
- **Take a broader perspective.** Conflict of interest or the perception of conflict can occur when there is no financial interest; when a council member is seen to be too close to the parties on one side of a dispute or proposal, or when a council member is seen to be at odds with one of the parties.



Building Accountability: Best Practices

- Once a connection between personal interests and public decisions is made, it can be difficult to demonstrate that a decision was not influenced by personal interest.
- Conflict of interest situations will arise, they are not unusual.
- It is how these situations are handled that matters:
 - Disclose the interest before the matter is discussed at a meeting
 - Withdraw from the meeting without voting or participating in the discussion
 - Refrain from attempting to influence the decision on the matter



Summary

To become more open, transparent and accountable:

- Commit to **proactive disclosure** or the release of information in anticipation of the public's needs and interests
- Give **reasons for decisions**
- Develop **good process** (record meetings to provide a definitive record)
- Take a broader perspective – develop **best practices** for fair decision making and consider legislative requirements (for example the MCCIA) as the minimum standard that must be met.



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ombudsman@ombudsman.mb.ca

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