

## APPEALING ACCESS TO INFORMATION DECISIONS IN

# Manitoba

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### RESOURCES

***Freedom of Information and Protection of Privacy Act (FIPPA)***

<http://www.gov.mb.ca/chc/fippa/actandregs/index.html>

***FIPPA Guide***

<http://www.gov.mb.ca/chc/fippa/howtouse/>

***Office of the Manitoba Access and Privacy Ombudsman***

<http://www.ombudsman.mb.ca/>

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***Disclaimer:***

*We have attempted to ensure that the information provided in this Manual is reasonably accurate and complete as of December 2005. However, we cannot guarantee complete accuracy or comprehensiveness; you should consult the relevant legislation and authorities if you seek fully accurate, complete, and up-to-date information.*

*Moreover, this Manual provides information of a general nature and does not constitute legal advice. Should you need legal advice, seek a lawyer.*

*Please report any errors or omissions in this Manual to [cippic@uottawa.ca](mailto:cippic@uottawa.ca)*

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## **WHAT CAN I DO IF MY REQUEST FOR ACCESS IS DENIED?**

If you are not satisfied with a public body's response to your access request, you have the right to complain to the Manitoba Ombudsman's Office, Access and Privacy Division.

## **WHAT ELSE CAN I COMPLAIN ABOUT?**

In addition to complaining about the public body's decision, you can complain to the Ombudsman:

- if you do not receive a response to your original request for access within 30 days, or if you find a time extension to be unreasonable;
- if your request to waive fees has been refused; or
- about any relevant act, or failure to act, by the public body in question.

Furthermore, as a third party, you may complain if, contrary to your stated wishes, a public body decides to disclose information about you.

## **HOW DO I SUBMIT A COMPLAINT?**

The Ombudsman must receive your complaint within 60 days of your being notified of the access decision. If you never received a response to your request, you have 120 days from the date your request was made to submit a complaint.

You must use a complaint form, which can be found at:  
<http://www.gov.mb.ca/chc/fippa/formsletters/complaint.pdf>.

## **HOW MUCH WILL IT COST TO SUBMIT A COMPLAINT?**

There is no fee for a initiating a complaint in Manitoba.

## **WHO WILL BE INVOLVED IN THE COMPLAINT?**

You, as the one who made the original access request and filed the complaint, are entitled to be involved. You are the applicant. The public body that refused your access request will also be involved. Finally, a third party whose interests are affected by an access request may be involved.

## **WHAT ARE THE STEPS IN THE COMPLAINT PROCESS?**

### **1. Investigation**

The Ombudsman will investigate your complaint to determine whether the public body is in

compliance with FIPPA. The Ombudsman may also initiate complaints concerning other matters if there are grounds to do so under the Act. The Ombudsman will first take steps to resolve the matter informally.

If your complaint cannot be resolved informally, the Ombudsman will undertake a formal, private process in which you and the public body will each be given the opportunity to present your position. Any affected third party may also present its position. Any party's representations may be made through counsel or an agent. The Ombudsman decides whether representations are to be made orally or in writing.

Under certain circumstances, the Ombudsman may decide not to investigate an access complaint. These include: if the subject matter of the complaint is trivial, not made in good faith or is frivolous or vexatious; or if the circumstances of the complaint do not require investigation. Where the complaint involves information privacy, the Ombudsman may also decide not to review a case if the elapsed time from when the alleged breach occurred is such that it makes an investigation not practicable or desirable.

## ***2. Ombudsman's Report***

The investigation ends with the Ombudsman's Report which contains findings and recommendations. You will receive a written copy of this report, as will the public body. The Ombudsman may also give it to any other party that has made representations.

## ***3. Implementing the Ombudsman's recommendations***

If the Ombudsman recommends disclosure and/or makes additional recommendations, the public body must then decide whether or not to comply. It has 15 days from the date of receiving the report to submit a written response to the Ombudsman indicating whether it accepts the recommendations. If it does, the public body must also describe the way in which it has or will implement them. If it refuses to implement the recommendations, it must explain why.

If access is refused contrary to the recommendation of the Ombudsman, you and third parties whose privacy or business interests are implicated will be notified. You may then appeal the public body's decision to the Court of Queen's Bench. The Ombudsman may appeal a decision or intervene as a party to an appeal only if the decision raises a significant matter of statutory interpretation or if the appeal is clearly in the public interest. The

Ombudsman may appeal only with the consent of the person who has the right of appeal. See 'Can I appeal to a court?' below.

## **HOW DOES THE OMBUDSMAN ARRIVE AT A DECISION?**

The public body must establish that its refusal to grant access to any part of a record is based on one of a limited number of specific exceptions to the right of access to information. If it does not succeed in establishing this, the Ombudsman will likely recommend disclosure.

## **WHAT ARE THE POWERS OF THE OMBUDSMAN DURING AN INVESTIGATION?**

The Ombudsman is authorized to conduct examinations under oath, to summon witnesses, and to compel the production of documents. The Ombudsman also has a right of entry into any public office in order to examine records and to obtain copies. Finally, the Ombudsman has other substantial powers when conducting an investigation. For more information, see the Manitoba Freedom of Information and Protection of Privacy Resource Manual, Chapter 6 at: <http://www.gov.mb.ca/chc/fippa/manuals/resourcemanual/chapter6.html#Powers%20of%20the%20Ombudsman>.

## **HOW LONG WILL IT TAKE FOR MY COMPLAINT TO BE INVESTIGATED?**

The Act requires the Ombudsman's Office to complete an investigation and submit a report within 90 days, subject to an extension.

## **CAN I APPEAL TO A COURT IF I STILL CANNOT GET ACCESS?**

Regardless of whether the Ombudsman finds in your favour, if you have received the Ombudsman's report and the public body refuses to grant access, you can appeal the public body's decision to the Manitoba Court of Queen's Bench.

An appeal must be made by filing an application with the court within 30 days of your receiving the Ombudsman's report unless the Court grants you an extension.

The Ombudsman may appeal a decision or intervene as a party to an appeal only if the decision raises a significant matter of statutory interpretation or if the appeal is clearly in the public interest. The Ombudsman may appeal only with the consent of the person who has the right of appeal.