

## ACCESSING GOVERNMENT INFORMATION 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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## **WHO CAN REQUEST GOVERNMENT INFORMATION?**

Anyone can request government information.

## **WHAT INFORMATION CAN I ACCESS?**

You have the right to access any record under the control of a public body, subject to certain exceptions described below. Public bodies include those of the Manitoba government, and municipalities, educational bodies and health care bodies. For a complete list, see the *FIPPA* website at: <http://www.gov.mb.ca/chc/fippa/wheretosend/index.html>.

## **WHAT ARE THE EXCEPTIONS TO MY RIGHT OF ACCESS?**

There are a number of circumstances in which you may be denied access to information, including the following:

### ***Publicly available information***

You may be denied access to information that is available to the public. This includes information for which you must pay a fee and information that will be made available to the public within 90 days of the date when the request is received.

If your request is refused because the information will be available within 90 days, the public body must inform you when it becomes available. If it is still not publicly available after 90 days, the public body must reconsider the request as if it were a new one, but may not deny access on the basis that the information will be made public within 90 days.

### ***Repetitive or incomprehensible request***

Your access request may be denied if it is repetitive or incomprehensible, or if it is for information that has already been provided to you.

### ***Another Act prevails***

Access to certain records is governed by other Manitoba statutes including:

- *The Adoption Act;*
- *The Child and Family Services Act;*
- *The Mental Health Act;*
- *The Personal Health Information Act;*
- *The Securities Act;*
- *The Statistics Act;*
- *The Youth Criminal Justice Act;*

- *The Vital Statistics Act; and*
- *The Workers Compensation Act.*

If the information you want is governed by one of these Acts, the provisions of that Act will prevail over any contradictory provisions in *FIPPA*. In addition, there may be other statutes that explicitly prevail over *FIPPA*.

### **Law enforcement and legal proceedings**

Your access request may be refused if disclosure could be harmful to law enforcement. This includes information that would: jeopardize national security; reveal investigative techniques or details of an investigation; reveal confidential information; endanger anyone; deny someone a fair trial or otherwise harm legal proceedings; expose its source to civil liability; or facilitate the escape of an inmate. In addition, if the disclosure of information is prohibited by law, your request for access will be denied. Furthermore, the public body may refuse to confirm or deny the existence of such information.

### **Court records**

You cannot access government information found in the records of: courts, judicial administration or judicial support services, judges, magistrates, or justices of the peace. Similarly, the personal notes of judges and those acting in a judicial role are not accessible.

### **Privileged information**

Your request for information may be denied if the information is protected by legal privilege such as solicitor-client privilege.

### **Advice**

Unless the public body consents, or unless the information is more than 30 years old, you cannot access records that could reveal advice to or from public bodies. The term 'advice' is used broadly and includes opinions, recommendations, proposals, analyses, policy options, consultations, deliberations, material relating to negotiations on behalf of the Government of Manitoba, unimplemented administrative plans, draft law at the executive level, agendas or minutes of meetings, or any information that could likely result in disclosure of a pending policy or budgetary decision.

These exceptions to access do not, however, apply to:

- statistical surveys;
- results of environmental tests;
- scientific or technical research results;

- guidelines issued to employees;
- statements of reasons for using discretionary power;
- rules or policies for interpreting law or administering a program; and
- final reports or audits on a public body's performance or efficiency

### ***Cabinet confidences***

You will not be given access to information revealing the substance of deliberations of the Cabinet or of Cabinet committees unless the record is more than 30 years old or the Cabinet for which the record was prepared consents. This includes information contained in agendas, policy analyses, proposals and communications among ministers.

### ***Local public body confidences***

Your request may be refused if disclosure could reveal a draft regulation or bylaw or the substance of a confidential meeting. If, however, the information was shared at a public meeting or it is more than 30 years old, you may access it.

### ***Relations with other governments***

Unless the affected public body consents, you may be refused access to information that could harm relations between Manitoba and other governments, including local, Canadian and foreign governments.

### ***Information provided in confidence by other governments***

You cannot access information that another government gave to the Government of Manitoba in confidence, either explicitly or implicitly. If, however, the other government consents to the disclosure or makes the information public, you can access such information.

### ***Economic and other interests of a public body***

Your access to information request may be denied if disclosure could harm the economic interests of a public body. Information under this heading includes: public body trade secrets; information in which a public body has a proprietary interest; information whose disclosure could lead to financial loss or prejudice a competitive position, and research conducted by employees of the province.

Similarly, access may be denied if disclosure could result in an undue loss or benefit to a person or corporation. This includes information regarding contemplated changes to: taxation; government borrowing; operating conditions of financial institutions; and the purchase or sale of securities, bonds or currency.

However, access must be granted to results of product or environmental tests unless the purpose of the test was to develop testing methods or to determine whether a product should be purchased.

### ***Conservation***

Your access request may be denied if disclosure could harm conservation efforts. This includes the conservation of: heritage sites, historic objects or works; and rare, endangered, threatened or vulnerable life forms.

### ***Testing procedures, tests and audits***

You may be denied access to information related to testing or auditing procedures, or to details of specific future tests or audits, if disclosure could prejudice the use or results of the tests or audits.

### ***Business interests of third parties***

You cannot access a third party's trade secrets or other confidential or sensitive information if disclosure could harm the business interests of a third party. This includes tax return information.

You can, however, get access when:

- the third party consents to the disclosure;
- the information is already publicly available;
- another Act requires disclosure;
- the information consists of the results of environmental tests not paid for by the third party; or
- there is a public interest in disclosing the information and that interest relates to: public health, safety, or environment protection; improved competition; or government regulation of undesirable trade practices.

### ***Third party privacy***

Your access request will generally be denied if disclosure would unreasonably invade a third party's privacy. Furthermore, a public body may refuse to confirm or deny the existence of information if to do so could invade a third party's privacy.

Disclosure of the following will be considered an invasion of a third party's privacy:

- personal health information;
- information that is part of a law enforcement record (except to the extent that

- disclosure is necessary to pursue prosecution);
- information that could reveal the source of confidential law enforcement information;
- financial information related to a third party's taxation, income, financial situation or receipt of social assistance;
- a third party's personal recommendations, character references or personnel evaluations;
- a third party's employment or educational history; and
- information revealing the race, ethnic origin, religious or political beliefs, or sexual orientation of a third party.

In addition to the list above, other disclosures of personal information may violate a third party's privacy. In determining whether this is the case, a public body will consider all relevant circumstances including:

- whether disclosure is desirable in order to subject the activities of a public body to public scrutiny;
- whether disclosure is likely to promote public health and safety or the protection of the environment;
- whether disclosure will help determine an applicant's rights;
- whether disclosure could expose a third party to harm;
- whether the information has been provided in confidence;
- whether the information is highly sensitive;
- whether the information is accurate and reliable;
- whether disclosure could damage a third party's reputation; and
- whether disclosure would be inconsistent with the purpose for which the information was collected.

Nevertheless, there are circumstances when, regardless of the criteria above, disclosure will be permitted. These include:

- when the relevant third party consents in writing to disclosure;
- when there are compelling circumstances affecting the applicant's health or safety;
- when another Act expressly allows or requires disclosure;
- when disclosure is for research purposes and is in accordance with *FIPPA*;
- when the information relates to a public body employee's salary range, classification, benefits, or expenses;
- when the information relates to a goods or services contract with a public body;
- when the information relates to a financial discretionary benefit to a third party;
- when the information relates to someone who has been dead for more than ten years; or
- when the record is publicly available.

### **Archival records acquired from private parties**

*FIPPA* does not apply to archival records acquired from private parties – that is, from people

or entities other than public bodies. For a list of public bodies, see:  
<http://www.gov.mb.ca/chc/fippa/wheretosend/index.html>

If the information you want was placed in an archives by a private individual or organization, discuss the matter with staff of the archives or contact that party directly and ask permission to access the information.

### **Individual or public safety**

Your access request may be denied if disclosure could threaten individual or public safety.

### **Security of property**

Your access request may be denied if disclosure could threaten property.

### **Information found in the following:**

Your request for the following information may be denied:

- examination or test questions;
- teaching materials or research belonging to an employee of an educational institution;
- elected officials' records regarding constituency matters;
- records related to incomplete prosecutions under *The Fatality Inquiries Act*; and
- credit union records held by the Credit Union Deposit Guarantee Corporation.

### **Exceptions related to personal information**

For additional exceptions more relevant to personal information, see *Accessing Your Personal Information in Manitoba*.

## **HOW DO I MAKE A REQUEST?**

### **1. Check whether the information is publicly available**

The government of Manitoba publishes a directory of records, which is available at: <http://www.gov.mb.ca/chc/fippa/directories/index.html>. While this directory is not always fully up-to-date, it may still be a useful tool.

### **2. Contact public bodies**

Call the public body and ask if it is willing to provide access to the information you want.

Such informal methods can be effective, but note that informal access-to-information requests do not trigger time limits for responding to you, nor do they trigger certain other rights, such as the right to complain to the Ombudsman.

Contact information can be found at:

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

### **3. Identify the appropriate public bodies**

*a) Determine whether the body is subject to access to information law*

All bodies subject to *FIPPA* can be found at:

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

Note, however, that such websites may not be fully up-to-date.

*b) Determine whether the information is in the custody or control of the public body*

Access-to-information laws only apply to records in the custody or control of a public body. If a record is destroyed, it is no longer in the custody or control of a public body, but it is an offence to wilfully destroy records in order to evade an access request.

### **4. Frame your request carefully**

*a) Use government directories to identify likely sources of information*

The government of Manitoba publishes a directory of records available at:

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

*b) Request "records"*

Request access to records, not to information, because "record" has a specific and broad definition which includes: "information in any form...written, photographed, recorded or stored in any manner, on any storage medium or by any means including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records."

*c) Request indexes, catalogues, and other records-management aids*

If you are seeking information that spans a broad area or could involve many records, you should first consider requesting indexes, file lists, file plans, and other records-management aids. These records of records can help you narrow your request and choose only the most relevant materials. This process can also shed light on other issues you may not have been aware of. The only drawback is that this is a two step request process: once you decide which records you would like, you must file another request to which the public body will have another 30 days to respond.

d) *Be specific*

Unless you absolutely need it, try not to request everything available on a subject so as to ensure a faster and less costly response. In addition, the more specific your request is, the less likely the public body will request a time limit extension on the grounds that answering the request within 30 days would unreasonably interfere with its operations.

**5. If you need help**

If you need help, ask the relevant public body. It is required to help you with your request and "to respond without delay, openly, accurately and completely." It is in the interests of both the applicant and the public body to focus access requests as carefully as possible.

**DO I HAVE TO USE A FORM?**

Yes. The application for access form can be found at:

<http://www.gov.mb.ca/chc/fippa/formsletters/application.pdf>

Your request can be made orally if you have limited ability to read and write in English or French, or if you are physically disabled in a way that limits your ability to make a written request.

**WHAT WILL IT COST?**

Fees in Manitoba cannot exceed actual costs. The applicable fees are:

- a) a search and preparation fee: The first two hours are free; after that it is \$15.00 for each half hour;
- b) a copying fee: you will be required to pay:
  - 20 cents for each computer-printed or photocopied page;
  - 50 cents for each micro-printed page;
  - the actual cost of any other copying method; and
  - 20 cents a page for copies of your own personal information unless the total fee is less than \$10.00, in which case the copies are free. Note that if the total copying fee for this information exceeds \$10.00, you do not get any free copies;
- c) a computer programming and data processing fee consisting of:
  - for internal programming or data processing, \$10.00 for each fifteen minutes; and
  - for external programming or data processing, the actual cost incurred by the public body.

There are no fees for:

- making an access request;
- using the Access and Privacy Directory or for using any file list, file plan or

similar record used to identify, locate or describe records. If, however, the applicant requests a copy, there is a fee of 20 cents for each page; and

- regular mailing costs. If you request courier delivery you must pay the actual cost.

If the public body believes that search time will exceed two hours or that a computer or data processing program will have to be used, it will send you an estimate of the total fee before it begins any search on your behalf. If you do not accept the fees or modify your request to change the amount of the fees within 30 days, the body will assume you have abandoned your request and no further action will be taken. If you agree to the fee, you must include payment for the estimated amount. If the actual cost is less than the estimate, the difference will be refunded to you.

You may ask to have some or all of the fees waived. This request may be granted if the head of the public body is satisfied that:

- the fee would impose an unreasonable financial hardship on you; or
- you are requesting access to your own personal information and it would be reasonable and fair to waive the fee; or
- disclosing the information is in the public interest and relates to the environment or to public health or safety.

The public body must reply to your fee-waiver request in writing. If you are not satisfied with the response, you may complain to the Ombudsman.

### **HOW LONG WILL IT TAKE?**

The public body must make every reasonable effort to respond to your request within 30 days of receiving it. If your request is transferred to another public body, the transfer must be done within seven days and the new body must respond to you within 30 days of receiving your request.

A transfer to another body is only allowed when:

- the record is in the custody or under the control of the public body to which your request is being transferred; or
- the record was prepared by or for, or was first obtained by, the public body to which your request is being transferred.

A public body can extend the time limit for responses by up to 30 days or, with the Ombudsman's agreement, for a longer period. The time limit for responses may only be extended when:

- your request does not provide enough detail for the public body to identify the requested record;
- you have requested a large number of records and responding within 30 days would unreasonably interfere with the operations of the public body;
- the public body needs time to consult with a third party or another public body

- before deciding whether to grant access to a record; or
- a third party makes a complaint to the Ombudsman about a decision to grant access.

If the public body extends the time limit, it must inform you in writing, stating the reason, indicating when a response may be expected, and stating that a complaint about the extension may be made to the Ombudsman.

Failure to respond to a request within 30 days is considered a denial of access. You can complain to the Ombudsman about both denial of access and failure to respond on time. For more information, see *Appealing Access to Information Decisions in Manitoba*.

## **WHAT ARE MY OPTIONS REGARDING FORMAT?**

### **Copies v. originals**

You may have copies sent to you or you may view the originals. A public body may impose one format (copy or original) depending on considerations of length, condition, and form. In addition, a public body may provide information in a format other than the one requested if it would be simpler or cheaper to do so.

### **Language**

Records are generally provided in the language in which they were created. You may, however, request an explanation of the record in French or in English.

### **Alternative formats**

A public body is not required to provide records in alternative formats for the hearing or seeing impaired. It will nevertheless often try to accommodate such requests.

### **Electronic format**

If the record can be reproduced using the public body's normal equipment, a public body will provide you with an electronic copy. The body may refuse to provide an electronic copy if to do so would unreasonably interfere with its operations.

## **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. For more information, see *Appealing Access to Information Decisions in Manitoba*.