

A Review of The Freedom of Information and Protection of Privacy Act

2017

TELL US WHAT YOU THINK



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Minister's Message

One of the foundations of accountable government is transparency in the operation of public institutions. A right of access to the information that is created and collected by public bodies fosters transparency and trust in the institutions that serve Manitobans. At the same time, public sector organizations need to protect the personal information which they collect in order to fulfill their various mandates. The Freedom of Information and Protection of Privacy Act (FIPPA) and the Personal Health Information Act (PHIA) provide a framework for ensuring that these responsibilities are properly balanced and respected.

The acts contain a provision for legislative review to assess the effectiveness of these laws. This discussion document on FIPPA is offered to encourage discussion about access and privacy in today's world. My colleague, the Minister of Health, Seniors and Active Living, has issued a discussion document on the PHIA review process as well.

When reading this document, I hope that you will think about how FIPPA has worked in the past and consider the challenges of managing information and privacy in the future. I invite you to provide input to the review process to ensure that the legislation continues to serve the needs of Manitobans.

There are questions about the act and the administration of access and privacy practices provided for your consideration at the end of the document. I welcome your thoughts on these and any other ideas or suggestions you may have about this legislation.

Thank you for your interest.

Honourable Rochelle Squires
Minister of Sport, Culture and Heritage

Consultation Process

If you have views on the Freedom of Information and Protection of Privacy Act (FIPPA) or on any other aspect of access to information and protection of privacy in the Manitoba public sector, we would like to hear from you.

Send us a written submission

Written submissions may be sent by email, fax or regular mail to:

FIPPA Review
Information and Privacy Policy Secretariat
130 – 200 Vaughan Street
Winnipeg MB R3C 1T5
Email: fippareview@gov.mb.ca
Fax: 204-948-2008

For information regarding the FIPPA Review, please contact:

FIPPA Review
Telephone: 204-945-2523
Toll Free: 1-800-617-3588 (Manitoba)
Website: www.gov.mb.ca/fippareview
Email: fippareview@gov.mb.ca

Your Confidentiality

The Minister of Sport, Culture and Heritage is consulting with the public as part of the legislative review required by The Freedom of Information and Protection of Privacy Act. Any personal information, including health information, you provide as part of this consultation is collected in accordance with and subject to The Freedom of Information and Protection of Privacy Act and The Personal Health Information Act.

Any information you provide will be used to assist in carrying out the review, evaluating The Freedom of Information and Protection of Privacy Act and developing possible amendments. This may involve disclosing your comments to other review participants, institutions and interested parties, during and after the review process, through various means, including written reports and the Internet. In addition, following the completion of the review, copies of all submissions received for the purpose of the review will be made available to the public at the Legislative Library.

If you submit any information for the purposes of this review as a private citizen, your identifying information will be removed from your submission before it is made public in the Legislative Library. In addition, your personal identity (including your name) will not be shared without your consent with other review participants, institutions and interested parties during or after the review, though you may be contacted by a government representative for clarification on your submission.

However, please be aware that the identity of an organization, and the name of any individual that submits any information for the purposes of this review on behalf of an organization, will be made public at the Legislative Library and may be disclosed to other review participants, institutions and interested parties during and after the review process.

If you have any questions about the collection, use or disclosure of your personal information, please contact the FIPPA Review Office at the numbers and addresses noted above.

About FIPPA

Manitoba's Freedom of Information and Protection of Privacy Act (FIPPA) came into effect for the provincial government and the City of Winnipeg in 1998 and for other local public bodies in 2000. The Freedom of Information and Protection of Privacy Amendment Act was passed in 2008 and came into force in 2011. This act amended the Freedom of Information and Protection of Privacy Act. FIPPA deals with three broad areas:

- access to information
- protection of privacy
- compliance review

The access to information provisions in FIPPA are similar to those in the former Freedom of Information Act, which had been in effect since 1988. However, the provisions for handling and protecting personal information held by public bodies were new to Manitoba. By the mid-1990s, Manitobans, like other Canadians, wanted greater protection for the large amount of personal information held by governments and other public sector bodies. Personal information collected by public bodies under FIPPA cannot be used or disclosed without the consent of the individual the information is about, except in certain circumstances outlined in the act.

FIPPA applies to more than 340 public bodies. In addition to provincial government departments and agencies, it covers more than 300 local public bodies, including municipalities, school boards, colleges, universities, and regional health authorities.

Manitoba's Personal Health Information Act (PHIA) also protects personal health information. Like FIPPA, it applies to public bodies, such as government departments, government agencies and local public bodies. But PHIA also extends to health service providers such as doctors and nurses, as well as health care facilities and health care organizations.

The way personal information is handled by private sector organizations is regulated by the federal government's Personal Information Protection and Electronic Documents Act (PIPEDA). PIPEDA applies to the collection, use and disclosure of personal information by private sector organizations in the course of commercial activities.

The Manitoba government and other public bodies are committed to meeting the access and privacy requirements of FIPPA. Employees of public bodies are given training and resource materials to help them interpret the legislation and develop best practices.

People wanting to access records through FIPPA fill out an application that is sent to an access and privacy coordinator in the department, agency or local public body that holds the information. Whenever possible, the coordinators assist applicants by directing them to publications, answering questions, or referring them to other staff who can answer their questions outside of the formal FIPPA process. If the application is sent to the wrong area, the coordinators determine where the requested information is held and transfer the application to the appropriate public body.

Purposes of FIPPA:

- provides individuals with a right of access to records held by public bodies, including to their own personal information, subject to exceptions in the act
- provides individuals with the right to request corrections to their personal information
- regulates the collection, use, disclosure and protection of personal information by public bodies
- provides for an independent review of decisions made under FIPPA

Under section 9 of FIPPA, public bodies have a duty to assist applicants and are required to make every reasonable effort to respond openly, accurately and completely, without delay.

This discussion paper reviews Manitoba's experience with access and privacy legislation and pinpoints some current issues.

For additional information, including FIPPA annual reports and the full text of the statute, consult your local library, the FIPPA website at www.gov.mb.ca/fippa or the Manitoba Ombudsman's website at www.ombudsman.mb.ca/info/access-and-privacy-division.html. This discussion paper summarizes some sections of FIPPA but does not fully present the legislative provisions.

Access Experience

One of the objectives of access and privacy legislation is to promote openness, accountability and transparency in public administration. In addition to providing for this through the access to information components of FIPPA, the Manitoba government provides a large amount of information to citizens through various channels. Government departments, agencies and other public bodies strive to share important information about their programs and services in various ways. Public bodies offer timely and accurate information to the public through websites, publications, inquiry lines, information releases and other channels.

Increasingly, the public expects to find information through a simple online search. The Manitoba government is continuously working towards making more information and services available electronically. The availability of information and services online or through other electronic media complements the legislative right to access information.

Open Government and Proactive Disclosure

Through its website (manitoba.ca), the Manitoba government publishes ministers' office expenses annually, and out-of-province travel expenses quarterly, for each government department. Other open government initiatives include:

- monthly reporting on government contracts
- compensation of public sector employees
- payments to all corporations, firms, individuals and other governments in excess of \$5,000
- cabinet Orders-in-Council
- the statutes of Manitoba
- Hansard – the daily record of the proceedings of the Legislative Assembly
- the weekly listing of access to information requests received by government departments

Several departments also provide regular reporting on programs and services such as wait time information for healthcare services; information related to caseloads and funding for Child and Family Services agencies; and information on high school graduation rates.

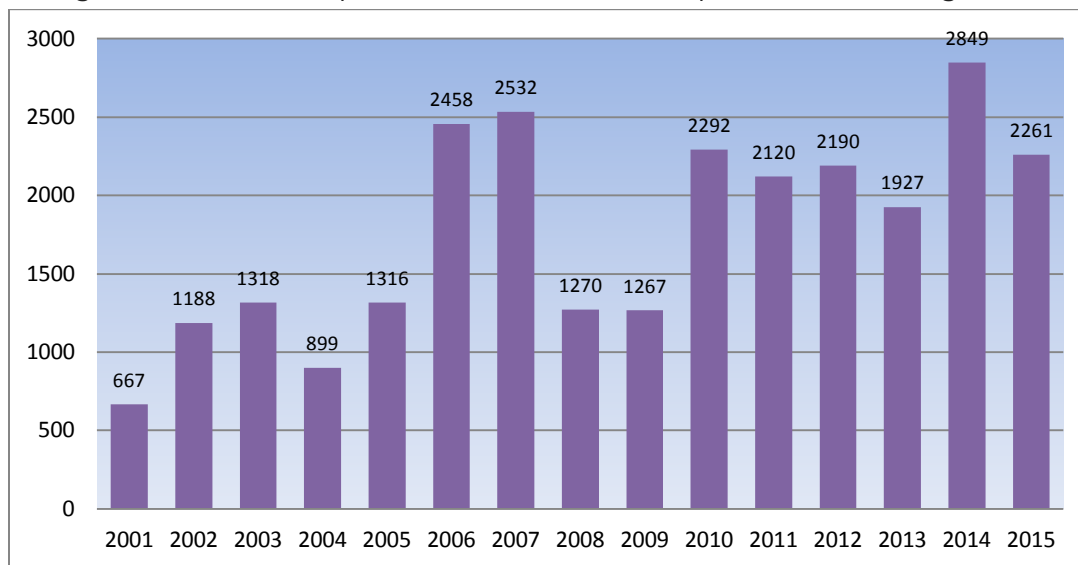
Public bodies continue to identify opportunities to provide greater transparency and accountability by providing such information to citizens on a proactive basis.

How many access requests are received?

Section 2 of FIPPA provides any person a right of access to records in the custody or under the control of public bodies. It also allows individuals a right of access to records containing information about themselves and to request corrections to those records. These rights are subject to limited exceptions under the act. Each year, the Manitoba government reports on FIPPA activity within government departments, agencies and local public bodies. These annual reports are available on the FIPPA website.

The number of requests for access to information has increased substantially since the introduction of the act in 1998, when government departments and agencies received a total of 444 requests. In the last five years, the average annual volume has exceeded 2,250 requests. Figure 1 shows the number of requests in each of the last 15 years.

Figure 1 - FIPPA Requests to Government Departments and Agencies

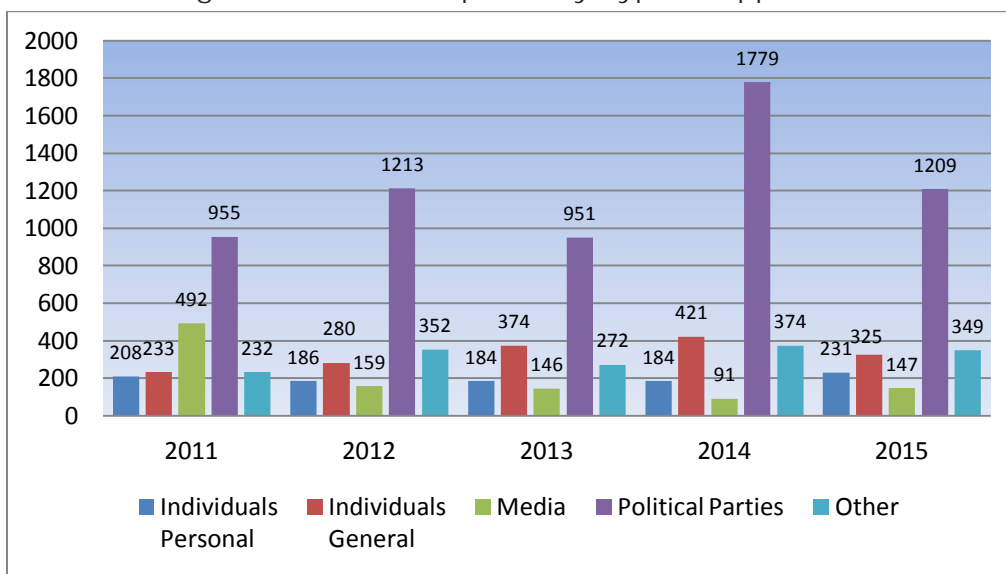


Municipalities and other local public bodies received a total of 2,045 applications in 2015 compared to 542 requests received 15 years ago.

Who requests access?

Any person may submit access requests for publicly held records. Applicant types typically include individuals, media outlets, political parties and other organizations such as businesses and public interest groups. Figure 2 shows the number of applications received from each source since 2011.

Figure 2 - FIPPA Requests by Type of Applicant



In the early years of the act, individuals seeking information of a general nature submitted the most applications for access. However, since 2010, political parties have been the most active applicant type to request records through FIPPA (7,585 requests), followed by individuals seeking general information (1,859 requests).

Who receives the most FIPPA applications?

Section 8 of FIPPA provides that applicants must submit their requests directly to the public body they believe has custody or control of the relevant records. Applicants are encouraged to first contact the public body's access and privacy coordinator to confirm that the organization holds the records they wish to access. The Information and Privacy Policy Secretariat also assists the public by guiding them through the access process and advising them of other information sources that may be of interest.

Larger public bodies usually receive the largest number of requests. Among government departments, Families; Health, Seniors and Active Living; Infrastructure; and Justice typically receive the most applications each year. In 2015, the leading recipients of access requests were the departments of Family Services (218 requests); Justice (196 requests); Infrastructure and Transportation (186 requests); Finance (165 requests); Health, Healthy Living and Seniors (163 requests); Labour and Immigration (162 requests); Jobs and the Economy (148 requests) and Conservation and Water Stewardship (135 requests).

Manitoba Hydro and Manitoba Public Insurance typically receive the largest number of access requests among government agencies. Among local public bodies, the City of Winnipeg receives the most, with 1,125 requests in 2015, an increase of more than 80 per cent over the last five years. The Winnipeg Regional Health Authority received 186 requests in 2015.

What is the response time under FIPPA?

There is a 30-day time limit for public bodies to respond to access requests. FIPPA permits extensions of that time limit for up to an additional 30 days in certain circumstances. This includes when a large number of records must be searched or when time is needed to consult with a third party or another public body before deciding whether to grant access. The Manitoba Ombudsman may authorize longer extensions in certain circumstances.

An average of 77 per cent of requests received by government departments and agencies in the past five years were completed within 30 days or within an extension authorized under the act. In 2015, the response rate for government departments and agencies was 70 per cent, lower than the long-term average. This decline may reflect an ongoing high volume of requests and a general trend toward requests for larger volumes of records.

The following table provides response rates for government departments and agencies in the past five years.

Table 1 - Response Rates

Year	Response Rate (within authorized timeframes)
2015	70%
2014	70%
2013	82%
2012	80%
2011	81%

In 2015, 95 per cent of requests received by local public bodies were completed within 30 days or within an extension authorized under the act.

How much access is provided?

In responding to an application under FIPPA, public bodies may grant access to all, some, or none of the records that the applicant has requested. Denial of access must be based on the exceptions to disclosure in the act. Some exceptions are mandatory, which means they **must** be applied. Other exceptions are discretionary and require the public body to determine if release of the information is appropriate. The exceptions to disclosure are set out in sections 17 to 32 of FIPPA.

In 2015, government departments and agencies granted full access to 35 per cent of the applications they received, granted partial access to 28 percent and denied access to 7 per cent. Of the remaining 30 per cent of applications, 26 per cent were for records that did not exist and 4 per cent were incomprehensible, abandoned or otherwise resolved.

In 2015, local public bodies granted full access to 36 per cent of the applications they received, granted partial access to 40 percent and denied access to 9 per cent. The remaining 15 percent were for records that did not exist or were otherwise resolved.

What exceptions to disclosure are applied?

The most commonly used exception to disclosure is section 17. Section 17 of FIPPA provides that the public body must refuse to disclose personal information to an applicant if the disclosure would be an **unreasonable invasion** of a third party's privacy. In 2015, this exception was used to deny, or partly deny, access to records requested in 377 applications to government departments and agencies.

Other exceptions to disclosure commonly applied in 2015 include:

- section 18 – third party business interests – 195 applications
- section 23 – advice to a public body – 175 applications
- section 28 – harmful to the economic interests of a public body – 75 applications
- section 20 – information provided in confidence by another government – 58 applications
- section 19 – cabinet confidences – 53 applications

How much do applicants pay?

All Canadian jurisdictions provide a fee structure that shares the costs of access between the person asking for information and the public body responding to the request. Usually the fee for the applicant is low compared to the total cost of responding to the request. The fee framework attempts to balance rights, responsibilities and costs in a reasonable way.

Sections 4 through 6 of the Access and Privacy Regulation establish fees for search and preparation of the records, as well as copying and computer processing.

In Manitoba, there is currently no fee for submitting a request. Two hours of search and preparation of records are also provided at no cost. This includes locating the records requested, preparing and redacting documents for release, and making copies.

A search and preparation fee may be assessed to the applicant for searches that are anticipated to exceed the two hours provided. The current search and preparation fee is \$15 per half hour. There is also provision for a charge of 20 cents per page for photocopying or printing. These rates were set when the act was proclaimed in 1998.

In 2015, fees collected by government departments and agencies for providing access to records under FIPPA totaled \$7,111, slightly higher than the average of \$4,154 over the last five years.

The fees paid to local public bodies totaled \$1,955. The City of Winnipeg, which received the most requests, reported the largest amount of fees collected with a total of \$1,204.

In most instances, public bodies respond to FIPPA requests and provide access decisions to applicants without charging a fee. The majority of charges are related to applications seeking substantial volumes of general information, as opposed to personal information.

Applicants may also request that public bodies waive fees under specific circumstances. Section 9 of the Access and Privacy Regulation sets out three conditions in which a fee waiver may be granted:

- if payment would impose an unreasonable financial hardship on the applicant
- if the applicant is requesting their own personal information and it would be reasonable and fair to waive the fees
- if the record relates to a matter of public interest concerning public health, public safety or the environment

In 2015, fee waivers totalling \$450 were granted by government departments and agencies. In 2014 waivers totalling \$675 were granted. No waivers were requested in the previous three years.

Fees in other jurisdictions

The fees set by each jurisdiction vary across the country. Half of jurisdictions charge a fee for applying for access to information. Canada, Nova Scotia, Ontario and Prince Edward Island charge \$5 per application, while Alberta, the Northwest Territories and Nunavut charge \$25 per application. All jurisdictions, except New Brunswick, currently have provisions for assessing fees for the search and preparation of records. Fees range from \$10 to \$30 per hour, chargeable in 30 minute increments. Each jurisdiction also specifies a certain amount of search and preparation time that is provided for free, ranging from 2 to 15 hours per request. There are also charges for copying documents and processing electronic reports.

In the spirit of open and accessible government, most governments exercise discretion in charging fees and limit them to instances where requests are extensive. In May of 2016, the Government of Canada issued a directive to federal departments and agencies to waive all fees with the exception of the \$5 application fee.

The trend is to provide access to one's own personal information at little or no cost. Access to your own personal information held by governments and public bodies is increasingly seen as vital to personal well-being and necessary for privacy protection.

How much time is spent responding to access requests?

When responding to FIPPA applications, staff of provincial government departments and other public bodies must first identify and locate records that are responsive to the request. Records are then reviewed to determine if any mandatory or discretionary exceptions to disclosure may apply. Applicants may be contacted to clarify the request and discuss possible sources of publicly available information.

Each public body is required to appoint staff to meet their responsibilities under the act. However, the frequency and volume of requests can vary during the course of a year and over time. Sudden influxes of requests may have the effect of impacting the delivery of public services. It is important that public bodies maintain the appropriate capacity to meet the principle of open access to information. This must be balanced with the demands of public services delivery, especially when numerous applications for access to general information are being made by one person or organization.

In 2015, government departments and agencies reported spending over 12,000 hours of staff time, at varying levels throughout their organizations, to fulfill their responsibilities under FIPPA. The calculation of time includes responding to FIPPA requests as well as Ombudsman's investigations. Departments and agencies also incurred \$59,648 in copying costs, computer charges and legal costs responding to FIPPA requests in 2015.

Every year, the cost of providing FIPPA services is significantly more than the nominal amount collected in fees to process applications. There may be merit in examining the current fee structure to balance the right of access while placing less of the burden of costs on the taxpayer.

FIPPA does not limit the number of requests an individual or organization may make to a public body at one time or during a year. Some individuals and organizations submit many requests each year, sometimes even simultaneously. In 2006 and 2007, one individual submitted more than 3,000 requests to the departments of Conservation and Water Stewardship. Considerable time and expense is incurred in dealing with these types of applications.

Exceptions to Disclosure

Across Canada, access to information legislation recognizes that an absolute rule of openness to all records of a public body could prevent or hinder that organization's ability to meet its responsibilities effectively and protect the privacy of third parties. For this reason, there are exceptions to the general principle of public access to information.

Mandatory Exceptions to Disclosure

- unreasonable invasion of a third party's privacy
- harm to a third party's business interests
- cabinet confidences less than 20 years old
- information provided in confidence by another government
- law enforcement information which federal law makes an offence to disclose
- solicitor-client privilege of a person other than a public body

Discretionary Exceptions to Disclosure

- harm to intergovernmental relations
- local public body confidences
- advice to a public body
- individual or public safety
- harm to law enforcement or legal proceedings
- security of property
- solicitor-client privilege of the public body
- harm to the economic or other interests of the public body
- testing procedures, tests and audits
- confidential evaluations about the applicant
- information which could damage heritage resources
- information that will be available to the public

Subsection 7(2) of FIPPA requires, when reasonable, severing protected information from a record in order for an applicant to access as much of a record as possible. The act of severing usually involves redacting information falling under an exception to disclosure from a record while leaving the remainder of the record intact and then preparing a copy of that record for the applicant.

In responding to each application for access, a public body must determine if there are any exceptions to disclosure that might apply to the requested records. The mandatory exceptions, such as personal information about another person, **must** be applied in each case.

There is a long-established tradition in the British and Canadian parliamentary system of cabinet confidentiality. As a result, cabinet records are subject to a mandatory exception in access legislation. Under Manitoba's FIPPA, cabinet records are closed for 20 years unless the cabinet for which they were created agrees to allow access. Prior to the 2011 amendment to FIPPA, cabinet records were closed for 30 years. This timeframe was shortened to make Manitoba's legislation comparable to other jurisdictions.

Most exceptions in FIPPA are discretionary, which means that a public body must consider the circumstances to decide if it is appropriate to release the requested information.

When a public body uses discretionary exceptions, a number of factors must be taken into consideration. At times, disclosure of information may seem to be in the interest of an individual or the general public, but from another perspective, it may be harmful—and sometimes even dangerous—to release that information.

Some of the most challenging discretionary exceptions to apply are those that fall under the heading “advice to a public body”. The exceptions listed under this heading protect the advisory and deliberative processes within government and other public bodies. The requested records often deal with current issues and decisions. All governments with access legislation must find a workable approach to balance recognizing ministerial responsibility in the development of policy and the operations of government under the principles of access.

Protecting Personal Information

Governments and other public bodies hold significant amounts of personal information about individuals. A major objective of FIPPA is to ensure that Manitoba public bodies collect and handle personal information responsibly to protect personal privacy.

In FIPPA, personal information is defined as recorded information about an identifiable individual, including information such as name, address, age, gender, sexual orientation, marital status, ethnic origin, religion, personal health information, hereditary characteristics, political activity, education, employment, financial circumstances, criminal history and an identifying number assigned to the individual.

Part 3 of FIPPA requires that public bodies follow standards and procedures in their day-to-day management of the personal information in their custody or control. The legislation is based on the principles of fair information practices that are accepted by many governments and businesses around the world. While fair information practices may be articulated differently from one country or organization to another, there are common minimum standards.

Canada's privacy legislation, including Manitoba's FIPPA and PHIA, is organized around an internationally recognized global privacy standard. This standard includes ten privacy principles.

Privacy Principles

1. Consent

The individual's free and specific consent is required for the collection, use or disclosure of personal information, except where otherwise permitted by law. The greater the sensitivity of the data, the clearer and more specific the quality of the consent required. Consent may be withdrawn at a later date.

2. Accountability

Collection of personal information entails a duty of care for its protection. Responsibility for all privacy related policies and procedures shall be documented and communicated as appropriate, and assigned to a specified individual within the organization. When transferring personal information to third parties, organizations shall seek equivalent privacy protection through contractual or other means.

3. Purposes

An organization shall specify the purposes for which personal information is collected, used, retained and disclosed, and communicate these purposes to the individual at or before the time the information is collected. Specified purposes should be clear, limited and relevant to the circumstances.

4. Collection Limitation

The collection of personal information must be fair, lawful and limited to that which is necessary for the specified purpose.

Data Minimization -- The collection of personal information should be kept to a strict minimum. The design of programs, information technologies, and systems should begin with non-identifiable interactions and transactions as the default. Wherever possible, identifiability, observability, and linkability of personal information should be minimized.

5. Use, Retention, and Disclosure Limitation

Organizations shall limit the use, retention, and disclosure of personal information to the relevant purposes identified to the individual, except where otherwise required by law. Personal information shall be retained only as long as necessary to fulfill the stated purposes, and then securely destroyed.

6. Accuracy

Organizations shall ensure that personal information is as accurate, complete, and up-to-date as is necessary to fulfill the specified purposes.

7. Security

Organizations must assume responsibility for the security of personal information throughout its lifecycle consistent with the international standards that have been developed by recognized standards development organizations. Personal information shall be protected by reasonable safeguards, appropriate to the sensitivity of the information (including physical, technical and administrative means).

8. Openness

Openness and transparency are key to accountability. Information about the policies and practices relating to the management of personal information shall be made readily available to individuals.

9. Access

Individuals shall be provided access to their personal information and informed of its uses and disclosures. Individuals shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

10. Compliance

Organizations must establish complaint and redress mechanisms, and communicate information about them to the public, including how to access the next level of appeal. Organizations shall take the necessary steps to monitor, evaluate, and verify compliance with their privacy policies and procedures.

Since FIPPA came into effect, Manitoba government departments and other public bodies have been reviewing the personal information they gather, how it is used and who has access to it. Public bodies are responsible for ensuring personal information is handled in compliance with the privacy protection principles of FIPPA.

Identifying the purposes for which personal information is collected is an important part of protecting privacy. As such, FIPPA requires public bodies to inform individuals about the legal authority and purpose for collecting their personal information. This notification is often readily available on websites, forms, posters or pamphlets. To further sustain public confidence that personal information is being managed responsibly, the notices often include additional information such as how the information will be used and to whom it will be disclosed.

Educational initiatives are available to public bodies that encourage and assist in the review of personal information collected, used and disclosed. The knowledge gained from these initiatives allows public bodies to review their practices and implement changes to further protect privacy.

One such initiative is the government's privacy impact assessment process. This privacy impact assessment process is designed to help departments and agencies determine whether new technologies, information systems and initiatives or proposed programs and policies are compliant with privacy legislation and meet basic privacy requirements.

The Manitoba Ombudsman also has a Privacy Impact Assessment Tool to assist other Manitoba public bodies that may not have an assessment process of their own. This tool can be found at: www.ombudsman.mb.ca/info/privacy-impact-assessment.html

Some Canadian jurisdictions have introduced compulsory privacy impact assessment processes. While not compulsory by law in Manitoba, some public bodies have incorporated the need for a privacy impact assessment into their program development processes as a matter of due diligence.

Also inherent in FIPPA is a formal process for individuals to request correction of their personal information on record with a public body. In the spirit of FIPPA and the Fair Information Practices, this formal process is not typically used by individuals since public bodies often handle requests for correction as a matter of natural course in the administration of their programs. In 2015, there were three requests

for correction of personal information made formally under FIPPA; in each of 2013 and 2014, there were nine requests.

The Office of the Ombudsman is the oversight body for FIPPA. Individuals who believe their personal information has been collected, used or disclosed in violation of the privacy protection provisions of FIPPA may complain to the Office of the Ombudsman.

Online Services and Privacy

Citizens expect to be able to access government information and services easily and conveniently. The Manitoba government website enables people to find information on virtually all government programs and interact with or apply for an increasing array of services at all times.

This inevitably changes the way services are delivered and the way in which personal information is handled. Whereas personal information was once used primarily by the specific office that collected it, there are now opportunities to streamline and improve service delivery by integrating programs and services from other areas of government.

Under an enhanced service delivery model, government bodies may need to share personal information in new ways to deliver services. In 2011, FIPPA was amended to allow the disclosure of personal information to an officer or employee of a public body, for the purpose of delivering a common or integrated service, program or activity, if the information is necessary to deliver the service, program or activity and the officer or employee to whom the information is disclosed needs the information to carry out his or her responsibilities.

Digital technology enables the business of government to be carried out more efficiently with the goal of improving services to citizens. A current development in the use of electronic data involves leveraging substantial amounts of data from various repositories and analyzing correlations, patterns and trends to inform design of products, services and programs, and improve the process of decision making. This practice of data analytics, sometimes called data mining or Big Data, is widely used in the information technology and other sectors of private industry.

The major challenge in pursuing such an approach in the public sector is finding a balance between protecting individual privacy and meeting wider public needs. While data analytics can be undertaken using no personal information, or even de-identified personal information, the practice could potentially lead to findings with a level of precision that would effectively identify individuals. Protection of privacy must be carefully considered in this context.

Similar issues are part of the ongoing national debate about security and the development of identification cards (“smart” cards) that include, for example, biometric personal data that can be read by retinal scanning devices. There appear to be differences of opinion among the Canadian public regarding how the competing goals of security, convenience, efficiency and privacy can all be met.

Complaints under FIPPA

All access to information and privacy laws in Canada have a process for reviewing complaints about the way access requests are handled or about misuse and unauthorized handling of personal information. While the responsibility varies among Canadian jurisdictions, each has an independent office to ensure that public bodies properly interpret and apply the legislation.

Manitoba has given the responsibility for the oversight of FIPPA to the Office of the Ombudsman, which has similar responsibilities under the Personal Health Information Act (PHIA). The Ombudsman is an independent officer of the Legislative Assembly of Manitoba. The Ombudsman has the authority to comment publicly on any issue related to access and privacy and the office reports annually to the Legislature.

The Ombudsman's website can be found at: www.ombudsman.mb.ca

The Ombudsman's broad powers of investigation, auditing, monitoring, and commenting on access and privacy issues are set out in Parts 4 and 5 of FIPPA. The Ombudsman's review mechanism is similar in scope and power to those of the Office of the Privacy Commissioner of Canada and the commissioners in Saskatchewan, Nova Scotia, Yukon and the Northwest Territories.

Manitoba's choice of the Ombudsman model is built upon the capacity of an office that has been in operation since 1970. The Ombudsman has the power under FIPPA to make recommendations to public bodies. In keeping with the principle of ministerial responsibility in parliamentary government, final decision making on access and privacy in Manitoba remains within the public body.

Amendments to FIPPA and PHIA proclaimed on January 1, 2011, establish the Information and Privacy Adjudicator as an officer of the Legislative Assembly. Where a public body has not acted on the recommendations of the Ombudsman in an access or privacy complaint, the Ombudsman may refer the matter to the Information and Privacy Adjudicator for review. At the request of the Ombudsman, the Adjudicator must review a decision, an act or a failure to act of the head of a public body respecting access to information or the protection of privacy. The Adjudicator has the power to make an order against a public body that has not acted on the Ombudsman's recommendations. For example, the Adjudicator could order a public body to release information that has been withheld from an applicant requesting access, or could order a public body to change the way it collects, uses or discloses personal information.

FIPPA also provides applicants who feel they have been improperly denied access to a record with the right to appeal to the Manitoba Court of Queen's Bench, provided that the Ombudsman has investigated the complaint. This right of appeal to court is an important part of the independent oversight mechanisms in FIPPA.

What Do You Think?

Manitobans' observations and experiences, as well as their general ideas about access and privacy, helped shape the development of the Freedom of Information and Protection of Privacy Amendment Act, which was proclaimed in 2011. Once again, the views and experiences of Manitobans are being sought to help shape this important legislation. Your response to this discussion paper and any other issues that you wish to raise will assist government in the process of reviewing and updating the act.

Act and Regulation

1. FIPPA provides a right of access to records with limited exceptions. The legislation has mandatory and discretionary exceptions that may limit access to information as set out in sections 17 to 32 of FIPPA. Do you have any specific recommendations or comments about these provisions?
2. FIPPA provides for protection of personal information held by the Manitoba government and by local public bodies. Are there any specific circumstances where you believe different uses or disclosures should be allowed under FIPPA?
3. Are the provisions of FIPPA appropriate for local public bodies – such as municipalities, school divisions, colleges, universities and regional health authorities?
4. Some government departments and other public bodies experience frequent, concurrent or very broad requests which must be managed along with other service delivery requirements. To date, public bodies have maintained a high standard for responding to requests within the legislated time frames and with minimal cost to the applicant. To meet their diverse public service commitments, should public bodies have greater flexibility:
 - in response times and extensions – for example, in emergency situations which affect public health and safety?
 - to charge fees to meet the demand of responding to voluminous requests for access to records?
 - to charge an application fee for multiple or concurrent requests?
5. The Office of the Ombudsman is independent from the Manitoba government and handles access and privacy complaints relating to FIPPA and PHIA, as well as under the Ombudsman Act and other legislations. Section 59 to 74 of FIPPA and section 10 of the Access and Privacy Regulation outline how complaints are handled under the act. Do you have any suggestions for changes to the current complaint process?

Transparency and Proactive Disclosure

6. As part of its commitment to greater transparency and accountability, the Manitoba government is releasing certain types of information on the government website on a regular and proactive basis. This includes: ministerial mandate letters, legislative assistant mandate letters, crown services mandate letters, Orders-in-Council, ministerial expenses, contract disclosure information and weekly listing of access requests received by government departments. Several departments also provide statistical information related to their operations. What other types of information of public interest would you like to see routinely disclosed? Please explain.

Technological Considerations

7. What has been your experience accessing information under FIPPA? Have you tried other ways to obtain access before using FIPPA? If so, what was your experience?
8. Like other governments, the Manitoba government and other public bodies are delivering more information and services through websites. Can you suggest which types of information and services you would expect to see delivered online?
9. Which method do you prefer for communicating with government (e.g., online application, email, telephone, regular mail, fax, in person) and for receiving records (e.g., email, mail, in person)?
10. To protect your privacy, what safeguards do you feel should be part of these initiatives?

Your views are important. There will be opportunities for public presentations as part of the FIPPA and PHIA review process.

For information about the public hearings or other matters related to access and privacy, please contact:

FIPPA Review

Telephone: 204-945-2523

Manitoba Toll Free: 1-800-617-3588

Website: www.gov.mb.ca/fippareview

Email: fippareview@gov.mb.ca

Appendix A:

Concepts and Terminology

This appendix has been developed to help readers understand concepts and terms that appear in FIPPA and throughout this document.

Access to Information - Part 2 of FIPPA sets out the general right of access by any person to records in the custody or under the control of public bodies. The limited and specific exclusions and exceptions to disclosure set out in FIPPA, and a small number of other statutes that state they prevail over FIPPA, provide the only basis for refusing access to records.

Information Privacy - Part 3 of FIPPA deals with 'information privacy'. The provisions protect the privacy of an individual's personal information by imposing obligations on public bodies respecting the collection, accuracy, correction, retention, destruction, protection, use and disclosure of personal information in their custody or under their control.

Personal Information - Personal information is defined in FIPPA as recorded information about an identifiable individual, including:

- the individual's name
- the individual's home address, or home telephone, facsimile or e-mail number
- information about the individual's age, sex, sexual orientation, marital or family status
- information about the individual's ancestry, race, colour, nationality, or national or ethnic origin
- information about the individual's religion or creed, or religious belief, association or activity
- personal health information about the individual the individual's blood type, fingerprints or other hereditary characteristics
- information about the individual's political belief, association or activity
- information about the individual's education, employment or occupation, or educational, employment or occupational history
- information about the individual's source of income or financial circumstances, activities or history
- information about the individual's criminal history, including regulatory offences
- the individual's own personal views or opinions, except if they are about another person, the views or opinions expressed about the individual by another person
- an identifying number, symbol or other particular assigned to the individual.

Public Bodies - Under FIPPA public bodies have statutory duties with respect to access to information and protection of privacy. The definition of public body in subsection 1(1) of FIPPA sets out the bodies that fall under FIPPA which includes:

- a department,
- a government agency,
- the Executive Council Office,
- the office of a minister, and
- a local public body,

FIPPA sets out three kinds of local public bodies:

- educational bodies,
- health care bodies, and
- local government bodies.

The definition of public body does not include:

- the office of a Member of the Legislative Assembly who is not a minister,
- the office of an officer of the Legislative Assembly, or
- the Court of Appeal, the Court of Queen's Bench or the Provincial Court.

Record / Recorded Information - means a record of information in any form, and includes information that is 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.