

An overhead photograph of four people sitting around a white circular table in a meeting. The people are looking at documents and laptops. The image is semi-transparent, allowing the text to be overlaid. A solid green horizontal bar is at the bottom of the slide.

MANITOBA OMBUDSMAN AND THE MUNICIPAL COMPLAINT PROCESS

PRESENTATION TO MANITOBA BAR ASSOCIATION
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Topics For Discussion

- Mission and mandate of the ombudsman in Manitoba
- Manitoba Ombudsman's work with municipalities:
 - complaint handling
 - investigations
 - guidance documents
 - education
- Best practices for municipalities
- Benefits of the work we do

The Ombudsman in Manitoba

- An independent office of the Legislative Assembly of Manitoba established to support and promote principles of fairness, equity and accountability
- Broad mandate, jurisdiction and investigative authority
- Manitoba Ombudsman
 - Must be non-partisan and impartial
 - appointed for a 6 year term
 - 36 staff
 - Offices in Winnipeg, Brandon and Thompson

Manitoba Ombudsman's Mission and Mandate

Mission – to promote and foster openness, transparency, fairness, accountability, and respect for privacy in the design and delivery of public services.

Broad mandate established under:

- The Ombudsman Act (1970)
- The Personal Health Information Act (1997)
- The Freedom of Information and Protection of Privacy Act (1998)
- The Public Interest Disclosure (Whistleblower Protection) Act (2007)

In Manitoba the ombudsman fulfills multiple roles:

- ombudsman
- information and privacy commissioner
- public interest disclosure commissioner

Access and Privacy

The Freedom of Information and Protection of Privacy Act (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

The Personal Health Information Act (PHIA) provides people with a right of access to their personal health information held by trustees and requires trustees to protect the privacy of personal health information contained in their records.

FIPPA Overview

The Freedom of Information and Protection of Privacy Act applies to most records held by or under the control of a public body. A record includes any information that is written, photographed, recorded or stored.

- Access is the rule, however, there are circumstances in which a public body can withhold information or can choose to withhold information.
- If a municipality chooses to withhold information, it must explain why it is doing so and refer to the specific provision of FIPPA on which its decision is based.
- A response to an access request must be provided within 45 days, unless the time period for responding is extended for a reason outlined in FIPPA.
- FIPPA also applies to the collection, use and disclosure of personal information.

Common Access and Privacy Complaints

- No response to application in 30 days (PHIA) and 45 Days (FIPPA)*
- Denial of access to all or parts of records*
- Request for correction of personal or personal health information was denied
- Refusal to waive part or all of fees
- Request was disregarded
- Personal information or personal health information was collected, used or disclosed inappropriately*

* most common for municipalities

Public Interest Disclosure (Whistleblower)

The Public Interest Disclosure (Whistleblower Protection) Act (PIDA) facilitates the disclosure and investigation of significant and serious matters in or relating to the public service while protecting those who make disclosures.

Brandon and Winnipeg only

- Reviewing disclosures of wrongdoing and complaints about reprisal
- Wrongdoing and reprisal investigations
- Reviewing a public body's PIDA procedures

Ombudsman Act

The Ombudsman Act sets out the authority/mandate to investigate “matters of administration.”

In practical terms a matter of administration could be:

- A failure to fulfill a statutory mandate or obligation
- A procedure or decision that is inconsistent with or contrary to a practice or policy
- An action or decision that is unfair

Elements of Fairness

Fair **process** is about the way a decision is made and the steps that are taken in making that decision.

Fair **decision** is about the decision itself, or the outcome or result.

Fair **service** is about how people are treated.



Early Resolution: Complaint Handling

Many complaints are addressed through an early resolution process by our intake staff:

- Make referrals
- Explain government process/policy
- Explain review or appeal mechanisms
- Attempt informal resolution
 - We look for simple, sensible solutions to problems, usually without having to resort to formal investigations.

Municipal Complaints

Commonly complained about issues:

- Bylaw enforcement and administrative fairness principles
- Conflict of interest / apprehension of bias by decision makers
- Tendering and procurement
- Open vs closed meetings

The more contact a department, agency or municipality has with the public, the higher the potential for complaints.

As the most local level of government, municipalities have a lot of contact with citizens.

Investigations

Formal investigations – individual investigations or clusters with the same complaint

- Involves review of records and files
- Interviews and site visits
- Written report with findings
- Recommendations

Ombudsman authority to initiate ‘own initiative’ investigations into systemic matters.

- Considerations: Inquiry/complaint volume or frequency, impact of issue, matter of public interest, vulnerability of those affected

Recommendations

Reports to investigations are provided and where there is no finding of maladministration but include suggestions for administrative improvement

When the ombudsman finds that a complaint (or some aspect of a complaint) is justified, she can recommend a remedy.

- A decision be reconsidered, cancelled or varied
- A practice be changed or reviewed
- Reasons for a decision be given
- An error or omission be corrected
- Any other action

Municipalities will be asked to respond within a specified time frame.

Best Practices for Municipalities – based on our work

Reasons – take time to explain decisions to help reduce perceptions that decisions are arbitrary or unfair.

Communicate – be proactive, and support proactive disclosure and use FAQs and publicly accessible tools to explain matters.

Documents – provide easy access to bylaws and policies.

Put it in writing – develop written policies, standard procedures and practices. This helps to ensure actions of government are consistent.

Go public – hold public meetings as needed; not just when required by law. Sometimes issues arise where it's helpful to gather the community together to discuss.

Best Practices, continued

Handling access requests and complaints

- get it in writing
- designate a staff member to handle complaints (access coordinator)
- learn rules under legislation, keep complaint file that documents receipt of complaint, response timeline, record of reasons for decisions and the outcome.
- respond to complaints from place of fact and policy

Seek advice – consult with legal counsel, AMM & other municipalities, the MB Information & Privacy Policy Secretariat, Manitoba Ombudsman

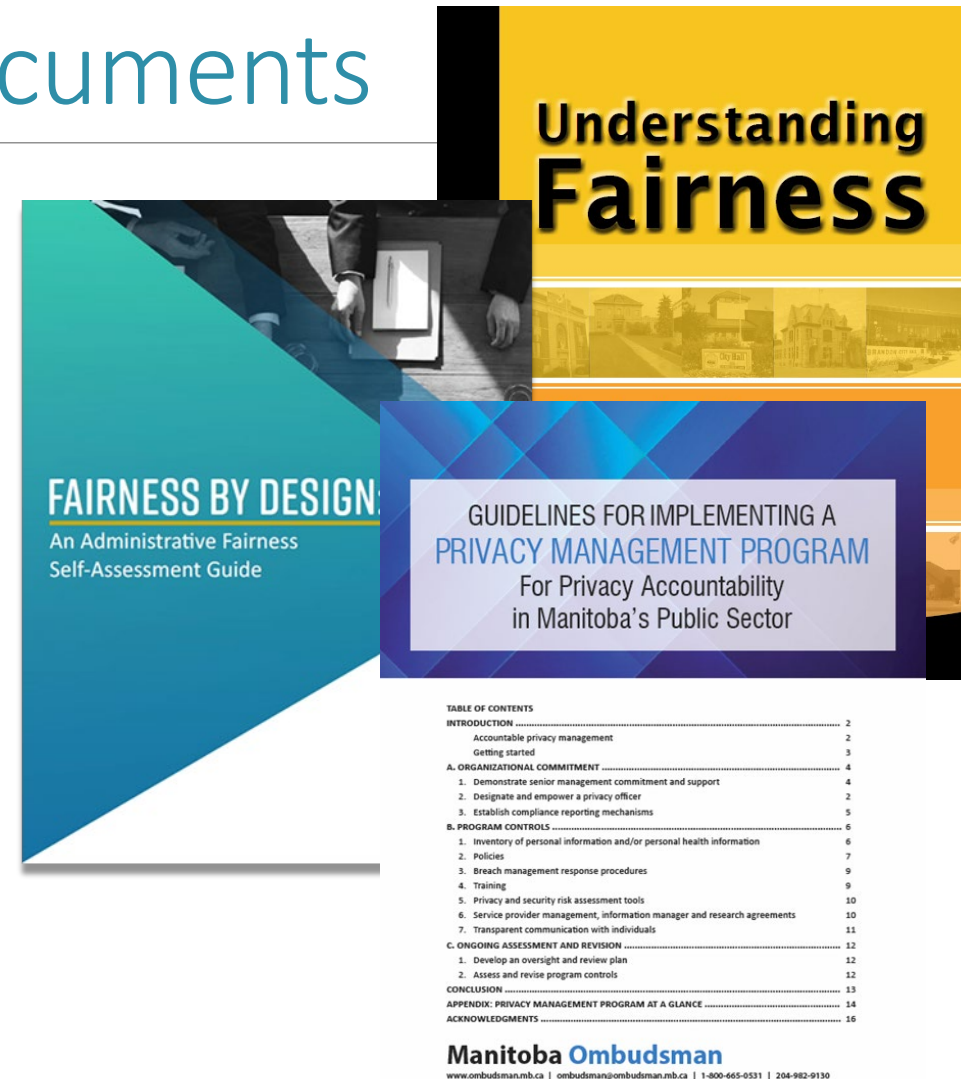
Ways We Help: Guidance Documents

Fairness by Design:

- can help to define a problem or concern more clearly, making it easier to discuss and to resolve.
- can help organizations design and deliver programs and services that are fair and reasonable.

Guidelines for Implementing a Privacy Management Program:

- Can help to implement an effective, accountable and transparent privacy management program.



Ways We Help: Other Resources

Resources available from Manitoba Ombudsman:

- Practice notes on various access and privacy issues
- Investigations, audits and special reports and with recommendations
- Annual reports with case summaries and statistics
- Mandatory privacy breach reporting guidance FIPPA/PHIA
- Informal consultations with municipalities to provide guidance on challenging access and privacy issues, fairness best practices and PIDA procedures

Ways We Help: Education

We are available for:

- Meetings with council and administration
- In-person or online presentations on various topics:
 - About the ombudsman
 - Fairness by Design
 - Privacy management programs
 - “Brown bag talks” on access and privacy matters, for example, talks about responding to privacy breaches or documenting the access process
 - Other sessions tailored to the needs of municipalities

Benefits of Ombudsman Involvement

Our office can provide an opportunity to:

- Give citizens an avenue to express their concerns
- Revisit an issue with fresh and impartial eyes
- Communicate a municipality's decisions and actions in an open and transparent way
- Help municipalities improve policies, procedures or practices
- Increase compliance with access and privacy requirements
- Increase transparency, openness, accountability

Questions?

For more information:

- www.ombudsman.mb.ca
- ombudsman@ombudsman.mb.ca
- 1-800-665-0531 or 204-982-9130
- Social media:
 - Twitter: @MBOmbudsman
 - Facebook: fb.com/manitobaombudsman