

Chapter **1**

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# PRINCIPLES, HISTORY & PURPOSES OF FIPPA

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## PRINCIPLES OF ACCESS AND PRIVACY LEGISLATION

Manitoba's Freedom of Information and Protection of Privacy Act ([FIPPA](#)) is both:

- an access to information statute (Part 2 – Access to Information); and
- an information privacy statute (Part 3 – Protection of Privacy).

### ■ Access to Information Legislation

Part 2 of [FIPPA](#) – Access to Information – is access to information legislation.

The Supreme Court of Canada has described the purpose of access to information legislation as follows:

*The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.<sup>1</sup>*

The Supreme Court of Canada has also recognized that the right of access to information held by public institutions must be subject to limits:

*Access to information in the hands of public institutions can increase transparency in government, contribute to an informed public, and enhance an open and democratic*

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<sup>1</sup> [Dagg v. Canada \(Minister of Finance\)](#), [1997] 2 S.C.R. 403 (Supreme Court of Canada) para. 61.

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*society. Some information in the hands of those institutions is, however, entitled to protection in order to prevent the impairment of those very principles and promote good governance.<sup>2</sup>*

The balance between openness and confidentiality is achieved by excepting certain categories of records<sup>3</sup> from access. The practice of severing information, which involves removing information that falls within an exception to disclosure from a copy of the record to be released, provides a way of disclosing as much information as possible while maintaining necessary confidentiality.

To ensure public institutions respect the right of access to information, access legislation provides for the independent review of decisions about access.

### ■ Information Privacy Legislation

Part 3 of [FIPPA](#) – Protection of Privacy – is information privacy legislation.

The protection of privacy is a fundamental value in modern, democratic states. Information privacy deals with a particular aspect of privacy – privacy related to information about an individual. It recognizes that personal information about an individual is, in a fundamental way, the individual's own, and that they should have some right to control this information – to determine when, how and to what extent it is communicated to others.

As the Supreme Court of Canada has stated:

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<sup>2</sup> [Ontario \(Public Safety and Security\) v. Criminal Lawyers' Association](#), 2010 SCC 23 (Supreme Court of Canada), para. 1.

<sup>3</sup> In access to information legislation, the term record is usually given a broad meaning – a record of information in any form. Record is defined in subsection 1(1) of [FIPPA](#); this definition is discussed in chapter 2, under *Records that Fall under FIPPA*.

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*Finally, there is privacy in relation to information. This too is based on the notion of the dignity and integrity of the individual. As the Task Force<sup>4</sup> put it: "This notion of privacy derives from the assumption that all information about a person is in a fundamental way his own, for him to communicate or retain for himself as he sees fit".<sup>5</sup>*

Information privacy legislation:

- (i) sets out rules governing the collection, use, disclosure, retention and destruction of personal information

In setting out these rules, the legislation must balance the right of individuals to privacy of and control over their personal information and the legitimate need of government institutions and other organizations to collect, use and disclose personal information (for example, to provide services or health care to the individual, to protect the public or enforce laws).

- (ii) provides individuals with a right of access to, and the right to request correction of, their personal information
- (iii) provides for independent review of the decisions of government institutions and organizations about personal information

The privacy principles in information privacy legislation flow from the eight international fair information practices issued in the 1980s by the International Organization for Economic Cooperation and Development (known as the OECD Privacy Guidelines).<sup>6</sup> These eight privacy principles are:

- collection limitation

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<sup>4</sup> From *Privacy and Computers*, the Report of the Task Force established by the federal Departments of Communications and of Justice in 1972.

<sup>5</sup> [\*Dagg v. Canada \(Minister of Finance\)\*](#), [1997] 2 S.C.R. 403 (Supreme Court of Canada), para. 67 (quoting from the Supreme Court decision in *R. v. Dyment*).

<sup>6</sup> Canada became a signatory to the OECD Privacy Guidelines in 1984.

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- data quality
- purpose specification
- use limitation
- security safeguards
- openness
- individual participation
- accountability

In November 2006, a Global Privacy Standard – a harmonization of privacy principles into a single set of fair information practices – was adopted at the International Data Protection Commissioners Conference. Canadian information privacy legislation – including Manitoba's [FIPPA](#) and Manitoba's Personal Health Information Act ([PHIA](#)) – reflects, and is organized around, these 10 privacy principles:

- consent
- accountability
- identifying purposes
- collection limitation
- use, retention and disclosure limitation
- accuracy
- security
- openness
- access to, and correcting one's own personal information
- compliance<sup>7</sup>

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<sup>7</sup> These privacy principles are discussed in more detail in chapter 6 of this manual.

### HISTORY OF FIPPA

#### ■ Manitoba's Freedom of Information Act

Manitoba has had access to government information legislation since The Freedom of Information Act was proclaimed in 1988.<sup>8</sup> That act allowed members of the public to access records held by the Manitoba government and government agencies, subject to certain exemptions. The Manitoba ombudsman and the Court of Queen's Bench served as the review and appeal mechanisms for access to information decisions.

The Freedom of Information Act provided limited protection for personal information by treating third party personal information as an exemption to disclosure. But it lacked a full scheme protecting all personal information collected, used and disclosed by the government. That is, The Freedom of Information Act was an access to information statute only; it was not an information privacy statute. Also, the access rights in that act were limited to records held by Manitoba government departments and Crown agencies. It did not apply to other public bodies in the province, such as municipalities, public schools or regional health authorities.

#### ■ Development and Enactment of FIPPA

[FIPPA](#) was drafted after a public consultation process and extensive research on similar legislation in other Canadian jurisdictions and elsewhere. A Discussion Paper titled *Access to Information and Privacy Protection for Manitoba* was distributed in May 1996, to which the public was invited to respond. Numerous individuals, organizations and government departments made oral and written submissions about new access and privacy legislation.

[FIPPA](#) was introduced in the Manitoba Legislature on June 4, 1997, by the Minister of Culture, Heritage and Citizenship and was passed on June 27,

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<sup>8</sup> *The Freedom of Information Act* was passed in 1985 and came into effect in 1988. It was replaced by [FIPPA](#).

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1997. It was proclaimed in effect for Manitoba government departments and government agencies on May 4, 1998, and for the City of Winnipeg on Aug. 31, 1998. [FIPPA](#) was extended to other local public bodies, such as school divisions, other municipalities and regional health authorities, on April 3, 2000.

### ■ Statutory Review of and Amendments to FIPPA

Sec. 98 of [FIPPA](#) required that, within five years of its coming into force, the minister responsible for [FIPPA](#) undertakes a comprehensive review of the act involving public representations, and that the minister submits a report about the review to the Legislative Assembly.

Since 1988, the minister responsible has undertaken two statutory reviews of the act. The first statutory review began in 2000, while the second began in 2017.

#### **First Statutory Review of FIPPA**

In May 2000, the Minister of Culture, Heritage and Tourism announced the launch of the legislative review of [FIPPA](#). The review of [FIPPA](#) was coordinated with the review of [PHIA](#). In 2003, there were preliminary consultations with local public bodies. More than 374 municipalities, school divisions, regional health authorities and other public bodies were invited to share their experiences and recommendations to improve the legislation.

Public consultations began in February 2004. A discussion paper about *FIPPA – Tell Us What You Think* – was posted online and Manitobans could respond with their views. In April and May 2004, public hearings were held in Winnipeg, Brandon and Thompson.

On May 31, 2004, the Minister of Culture, Heritage and Tourism tabled the *Report on Statutory Review* in the Legislative Assembly. This report resulted in the amendments to [FIPPA](#) discussed below.

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### Amendments to FIPPA

On May 1, 2008, the Minister of Culture, Heritage, Tourism and Sport tabled [Bill 31](#), and [The Freedom of Information and Protection of Privacy Amendment Act, S.M. 2008 c.40](#) was passed on Oct. 9, 2008. This act amended certain provisions of [FIPPA](#) and was in effect as of Jan. 1, 2011.

The main changes the amending act made to [FIPPA](#) include:

- appointing an information and privacy adjudicator as an officer of the Legislative Assembly, who has the power to make an order against a public body that has not acted on the ombudsman's recommendations [Parts 4.1 and 5]<sup>9</sup>
- prohibiting the application of Part 2 to information that is available to the public free-of-charge or for purchase [subsections 6.1, 32(1), 32(2)]
- adding discretionary provisions allowing public bodies to disregard access requests that are frivolous or vexatious, or that, because of their repetitious or systematic nature, would unreasonably interfere with the public body's operations or amount to an abuse of the right to make access requests [subsection 13(1)]
- reducing the closure period for cabinet confidences, local public body confidences and advice, etc. to a public body (exceptions to disclosure) from 30 to 20 years, and clarifying how to request consent to the earlier release of cabinet confidences [subsection 19(2)]
- clarifying the provision for limiting the use of personal information by employees [subsection 42(3)] to ensure that it applies when employees of a public body are using personal information
- permitting disclosure of personal information to another public body where disclosure is necessary to deliver a common or integrated service, program or activity [clause 44(1)(f.1)]; to evaluate or monitor a service, program or activity of the public body or the government, or to carry out research and planning relating to them [clause 44(1)(j.1)]; where the information disclosed is limited to business contact information [clause 44(1)(x.1)]; about alumni by universities and colleges for fundraising purposes; disclosure is limited to specified contact information and a written

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<sup>9</sup> The role of the information and privacy adjudicator under [FIPPA](#) is discussed in chapter 8 of this manual.

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agreement with the fundraiser is required; among other things, the agreement must require that individuals be given an opportunity to opt out [clause 44(1)(dd) and subsection 44(1.1)]

- amending the provision related to delegation of duty or power by the head of a public body to include a person, not just a person on the staff of the public body [Sec. 81]
- adding a provision requiring the minister responsible for [FIPPA](#) to undertake a comprehensive review of the operation of [FIPPA](#), which involves public representations, within 5 years after the information and privacy adjudicator is appointed [subsection 98(1)]

### Second Statutory Review of FIPPA

The Minister of Sport, Culture and Heritage announced the launch of the second legislative review of [FIPPA](#) in March 2017. The review of [FIPPA](#) was coordinated with the review of [PHIA](#).

A discussion paper, *A Review of The Freedom of Information and Protection of Privacy Act 2017: Tell Us What You Think*, was developed to facilitate the public consultation process. The discussion paper provided an overview of the legislation and its administration in Manitoba. It also requested submissions on the views and experiences of Manitobans using and administering [FIPPA](#) to assist the government with the process of reviewing and updating the act.

On April 11, 2019 the Minister of Sport, Culture and Heritage tabled the *Report on the Statutory Review* in the Legislative Assembly. This report provided a consolidated version of the submissions received.

### Amendments to FIPPA

On Nov. 2, 2020, the Minister of Finance tabled [Bill 49](#), and [The Freedom of Information and Protection of Privacy Amendment Act, S.M. 2021, c.43](#) received assent on May 20, 2021.

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The amendment act made the following significant changes to [FIPPA](#) that came into effect on Jan. 1, 2022:

### Access to Information

- A provision was added to clarify that if an individual makes an access request under [FIPPA](#) to a record containing their own personal health information, the part of the record containing their personal health information must be processed as a request under Sec. 5 of [PHIA](#) [subsection 6(1.1)].
- The requirement for an applicant to use a prescribed form to make an access request is eliminated but a request must still be submitted in writing, with limited exceptions [subsections 8(2) and 8(3)].
- The number of days to transfer an access request to another public body has been extended to 10 days from seven days [subsection 16(1)].
- The time for responding to a request for access was extended to 45 days from 30 days, and additional circumstances in which extensions can be taken were added. These reasons include an applicant consenting to an extension or presence of exceptional circumstances warranting the extension [subsections 11(1), 11(2), 15(1) and 16(2)]. The time for responding to a request is suspended if additional information is requested by the head of the public body [subsection 12.1(4)].
- A person's request for access may be considered abandoned if they do not provide additional information relating to the request within 30 days of the additional information being requested [Sec. 12.1].
- The reasons to disregard a request were amended to expand the ability to disregard requests that amounted to abuse of the right to make a request for access and to provide considerations that a public body can consider when deciding whether to disregard a request [subsections 13(1) and 13(1.1)].
- Provisions related to whether a disclosure of personal information would be an unreasonable invasion of a third party's privacy were strengthened to further protect privacy and to increase consistency with authorized disclosures under Part 3 – Protection of Privacy [subsections 17(2), 17(4) and 17(4.1)].

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- The exception to disclosure for information provided by another government no longer applies to records more than 20 years old [subsection 20(3)].
- The exception to disclosure related to solicitor-client privilege was expanded to include any type of legal privilege, including solicitor-client privilege and litigation privilege [subsection 27(1) and 27(2)].
- Specific exceptions to disclosure for labour relations information and workplace investigations were added [Secs. 29.1 and 29.2].
- The timeline allowing public bodies to refuse to disclose to an applicant information that will be made available to the public after the applicant's request is received was reduced from 90 days to 60 days [subsection 32(1)].

### Protection of Privacy

- A person may seek to correct their personal information without first having to request access to the information. Requests for correction may be disregarded if certain conditions are met and an individual may file a statement of disagreement on record if the public body refuses to make the correction [Sec. 39].
- The Manitoba ombudsman and affected individuals are to be notified of a privacy breach if the breach could reasonably be expected to create a real risk of significant harm to the affected individuals [subsections 41.1(1), 41.1(2), 41.1(3) and 41.1(4)]. Factors to consider for determining if a privacy breach could reasonably be expected to create a real risk of significant harm to an individual, and form and manner of notifying affected individuals are prescribed in the [Access and Privacy Regulation](#).
- Employees of a public body may notify the ombudsman if they reasonably believe the public body is treating personal information in an unauthorized manner, and no adverse actions may be taken against them for doing so [Sec. 41.2].

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### Powers and Duties of the Ombudsman

- The ombudsman is authorized to disclose personal information if it is necessary to prevent or lessen a risk of serious harm to the health or safety of an individual [subsection 55(3.1)].

### Complaints

- The requirement for a complaint to use a prescribed form to submit a complaint to the Manitoba ombudsman is eliminated but a complaint must be submitted in a form acceptable to the Manitoba ombudsman. [subsection 60(1)].

### Mandatory Disclosures, Offences and General Provisions

- A non-identifying summary of access requests received by certain public bodies, excluding access requests for the individual's own personal information, must be made publicly available on a website within 14 days of the request being received [section 75.1].
- Manitoba government transition briefing materials, estimates briefing packages, orders in council and mandate letters are to be made available to the public within specific time frames [subsections 76.2(1) and 76.2(2)].
- Government departments, government agencies subject to The Crown Corporations Governance and Accountability Act, and government agencies, educational bodies and health care bodies that are designated in the [Access and Privacy Regulation](#) must make certain records, including employee codes of conduct, a summary of respectful workplace reports and statistics and additional records as directed by the minister responsible for the act, available to the public without an application for access under [FIPPA](#) [subsection 76.3(1) and 76.3(2)]. Currently, there are no educational bodies or health care bodies designated in the [Access and Privacy Regulation](#).
- The offence provisions were expanded to include wilfully collecting, using, disclosing, accessing or attempting to gain access to personal information

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contrary to the requirements of [FIPPA](#) and wilful failure to comply with the requirement for notification of a privacy breach[subsection 85(1)].

- The time limit for prosecutions of offences under [FIPPA](#) was changed from two years from the date the offence occurred to two years from the date the ombudsman has knowledge of sufficient evidence to justify a prosecution. [subsection 85(2)].
- The Minister responsible for [FIPPA](#) must undertake a comprehensive review of the operation of [FIPPA](#), which involves public representations, by December 31, 2026 [subsection 98(1)].

## PURPOSES OF FIPPA

The purposes of [FIPPA](#) are set out in Sec. 2 of the act.

### ***Purposes of this Act***

**2** *The purposes of this Act are*

*(a) to allow any person a right of access to records in the custody or under the control of public bodies, subject to the limited and specific exceptions set out in this Act;*

*(b) to allow individuals a right of access to records containing personal information about themselves in the custody or under the control of public bodies, subject to the limited and specific exceptions set out in this Act;*

*(c) to allow individuals a right to request corrections to records containing personal information about themselves in the custody or under the control of public bodies;*

*(d) to control the manner in which public bodies may collect personal information from individuals and to protect individuals against unauthorized use or disclosure of personal information by public bodies; and*

*(e) to provide for an independent review of the decisions of public bodies under this Act and for the resolution of complaints under this Act.*

### **1. Right of Access to Records [Subsection 2(a)]**

Part 2 of [FIPPA](#) – Access to Information – 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 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.

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The exceptions to disclosure in [FIPPA](#) are limited and focused and should be interpreted so as to give as much access as possible to records that are requested.

Part 2 of [FIPPA](#) is discussed in chapters 4 and 5 of this manual. Statutes that prevail over [FIPPA](#) are discussed in chapter 2, under *Relationship of FIPPA to Other Legislation*.

### **2. Right of Access to Records Containing One's Own Personal Information [Subsection 2(b)]**

Under Part 2 of [FIPPA](#) – Access to Information – an individual also has a right to obtain access to records in the custody or under the control of public bodies that contain personal information about them. This important information privacy right is subject to the limited and specific exceptions in [FIPPA](#), and to a small number of provisions of other statutes that prevail over [FIPPA](#).

The exceptions to access in [FIPPA](#) are limited and focused and should be interpreted so as to give the individual as much access to their personal information as possible.

Part 2 of [FIPPA](#) is discussed in chapters 4 and 5 of this manual. Statutes that prevail over [FIPPA](#) are discussed in chapter 2, under *Relationship of FIPPA to Other Legislation*.

### **3. Right to Request Correction of One's Own Personal Information [Subsection 2(c)]**

Sec. 39 of [FIPPA](#) contains another important information privacy right – the right of individuals to request corrections to records containing information about them that are held by public bodies.

Sec. 39 of [FIPPA](#) is discussed in chapter 6 of this manual, under *Requests to Correct Personal Information*.

### **4. Protection of Privacy [Subsection 2(d)]**

Part 3 of [FIPPA](#) – Protection of Privacy – controls the way public bodies collect personal information and protects individuals against unauthorized use or disclosure of their personal information, by setting out requirements around use, protection, accuracy, retention and disclosure of personal information by public bodies.

Part 3 of [FIPPA](#) is discussed in chapter 6 of this manual.

### **5. Independent Review of Access and Privacy Decisions [Subsection 2(e)]**

Part 4 and Part 5 of [FIPPA](#) deal with the independent review of the decisions of public bodies about access to information and privacy, and the resolution of access and privacy complaints.

The roles of the Manitoba ombudsman, the information and privacy adjudicator and the courts in the independent review of decisions and in complaint resolution under [FIPPA](#) are discussed in chapters 7 and 8 of this manual.