

COMMUNITY LIVING disABILITY SERVICES

Subject: **Protection of Personal Information Policy and Guidelines – Appendix B – Complaints to the Ombudsman**

ADULT DISABILITY SERVICES

COMPLAINTS TO THE OMBUDSMAN

MAKING A COMPLAINT

An individual or their representative may make a written complaint to the Office of the Provincial Ombudsman about any departmental decision, act or failure to act that relates to accessing information, and the collection, use or disclosure of personal information. Refer to Part 5 of both *The Freedom of Information and the Protection of Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA). Refer to the Department of Sport, Culture and Heritage website (<https://www.gov.mb.ca/chc/fippa/index.html>) for more information regarding complaints that can be made to the Ombudsman. Similar reasons exist under PHIA for the basis of complaints to the Ombudsman. Refer to the Department of Health, Seniors and Active Living website (<https://www.gov.mb.ca/health/phia/index.html>) for more information.

The prescribed complaint form is available through the Ombudsman’s Office and the Government Records Office. The completed complaint form is to be forwarded to the Ombudsman. The Ombudsman may also initiate a complaint if the Ombudsman is satisfied that there are reasonable grounds to investigate under FIPPA or PHIA.

RESPONSE TO COMPLAINTS

On receiving a complaint, the Ombudsman may decide to investigate, not to investigate or may take any steps appropriate to resolve the dispute informally to the satisfaction of the parties involved (refer to FIPPA Section 62 and PHIA Section 40). The Ombudsman will notify the Department in writing if the decision is not to conduct a formal investigation.

If there is a formal investigation, the complainant and the Minister of Families may make representations to the Ombudsman directly or through counsel or an agent. Representation may be oral or written as decided by the Ombudsman. After the completion of a formal investigation, the Ombudsman will provide a report to the complainant and the Minister regarding the findings and any recommendations.

After the receipt of the Ombudsman’s recommendations, the Minister or delegate has 14 days (personal health information complaints) or 15 days (personal information complaints) to respond in writing. The response must indicate either the acceptance or the refusal of the recommendations. If accepted, the response must describe any action taken or proposed to be taken to implement the recommendations. If refused, the response must indicate why no action will be taken to implement the recommendations.

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If the Department accepts the Ombudsman’s recommendations, the Department must comply within 15 days if the complaint is related to accessing a record. If the complaint involves other issues (e.g., collection, use, or disclosure of personal information), the Department must comply within 45 days under FIPPA and 15 days under PHIA. In either case, the Ombudsman may give an additional time period as he/she considers reasonable.

With the complainant’s consent, the Ombudsman can appeal the Department’s refusal to implement recommendations involving access to information, within 30 days after the refusal. There is no appeal to court about the collection, use or disclosure of personal information under FIPPA. In all cases, the complainant must receive a formal letter from the Ombudsman to advise of the right of appeal, before the complainant can make an appeal to the court. The complainant may make an appeal by filing a Notice of Motion at the Court of Queen’s Bench within 30 days after receiving the Ombudsman’s advisement or within a longer period as the court may allow under special circumstances.

DEPARTMENT’S OBLIGATIONS WHEN OMBUDSMAN/COURT IS INVOLVED

Departmental staff may be required to do the following as a result of a complaint to the Ombudsman (Parts 4 and 5 under both FIPPA and PHIA):

- produce any record or copy of a record that the Ombudsman (or delegate) considers relevant to an investigation within 14 days of the Ombudsman’s/delegate’s request; *
- allow the Ombudsman (or delegate) to examine and make copies of records relevant to the investigation during regular business hours;
- talk to the Ombudsman (or delegate) in private;
- assist with a written or oral representation to the Ombudsman;
- be involved in an informal resolution to a complaint;
- assist with a written response to the Ombudsman about action taken or proposed to be taken;
- take action to implement the Ombudsman’s recommendations;
- assist with a written response to the Ombudsman with reasons why action will not be taken to implement the Ombudsman’s recommendations;
- when required by court, provide proof that the individual has no right of access to a record or part of a record; and/or
- provide any record for examination by court when required to do so.

* *If it is not practical to make a copy of a record, the department may require that the Ombudsman (or delegate) examine the original record on site.*

No person is guilty of an offence under any statute when he or she complies with a request to produce a record or provide information to the Ombudsman. No adverse employment action can be taken against an employee because the employee complied with a request from the Ombudsman. In fact, it is an offence to make false statements to, mislead or obstruct the Ombudsman (liable on summary conviction to a fine of up to \$50,000).

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