



PROCEDURE: Third Party Consultation Process under *The Freedom of Information and Protection of Privacy Act (FIPPA)*

Program Area: Health Information Services

Section: Privacy & Access

Reference Number: ORG.1411.PR.002

Approved by: Regional Lead – Corporate Services & Chief Financial Officer

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Revised yyyy/mmm/dd

PURPOSE:

To further provide direction related to the Third Party consultative process under FIPPA.

IMPORTANT POINTS TO CONSIDER:

The Public Body will consult with a Third Party when the Public Body is unable to directly support the application of the exceptions to Disclosure protecting Third Party information (specifically Sections 17 and 18 of FIPPA)

The Public Body will consult with a Third Party when considering the Disclosure of Third Party information when Sections 17 or 18 of FIPPA may apply.

Create a working copy to mark information and to make notes.

In accordance with section 42 of FIPPA, the identity of the Applicant will not be shared with the Third Party.

The time frame to carry out Third Party Consultation does not change the initial 45 day due date or the extended due date if an extension under Section 15(1) is taken.

Where there are multiple Records that are responsive to a request, but some Records contain information are subject to the Third Party consultation process do not delay processing the Records that are not affected by the consultation process.

Redact information that is not subject to the consultation when providing Records to a Third Party, particularly if that information is about another Third Party or is otherwise sensitive in nature or provide a summary of the information within the Records.

This procedure does not apply to consultations with another Public Body.

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Use of pre-printed documents: Users are to refer to the electronic version of this document to ensure the most current document is consulted.

PROCEDURE:

1. Informal Third Party Consultation

- 1.1. Engage in a discussion to gain the Third Party's perspectives on any harms that could come to them if the Record or information were to be disclosed. This can be done by email, phone or in person.
- 1.2. Explain that a request has been made for access to a Record that contains information that, if disclosed, may affect them.
- 1.3. Provide a copy of or explain the Record in question.
- 1.4. Ask if the Third Party has any concerns with the Disclosure. If they do, discuss the reasons for the concern.
- 1.5. Determine if one or more of the circumstances under Sections 17(2) or (3) for an individual or Section 18(1) for a business applies.
- 1.6. Create a written Record of the discussion that includes the individual's name or the organizational contact, the date of the communication, the Records of issue and the final position of the Third Party along with their reasons for that position.
- 1.7. Inform the Third Party of the Public Body's decision:
 - If the Third Party **agrees** with the Public Body's decision, process the request in accordance with ORG.1411.PL.002 Access to Information under *The Freedom of Information and Protection of Privacy Act* (FIPPA).
 - If the Third Party **disagrees** with the Public Body's decision to disclose the information, proceed with the formal Third Party consultation process.

2. Formal Third Party Consultation

The formal consultation process must be taken when the Public Body is considering giving access to information that might either invade someone's Privacy under Section 17 if disclosed or affect the interests of a business as described under Section 18 if disclosed.

- 2.1. Provide a written notice to the Third Party. The content of the notice must be as prescribed in Section 33(3) of FIPPA and include further details in accordance with Section 33(4) of FIPPA.

Note: Send notices informing of the need to consult with a Third Party to both the Third Party and the Applicant on the same day. Advise the Applicant an access decision will be made within 30 days after giving the Third Party notice.
- 2.2. Make the access decision based on written representation from the Third Party. The access decision must be made 30 days after the notice is given to the Third Party; however, cannot be made before the Third Party submits their representations, or before the 20th day that the Third Party has to submit their representation, whichever comes first.
- 2.3. Provide written notice to inform the Third Party of the access decision, including reasons for the decision, in accordance with Section 34(2) of FIPPA. Do not include the Records.

Note: Send notices of the access decision to both the Third Party and the Applicant on the same day.

- If the Third Party **agrees** with the Public Body's decision to **provide access**, process the request in accordance with ORG.1411.PL.002 Access to Information under *The Freedom of Information and Protection of Privacy Act* (FIPPA). Advise the Third Party that the Records will be provided to the Applicant.
- If the Third Party **disagrees** with the Public Body's decision to **provide access** or **did not give enough (or any) information** to support a refusal, inform the Third Party that they may make a Complaint to the Ombudsman within 21 days and that the Applicant will be given access at that time unless the Third Party makes a Complaint and notifies the Public Body that the Complaint has been made. Inform the Applicant in writing of the Access decision.

Note: If the Public Body does not receive notice from the Third Party, it is recommended that the Public Body contact the Ombudsman's office to confirm that no Complaint has been made *prior* to providing access to the Records.
- If the Public Body **agrees** with the Third Party to **refuse** access, process the request in accordance with ORG.1411.PL.002 Access to Information under *The Freedom of Information and Protection of Privacy Act* (FIPPA).

3. Public Body Complaint to Ombudsman about Decision to Give Access

- 3.1. Access to the Records can only be provided after the ombudsman's investigation into the Complaint has been completed with their finding that the Third Party's Complaint is not supported.
- 3.2. If the Third Party does make a Complaint about the access decision to the Manitoba Ombudsman, the Ombudsman's office will notify the applicant.

REFERENCES:

ORG.1411.PL.002 Access to Information under *The Freedom of Information and Protection of Privacy Act* (FIPPA)
 ORG.1411.PL.002.SD.01 Request for Access Response Coordination Process Flow Chart
 ORG.1411.PL.002.SD.01 Third Party Consult Flow Chart
[Resources | FIPPA | Province of Manitoba \(gov.mb.ca\)](#)