

Manitoba: Ombudsman (L'Ombudsman du Manitoba)

**APPLICATION FORM FOR ACCREDITATION AS A DATA PROTECTION AUTHORITY**

Application to the Credentials Committee for accreditation as a data protection authority pursuant to the resolutions adopted at the 23<sup>rd</sup> International Conference of Data Protection and Privacy Commissioners at Paris on 25<sup>th</sup> September 2001.

**Notes:**

- (a) Please complete application in French or English.
- (b) Please keep answers brief and to the point.
- (c) Please ensure that all 33 questions are answered
- (d) If you retype the form, please include the numbered questions with your answers. It is possible to avoid such retyping by getting the electronic application form in French or in English upon request by e mail at [credentials@privacy.org.nz](mailto:credentials@privacy.org.nz).

**Details of applicant**

1. Name and postal address of authority

Office of the Ombudsman 750 – 500 Portage Avenue Winnipeg, MB R3C 3X1
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2. Contact person for this application:

(a) Name

Barry E. Tuckett
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(b) Email address

<del>barry.tuckett@ombudsman.mb.ca</del>
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(c) Direct telephone number

<del>204-932-9731</del>
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(d) Fax contact

<del>204-932-9731</del>
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**Type of application**

3. The application is for accreditation as:

(a) national Authority	YES/NO
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(b) sub-national Authority YES/NO

(c) Authority within an international, if yes which one..... YES/NO

### Description of applicant

4. Description of Authority (e.g. commissioner, commission, board etc)

Ombudsman

5. Is the Authority a public body? YES/NO

6. Geographical jurisdiction

Province of Manitoba

7. Sectoral coverage (i.e. does the applicant's jurisdiction cover the entire public and private sectors? If only part of a sector or if there are significant activities not covered, please specify)

Public sector and personal health information Trustees in private sector.

8. Is the role of the Authority mainly concerned with data protection and privacy? YES/NO

Administrative accountability, access to information and personal information privacy protection.

### Legal basis

9. Title of law under which the Authority is constituted

The Ombudsman Act  
The Freedom of Information and Protection of Privacy Act (FIPPA)  
The Personal Health Information Act (PHIA)

10. Is this principally a data protection law? YES/NO

Administrative accountability, access to information and personal information privacy protection.

11. Status of the law (e.g. statute, regulation, executive order)

Statutes

12. Which body made the law?

Manitoba Legislative Assembly (Parliament)

13. What body has the power to amend or revoke the law?

Manitoba Legislative Assembly (Parliament)

### Autonomy and independence

14. Who appoints member(s) of the Authority? (Please explain if a different process applies to the presiding member from other Authority members in this question and in subsequent questions.)

The Ombudsman is appointed by the Lieutenant Governor in Council on the recommendation of an All-Party Committee of Legislature.

15. What process is followed?

The Ombudsman is appointed by the Lieutenant Governor in Council on the recommendation of an All-Party Committee of Legislature.

16. For what term are appointments made?

Six year term with renewal for one additional six year term.

17. Does the law under which the Authority operates explicitly state that it acts independently? **NO**

Independence is implied through provisions of Legislation and custom.

18. May the member(s) be removed before expiry of their term? **YES**

19. If yes, who may remove members of the Authority before expiry of their term?

Only on a 2/3 vote of the Legislative Assembly.

20. Are there limited reasons specified in the statute, or in another law, providing the permitted grounds for removal?

YES

21. What are the grounds for removal?

Disability, neglect of duty, misconduct or bankruptcy.

22. Does the Authority possess the following powers (briefly describe and give statutory references)

(e) to initiate an investigation with seeking provision YES/NO

details: FIPPA: s59(5) and PHIA: s39(4)

(f) to report to the head of State, head of Government or legislature YES/NO

details: FIPPA: s58 and PHIA: s37

(g) make public statements YES/NO

details: FIPPA: s49, s58(3) and PHIA: s28, s38(3)

23. Does the Authority (and its staff) have immunity from legal suit for actions performed in the course of their duties? YES/NO

24. Applicants may list any other measures set out in the statute or in other laws which guarantee the Authority's independence (for example if the law provides specifically that the Authority's finances are protected).

### Consistency with international instruments

25. Does the Authority explicitly implement any international instrument (for example if the law under which the Authority operates specifies that it implements such international instrument)? YES/NO

If "yes", which of the following does it principally implement?

(a) OECD Guidelines (1980) YES/NO

(b) (i) Council of Europe Convention No 108 (1981) YES/NO

(ii) Council of Europe Additional Protocol (8 November 2001)

YES/NO

(c) UN Guidelines (1990) YES/NO

(d) EU Directive (1995) YES/NO

26. Does the law instead, or additionally, implement any general or specific international instrument? (If so, list the international body and the instrument)

YES/NO

27. Have significant questions been raised about the extent to which the law is consistent with the international instruments which are claimed to be implement in answer to questions 25 and 26? (Applicants should supply further information to assist the Committee including a description of any measures under way to address these inconsistencies.) YES/NO

### Appropriate functions

28. Does the Authority possess functions in any of the following areas (briefly describe and give statutory references):

- (a) compliance (e.g. audit, inspection) YES/NO

details: FIPPA: Part 4 and PHIA: Part 4

- (b) approvals (e.g. prior-checking, notification) YES/NO

details: May comment on Access and Privacy matters.  
FIPPA: Part 4 and PHIA: Part 4

- (c) redress for individuals (e.g. complaints, conciliation enforcement) YES/NO

details: Recommendations, FIPPA: Part 5 and PHIA: Part 5

- (d) sanctions available to Authority (for example, prosecution and enforcement) YES/NO

details: The office does not conduct prosecutions, but FIPPA and PHIA contain penalties that may be prosecuted by the Ministry of Justice.

- (e) guidance (e.g. compliance advice) YES/NO

details: May comment on access and privacy matters.  
FIPPA: Part 4 and PHIA: Part 4

- (f) public education YES/NO

details: FIPPA: Part 4 and PHIA: Part 4

- (g) policy advice for government YES/NO

details: May comment on Access and Privacy matters.  
FIPPA: Part 4 and PHIA: Part 4

- (h) studies or research (e.g. into developing technologies, privacy issues) YES/NO

details: FIPPA: Part 4 and PHIA: Part 4

### Additional comments

29. Applicants are invited to offer any further comments that they wish.

Constitutionally, the provinces are sovereign in their respective jurisdictions.

### Other materials

30. List any attachments which will accompany the application as an electronic attachment or to follow by post.

None

31. If law under which the Authority operates is accessible on the Internet, please give the reference

URL: [www.ombudsman.mb.ca](http://www.ombudsman.mb.ca)

32. If a recent annual report of the Authority (or a similar recent publication outlining typical activities) is available on the Internet, please give the reference

URL: [www.ombudsman.mb.ca](http://www.ombudsman.mb.ca)

### Research use

33. With the consent of applicants, the Committee proposes to make copies of the applications available to appropriate researchers approved by the Committee to facilitate a study on data protection. Please indicate whether you agree to this use:

- I agree to this application being released to a researcher YES/NO

### Making the application

The application should be emailed to the credentials committee at [credentials@privacy.org.nz](mailto:credentials@privacy.org.nz)

If sent as an email attachment it should be in M/S Word.

If unable to email the application, it should be posted to:

**Credentials Committee**

**C/- Privacy Commissioner  
P O Box 466  
Auckland  
New Zealand**

The Committee needs access to a copy of the law under which the Authority is constituted. This need not be supplied in hard copy if it is available on the Internet and listed at question 31. If the law itself is not in English or French, it will be useful to supply an English or French summary or translation if one exists.

### **Use of information**

The information in this form will be used for processing the application and will be disclosed to members of the committee and their staff (being the commissioners from New Zealand, France and the United Kingdom) and future committees. It may be also disclosed also to the Data Protection Authorities which participate to the international conference and approved researchers. Any personal data contained in the form is available for access and correction in accordance with the applicable data protection laws of current and future committees. In the first instance it is subject to the New Zealand Privacy Act 1993.



ACCREDITATION OF DATA PROTECTION AUTHORITY  
CHECKLIST FOR THE CREDENTIALS SUB-GROUP

1 Name of Authority

Office of Ombudsman, Manitoba

2 Does the authority have clear and wide ranging data protection functions covering a broad area of economic activity (eg not just an advising body or a body operating in a narrow field such as medical privacy)?

Yes

No

Don't know

Notes

Statutory Ombudsman functions in Public Sector and personal health areas in the Province. These include powers concerned with DP and Privacy contained in a unified FoI and Privacy Protection Act. This contains core DP provisions on access, accuracy, retention, collection, use and unauthorised disclosure

3 Legal Basis.

Is the authority a public body established on an appropriate legal basis (eg by statute or regulation)?

Yes

No

Don't know

Notes

Established by law

4 Autonomy and Independence?

Is the authority guaranteed on appropriate degree of autonomy and independence to perform its functions (eg the power to make public statements and protection from removal from office)?

Yes

No

Don't know

Notes

No explicit provision but is implied and has statutory role and powers

5 Consistency with International Instruments.

Is the law under which the authority operates compatible with at least one of the international instruments dealing with data protection and privacy (eg EU Directive, OECD Guidelines, Council of Europe Convention)?

Yes

No

Notes

None cited

*Canada would normally tailor its law to the OECD Guidelines. I have looked at the Ombudsman website at least one of their statutes and it does seem to take the*

Don't know

*approach one would expect for an OECD-consistent law.*

- 6 Appropriate Functions.  
Does the authority have an appropriate range of functions with the legal powers necessary to perform those functions (eg the power to receive and investigate complaints from individuals without seeking permission)?

Yes

No

Don't know

Notes

Can make recommendations for individual redress. FIPPA prosecutions taken by Ministry of Justice. Not clear about the extent of these sanctions

- 7 Does the Sub-group recommend accreditation?

Yes

No

Notes

Having looked at the FIPPA law ([www.ombudsman.mb.ca](http://www.ombudsman.mb.ca)), it does provide DP safeguards but I'm not certain about how these work in practice or how they compare with other Canadian Provinces. It is very marginal. If it is significantly weaker than other Provinces we may wish to reconsider

- 8 If accreditation is recommended what is the accreditation as?

National authority (within the UN criteria)

Authority within a limited sub-national territory

Authority within an international or supranational body

Notes

- 9 If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?

Voting Rights

No Voting Rights

Notes

- 10 If accreditation is not recommended does the Sub Group recommend that accreditation is refused or is more information needed before a decision can be made?

Refusal

Notes

More Information

- 11 If accreditation is not recommended and the application is from an authority with narrow functions does the Sub Group recommend that, at the discretion of the conference host, observer status is granted?

Notes

Not Applicable

Yes

Not

If more information is required what is this:

Signed on behalf of the Sub-group:

Jonathan Bamford

Date: 5/6/02

*Blair Stewart*

Date: 9 July 2002

Date:

Note: 2 signatures required for recommendations for accreditation.  
3 signatures required for recommendations for refusal