
INFORMATION BULLETIN #2

RECORDS OF CLOSED, TRANSFERRED OR PRIVATIZED PROGRAMS

The *Archives and Recordkeeping Act, 2006* was proclaimed September 1st, 2007. The act refers to government organizations subject to its provisions as “public bodies”, and these public bodies are defined in the act or designated by name in the accompanying regulation (O. Reg. 336/07).

“Public records” are defined as information in any form made or received by the public body in the conduct of its activities.

As ministries and provincial agencies reorganize or divest responsibilities, attention needs to be given to the records that were created or acquired to run program functions. Many of these records need to be maintained to support legal or audit requirements or to assist with the continuing delivery of services. Some should be preserved for transfer to the Archives of Ontario while others have only temporary value and may be safely destroyed once their operational usefulness has ceased.

The disposition of public records where the functions of a public body cease or are transferred elsewhere is governed by section 14 of the *Archives and Recordkeeping Act*, S.O. 2006, chapter 34, Schedule A.

Any transfer or destruction of records must also comply with the requirements of the *Freedom of Information and Protection of Privacy Act* and any other legislation that affects the accessibility of the records for fiscal, audit or legal reasons.

Program areas should be aware of these legislative obligations and ensure that records of closed or transferred functions are not destroyed prematurely. Careful consideration should be given to future needs, for example, for program review or to address legal claims or anticipated access requests. The same considerations should be assessed before transferring records to organizations outside of government.

Records schedules authorized by the Archivist of Ontario are required before records can be disposed of. Records schedules need to be consulted before taking any action to transfer or destroy records and will in most cases need to be revised.

Section 14 of the *Archives and Recordkeeping Act, 2006* contains specific provisions for different situations. Four common scenarios are summarized below.

Scenario 1: Disposition of public records where a public body is closed

The *Archives and Recordkeeping Act, 2006*, ss. 14 (1) specifies that, when a public body ceases to exist, the records created or received by the public body are to be treated as if they have reached the end of their retention period. Records should be transferred to the Archives of Ontario or destroyed depending on the authorized disposition on the ministry or agency's records schedule. No records should be destroyed or transferred without a records schedule approved by the Archivist of Ontario.

The closing public body should first determine whether the records need to be retained longer to fulfill legislative or other legal or operational requirements. Consultation with the ministry or agency's legal counsel and FIPPA Coordinator should take place before taking action to dispose of records or transfer them to the Archives of Ontario.

If records of the closed public body are not included in a records schedule authorized by the Archivist of Ontario, one must be prepared and submitted for approval before any dispositions. It may be helpful to adopt where possible common schedule series that have already been approved by the Archives for generic classes of records.

Records management documentation, such as records schedules, transfer lists, and file plans associated with the disposition of the closed public body's records must be transferred to the Archives.

An example of a public body that ceased to exist is the Ontario Telephone Services Commission, which was closed down in the fall of 1994 after the Supreme Court of Canada ruled that regulating independent telephone systems was the responsibility of the CRTC (the federal communications regulatory body).

Scenario 2: Disposition of public records where certain functions of a public body cease

The *Archives and Recordkeeping Act, 2006*, ss. 14. (2) specifies that when any of the program functions of a public body cease to exist, the records relating to the activities of those functions are deemed by the act to have reached the end of their useful life for the organization. The type of change involved is the termination of a significant program activity, not just the end of a project or initiative. Records must be transferred to the Archives of Ontario or destroyed depending on the authorized disposition on the ministry or agency's records schedule. No records for these terminated functions should be destroyed or transferred without a records schedule approved by the Archivist of Ontario.

The program area should first determine whether the records need to be retained longer for fulfilling legislative or other legal or operational requirements. Consultation with the ministry or agency's legal counsel and FIPPA Coordinator should take place before taking action to dispose of records or transfer them to the Archives of Ontario.

If records of the terminated functions are not included in a records schedule authorized by the Archivist of Ontario, one must be prepared and submitted for approval before any dispositions. It may be helpful to adopt where possible common schedule series that have already been approved by the Archives for generic classes of records.

Records management documentation associated with the terminated program, such as records schedules, transfer lists and file plans, must be either transferred to the Archives or maintained by the continuing public body.

An example of a major function that ceased within a continuing public body is the Premier's Councils (1986-1995), which consisted of senior representatives of business, labour and academia along with a number of government ministers advising the Office of the Premier.

Scenario 3: Functions of a public body are transferred to another public body (OPS ministry or agency)

The *Archives and Recordkeeping Act, 2006*, ss. 14. (3) requires that if any functions of a public body are to be transferred to another public body subject to the act, the transferring public body must enter into an agreement with the Archivist of Ontario and with the public body receiving the functions. This requirement for an agreement may be met by revision and reauthorization by the Archivist of Ontario of both public bodies' records schedules.

The records series pertaining to the transferred functions must be incorporated into the receiving public body's records schedule and removed from the sending public body's records schedule. Both must be submitted to the Archives of Ontario for review and reauthorization, along with any key supporting information about the arrangements for the transfer of records. If there are significant differences in program functions after transfer, the Archives may reassess the retention and disposition of the records.

Note: A public body's records schedule should also be promptly revised when functions are transferred between branches of a ministry, or between units within an agency or other public body subject to the act, or when ministries merge. (For agencies, boards and commissions subject to the *Archives and Recordkeeping Act, 2006* see O. Reg. 336/07).

All existing records management documentation associated with the transferred records, such as records schedules, transfer lists and file plans, must be given to the receiving public body.

An example of a function being transferred to another public body is the shift of the rural development programs between the ministries of Agriculture and Food and Municipal Affairs and Housing (2002, and 2005).

Scenario 4: Functions of a public body are privatized or transferred to another person or entity outside the OPS

The *Archives and Recordkeeping Act, 2006*, ss. 14. (3) requires that if any functions of a public body are to be transferred to any other person or organization not subject to the act (e.g. in the private sector, the broader public sector or another jurisdiction), the transferring public body must enter into a three party agreement with the Archivist of Ontario and with the entity receiving records for the transferred functions. This mandatory agreement establishes the terms and conditions for maintenance, retention, preservation, transfer and other disposition of the records pertaining to the transferred functions.

Examples of transfers of functions requiring agreements with the Archivist of Ontario include: between a public body (ministry or agency) and a municipality, another level of government, university or college, private sector corporation (business, statutory or non-profit), agency or crown corporation outside the act, or a private association or person.

Three party agreements with non-government bodies may need to address a variety of additional information-related issues and responsibilities. For example, the form of transfer of existing program information (original records, copies or long-term loans); cut off dates for transfer of such information to a new service provider; ownership and control of future records or data; public access to information and protection of personal privacy; licensing of information products and copyright; information security; records disposal and information technology issues; as well as preservation and transfer of archival records.

Examples of public bodies being transferred to other jurisdictions or privatized include: the transformation of the Ministry of Revenue Assessment Division into the Municipal Property Assessment Corporation (1998); the sale of the Province of Ontario Savings Office to Desjardins Credit Union Inc. (2003); and the divestment of the Ontario psychiatric hospitals to local general hospitals or to non-profit bodies such as the Centre for Addiction and Mental Health (2000-).

The Archives of Ontario can provide advice and assistance in the development of records transfer and disposition agreements for approval of the public body, the receiving non-government body and the Archivist of Ontario.

Whom can I contact if I have any questions?

If you have any questions, need more information or are seeking advice, please contact the Archives of Ontario Recordkeeping Support Unit at (416) 327-1600 or recordkeeping@ontario.ca.

**Archives of Ontario
Ministry of Government Services**

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