

INFORMATION BULLETIN

RETENTION PERIODS, ARCHIVAL ACCESS AND THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

SOME TYPICAL QUESTIONS

Are records in the custody of the Archives of Ontario subject to the Freedom of Information and Protection of Privacy Act?

Yes, the Archives of Ontario adheres strictly to all provisions of this Act.

Is there any formula for determining how long records scheduled to go to the Archives of Ontario should first remain within a ministry's custody?

No. The time varies widely according to how long an office requires the records. Records should come to the Archives only after the ministry has no more operational need for the information.

Waste of resources results when records still used in ongoing government activities come to the Archives. The Archives of Ontario's operations are not intended nor designed to provide routine service for inactive records.

Rather, the Archives of Ontario's mandate is to acquire and preserve government records of permanent value and to make these available for historical research.

Of course, ministries can continue to get access to records transferred to the Archives; in part, we are here to serve that need. However, if access is regular or ongoing, then the retention period should be reconsidered. More about that shortly.

What does the term "operational need" mean, as used above?

As the term implies, a ministry's operational need may include an ongoing requirement for the records in order to perform its activities, for example, to manage programs, to support ministry decision-making, and so on.

However, a ministry may also need to retain files for legal reasons. Often provincial or federal statutes determine retention periods. Sometimes a continuing need to demonstrate that legal obligations have been fulfilled will require the ministry to have access to these records ten, fifteen or more years into the future. These files should be retained by the ministry as long as the potential legal need remains. Retention periods on schedules should reflect that need.

When developing schedules, records management personnel should discuss retention periods thoroughly with branch personnel and explain very carefully the implications of establishing short or long retention periods. More about these implications is described below.

What about those records for which all normal ministry need has ceased, but which continue to be the subject of access requests by the public?

In assessing operational need, ministries should also consider the frequency with which the public requests access to program files. In a few cases this might mean that a ministry keeps records for longer than might otherwise have been the case because a public need for the records remains.

For example, the ministry's primary need for information within program files may be only two years, but the public has repeatedly requested access to these records for up to five years. Perhaps individuals have wanted to know why certain decisions affecting their personal interests were made.

It is not feasible or effective for the Archives to administer these requests. For one thing, ministry personnel are more familiar with the issues and programs. Moreover, the public expects records of recent origin to be found in the ministry administering the program. They also expect answers to their questions from the program area that made the decisions.

Does the Archives of Ontario have a role in determining retention periods?

Yes. The *Archives and Recordkeeping Act, 2006, S.O. 2006, chapter 34, Schedule A*, gives the Archivist of Ontario responsibility for reviewing and for giving final approval for record schedules. Our purpose is twofold: (1) to ensure that government resources are not wasted on storage of records having no ongoing value, (2) but also to ensure that records are not disposed of prematurely or transferred to the Archives too soon. We must balance these two interests.

As well, the Archives monitors repeated ministry requests for access to particular bodies of records in Archives holdings. The Archives will request changes to retention periods when access for operational purpose (including administration of Freedom of Information access requests) occurs on a consistent basis.

Can records be returned to a ministry once they have been transferred to Archives custody?

No, a transfer to Archives means that legal "ownership" and control of the records has passed to the Archives. Under the terms of the *Archives and Recordkeeping Act, 2006, S.O. 2006, chapter 34, Schedule A*, the Archivist of Ontario is alone responsible for ensuring the safety and integrity of the government's permanent records. The Archivist cannot do that if records go back to an originating ministry. Only unbroken custody and control can ensure records remain complete, accurate and secure.

Are there other conditions of which I should be aware?

Not all records transferred to the Archives are kept. Transfers often include records that are not of permanent value. These records are culled and destroyed; so in some cases the record you expect to find at the Archives may no longer exist.

In other instances, only a sample of records is necessary to document a government activity or to preserve a record of information. In these cases, only a percentage of the transferred holdings will remain.

Of course, if the records are no longer of any operational value, culling will not be a concern to the originating ministry. But if the operational need does continue, and the records have been transferred to the Archives, culling will be a concern.

So transferring records to the Archives means that many now become inaccessible?

Not at all. Ministries are welcome to use archival records at any time. In fact, one of the virtues of schedules is that they ensure that records of permanent value will be available to ministries at any future date. Moreover, copies are always available (within reasonable limits) through the Archives. The Archivist of Ontario can certify reproductions to make them court admissible.

Of course, if there are security or privacy concerns attached to the records we do require that the ministry provide an appropriate letter authorizing the Archives to give designated ministry employees access to the specified records before they visit our reading room.

While the Archives does provide extensive reference and retrieval services, it cannot do a ministry's actual research. That is the job of ministry employees, just like any other researchers.

So what about access under the Freedom of Information and Protection of Privacy Act to records in the Archives' custody? Who decides?

In most cases, the Archives decides. Records transferred to the Archives of Ontario fulfil a new purpose. They are now research records. Access decisions will be administered on the basis that these records are now archival documents in Archives custody and that decisions about disclosure, access and use are best handled by the Archives. Consultation with originating ministries is not automatic.

However, when the Archives receives requests for access to records in its control and judges that the "greater interest" in these records lies with the ministry which originally created or acquired them, then the Archives will transfer the access request to that ministry for decision. The records will remain at the Archives. The practical details of subsequent disclosure, access and use will be subject to Archives practices.

Any final considerations?

Yes, the Archives is an institution with a strong commitment to customer service. It is also a unique provider of information to the public. Fairness means that if the public pays for reproductions, so should our government clients – normally through charge back.

As well, the Archives is a small institution. Fluctuating demands can mean delays up to three weeks in preparing reproductions.

In general, ministry staff, like any other researchers working at the Archives, must adhere to any Archives rules for the use of archival records. These are designed to protect irreplaceable records while still allowing access.

So, there you have it – the considerations to take into account when deciding short or long retention periods on your records schedules.

Who can I contact if I have any questions?

If you have any questions or need more information 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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