

Recordkeeping Amendments to FIPPA and MFIPPA Information Sheet

The Public Sector and MPP Accountability and Transparency Act, 2014 amended the Freedom of Information and Protection of Privacy Act (FIPPA) and the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). The FIPPA/MFIPPA amendments related to recordkeeping are contained in Schedule 6 of the Act.

Schedule 6 can be viewed at this link (Public Sector and MPP Accountability and Transparency Act)

Is my organization covered by these amendments?

The amendments apply to all FIPPA/MFIPPA institutions. This includes (but is not limited to) all provincial government ministries, hospitals, colleges, universities, school boards, municipalities, and police services boards.

What are my organization's responsibilities under these amendments?

The head of each organization subject to FIPPA and MFIPPA is required to ensure that reasonable measures are developed, documented and put into place to preserve the organization's records in accordance with any recordkeeping or records retention requirements, rules, or policies, that apply to the institution.

Recordkeeping rules may be established for an institution by policy, by-law or law.

What does this mean for me?

This means that:

If you are the head of a FIPPA/MFIPPA organization, you are responsible for ensuring that reasonable measures to preserve records in the custody or under the control of the institution are developed, documented and put into place in accordance with recordkeeping rules that apply to your organization.

There is a new provision in both Acts prohibiting any person from altering, concealing or destroying a record, or causing any other person to do so, with the intention of denying a right under FIPPA/MFIPPA to access the record or the information in the record.

It is also an offence to breach this prohibition. On conviction, a fine of up to \$5,000 could be imposed by the Court.

All institutions should ensure that staff members are aware of the need to preserve records in accordance with the recordkeeping and records retention rules of the organization.

Staff should also be made aware of the prohibition on destroying records by sending instructions to staff to put on hold any destruction of a record, if a freedom of information request is received for the record.

For assistance please contact your organization's FIPPA/MFIPPA coordinator and/or recordkeeping staff.

Questions & Answers

Q. What is the Public Sector and MPP Accountability and Transparency Act, 2014?

A. The **Public Sector and MPP Accountability and Transparency Act, 2014** amended several existing acts, including the **Freedom of Information and Protection of Privacy Act (FIPPA)** and the **Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)**. The FIPPA/MFIPPA amendments related to recordkeeping are contained in Schedule 6.

Q. Why are changes being made to FIPPA and MFIPPA?

A. Changes to FIPPA and MFIPPA originated from legislative amendments recommended by the Information and Privacy Commissioner (IPC) in its report, **Deleting Accountability: Record Management Practices of Political Staff - A Special Investigation Report**. Through these amendments, the Government is demonstrating its commitment to transparency and open government.

Q. What are the exact changes/amendments to FIPPA and MFIPPA?

A. FIPPA and MFIPPA have been amended by the addition of section 10.1 to FIPPA and section 4.1 to MFIPPA. Section 10.1 and 4.1 both state:

Every head of an institution shall ensure that reasonable measures respecting the records in the custody or under the control of the institution are developed, documented and put into place to preserve the records in accordance with any recordkeeping or records retention requirements, rules or policies, whether established under an Act or otherwise, that apply to the institution.

In addition, a new offence has been placed in FIPPA and MFIPPA, with related amendments. The Offence provisions of section 61(1) of FIPPA and subsection 48(1) of MFIPPA have been amended in the same way.

Subsection 61(1) is amended by adding the following clause prohibiting any person from altering or destroying a record:

No person shall:....

(c.1) alter, conceal or destroy a record, or cause any other person to do so, with the intention of denying a right under this Act to access the record or the information contained in the record;

A person who contravenes this prohibition is guilty of an offence and could be subject to a fine up to \$5000.

Subsection 61(3) of FIPPA requires the consent of the Attorney General to commence a prosecution under certain clauses in subsection 61(1). The amendments add the new “(c.1)” set out above to section 61(3).

Subsection 61(4) of FIPPA is also amended to include additional procedural provisions relating to how this offence is prosecuted.

Q. In plain language, what do the amendments mean?

A. These amendments:

- Require institutions subject to FIPPA and MFIPPA to ensure that reasonable measures are developed, documented and put into place in order to preserve the organization’s records in accordance with the recordkeeping rules that apply to the organization. An organization’s rules can be established either by policy or in accordance with a by-law or law.
- Make it an offence for an individual to alter, conceal or destroy a record with the intention of denying someone a right to access the record. The penalty on conviction is a fine of up to \$5000.

Q. Has any other section of FIPPA been amended by the Public Sector and MPP Accountability and Transparency Act, 2014?

A. Yes. There is one other minor change to the definition of “Opposition leader” and “reviewable expense” in section 1.1(3) of FIPPA.

Q. Is there a similar section 1.1 (3) change to MFIPPA?

A. No.

Q. When do these changes take effect?

A. January 1, 2016.

Q. Which organizations will be affected by these amendments/changes?

A. All organizations subject to FIPPA and its municipal counterpart MFIPPA.

Q. What should institutions do to address these proposed changes?

A. It may be useful to review and update any relevant policies and procedures relating to preserving records in your organization. It may also be useful to review the records retention schedules your organization may already have in place. Training and onboarding material for new staff should also be updated in accordance with these changes.

Q. How will this affect day-to-day operations in the work units that are impacted by these changes?

A. The proposed amendments re-affirm existing business practices in FIPPA/MFIPPA institutions, where records subject to freedom of information (FOI) requests are already preserved and not destroyed.

Training for staff on records preservation would assist staff to meet their recordkeeping responsibilities. See the Appendix A - Recordkeeping Practices Checklist for guidance.

Q. What does the establishment of the new offence really mean?

A. The offence provisions send a clear signal about how organizations and individuals subject to the legislation must manage their records, and the consequences for the improper destruction of records with the intent to avoid access to information requests.

The proposed offence is in line with similar offence provisions in other Canadian jurisdictions, including the federal Access to Information Act.

Q. How was the time limitation (two years after the offence is discovered) in the offence provision established?

A. The standard limitation period for most offences in provincial legislation is six months. This time frame is established in the Provincial Offences Act.

A longer limitation period in connection with the new records destruction offence provision in FIPPA and MFIPPA was established because it was recognized that an offence may not be discovered within six months.

The two-year provision is also in line with other Canadian jurisdictions that have this provision in their freedom of information legislation.

Q. To whom would an individual or organization raise the flag if there is suspicion that an act of improper records destruction has taken place?

A. Under this legislation, a prosecution for this offence would require the consent of the Attorney General. Information and concerns about the commission of the offence should be raised with the Ministry of the Attorney General.

Q. What is the role of the IPC with respect to these new amendments?

A. The IPC is the oversight body for FIPPA and its municipal counterpart MFIPPA. If there are concerns regarding compliance with these new amendments, the IPC may look into the matter and take appropriate action.

Q. I have additional questions. Who should I contact to learn more?

A. The Ministry of Government and Consumer Services, Information, Privacy and Archives Division can provide guidance and respond to questions about the amendments. Please contact us at web.foi.mgcs@ontario.ca or 416-212-7061.

Q. Are there tools to help assess whether institutions are prepared for the amendments to FIPPA and MFIPPA?

A. See the Appendix A - Recordkeeping Practices Checklist for guidance.

Q. What does it mean for institutions to “develop, document and put into place reasonable measures to preserve records in accordance with recordkeeping or record retention policies”?

A. It is recommended that institutions review or examine their existing recordkeeping and record retention policies and consider whether the processes or measures that have been put in place are sufficient to comply with the new rules. The organization should update and/or document those processes, if they are not already documented. These processes should be communicated to staff, so that there is an organization-wide understanding of how its business records are managed and preserved.

Q. What do institutions need to do?

A. In addition to the above, institutions should review their record holdings to determine which business records need to be preserved and for how long. The review of record holdings may lead to the development or updating of appropriate record retention schedules, taking into account the content and significance of the records and information.

Q. What is a record retention schedule?

A. A record retention schedule is a document that describes the type of records managed by the organization, the length of time they must be retained in a business area to meet operational or legal requirements, and how the records should be disposed of.

Q. What if we do not have recordkeeping requirements or record retention schedules? Who can we speak to for assistance?

A. If your institution is an Ontario government ministry or a government agency designated by regulation under the Archives and Recordkeeping Act, 2006; you can contact the Information, Privacy and Archives Division (IPA) of the Ministry of Government and Consumer Services at recordkeeping@ontario.ca.

Other institutions subject to FIPPA/MFIPPA should consult staff in their institutions who are responsible for recordkeeping or their legal counsel.

Contact information:

Ministry of Government and Consumer Services

Information, Privacy and Archives Division

Email: web.foi.mgcs@ontario.ca

Phone: 416-212-7061.

Web: Ontario.ca/Archives

Appendix A

Recordkeeping Practices Checklist

The Public Sector and MPP Accountability and Transparency Act, 2014 Schedule 6

The checklist below is intended to be a reference and guidance tool for FIPPA/MFIPPA institutions when assessing their recordkeeping practices. It is recommended that institutions review this checklist with their legal counsel and recordkeeping staff when evaluating their institution's readiness with the recordkeeping amendments to FIPPA/MFIPPA.

1.	Does your organization have recordkeeping, record retention rules and/or policies in place?	Yes	No
2.	Are they regularly reviewed and updated?	Yes	No
3.	Have those policies been updated to reflect the new recordkeeping amendments?	Yes	No
4.	Are there records management procedures in place to implement the rules/policies described above?	Yes	No
5.	Are they regularly reviewed?	Yes	No
6.	Are there tools and processes in place to assess whether your organization is complying with the recordkeeping amendments to FIPPA/MFIPPA?	Yes	No
7.	Are there record retention schedules that capture all records in your organization?	Yes	No
8.	Do the record retention schedules cover all formats of records (paper, digital, scanned records, email, etc.)?	Yes	No

Recordkeeping Practices Checklist

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| 9. Are there documented procedures in place to ensure that staff are aware of the need to preserve records and to put a hold on any destruction of records, (even destruction in the normal course of business) once a request for access under FIPPA/MFIPPA is received? | Yes | No |
| 10. Are there recordkeeping processes that prevent unauthorised disposal or tampering of records? | Yes | No |
| 11. Do requests for records sent to program areas by FOI offices (in response to an FOI request) note that it is now an offence to alter, conceal or destroy a record with a penalty of up to \$5000? | Yes | No |
| 12. Is there a dedicated records management team in place, and/or is there a senior manager or senior executive who is responsible for recordkeeping in your organization? | Yes | No |
| 13. Are managers aware of their recordkeeping obligations for their program areas? | Yes | No |
| 14. Is there a records management training program in place for all staff? | Yes | No |

Contact information:

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