

POLICY ADVISORY - CONSTITUENCY BUSINESS

TOPIC

Treatment of records related to constituency business under the *Freedom of Information and Protection of Privacy Act* (the Act). See also Section A.2 of the cross-government Policy and Procedures Manual (the Manual).

BACKGROUND

Members of the Legislative Assembly (MLAs) and Cabinet ministers hold several types of records, some but not all of which are subject to the Act. Some records may contain information that falls within two or more of the following categories:

Records related to the Office of an MLA, dealing with the duties and functions of an MLA as the representative of her or his constituents (including records of a Cabinet minister acting in her/his capacity as an MLA);

Records of a Cabinet minister, dealing with ministry programs and activities; and

Records of a member of a Cabinet or Cabinet-caucus committee, dealing with Cabinet issues. (A person need not be a Cabinet minister to be involved in Cabinet activities.)

FOIPP PROVISIONS

Section 3 of the Act states that the Act applies to all records in the custody or under the control of a public body, with few exceptions. The Schedule 1 definition of "public body" excludes "the office of a person who is a member or officer of the Legislative Assembly".

The Act does not, therefore, apply to the private or "political" records of MLAs, including MLAs who are Cabinet ministers, where those records relate to the non-government duties and functions of MLAs and their constituencies.



FOIPP PROVISIONS - continued

Records **excluded** from coverage by the Act are:

- Records related to the Office of an MLA, as they document the MLA's functions and activities as an MLA;
- Records of Cabinet ministers in their role as MLA representing their constituents.

Records **subject** to the Act include:

- records of a Cabinet Minister dealing with ministry activities, Cabinet committees and Cabinet-caucus committees. If such records are requested formally under the Act, public bodies review them line by line and release whatever information is not excepted from disclosure;
- any record of an MLA that is in the custody or control of a public body.

Exceptions that may apply to records subject to the Act depend on the type of information found in these records, for example, policy advice or recommendations (see section 13 of the Act and Section C.4.4 of the Manual) or economic or financial information, the disclosure of which might be harmful to the government's financial or economic interests (see section 17 of the Act and Section C.4.8 of the Manual).

KEY POINTS TO REMEMBER

1. File constituency records and other excluded records separately from records which are included in the scope of the Act.
2. Records of an MLA that are in the custody or control of a public body are subject to the Act.
3. Clarify the role of the Minister when meeting a constituent -- calling a record a constituency record does not necessarily make it one.

4. Consult your ministry's Director or Manager of Information and Privacy for more detailed assistance in identifying included and excluded records.
5. Consult your Ministry Records Officer for assistance in developing a system for separating included and excluded records.

July 1, 1999

