

## ***POLICY ADVISORY - DRAFTS / WORKING MATERIALS***

### **TOPIC**

Treatment of drafts or working materials under the *Freedom of Information and Protection of Privacy Act* (the Act). See also Sections A.2, C.4.2, C.4.4, C.4.5, C.4.8, C.4.12, and C.4.13 of the cross-government Policy and Procedures Manual (the Manual).

### **BACKGROUND**

Drafts and working materials are records which are preliminary versions of a final record. Examples are rough notes or calculations, research notes, steno work materials, drafts and similar materials used in the preparation of the final version of reports, correspondence or other records.

Some, **but not all**, drafts and working materials are "transitory" records. Transitory records are records of temporary usefulness that are needed only for a limited period of time in order to complete a routine action or prepare an ongoing record. See the separate backgrounder for transitory records for a more detailed discussion.

Records that are required by a public body to control, support or document the delivery of programs; carry out operations; make decisions or account for activities of government are **not** transitory records (for example, a preliminary version or annotated draft that is needed as evidence of approval or decisions that were made in the evolution of the document).

### **FOIPP PROVISIONS**

Any drafts or working materials in the custody or under the control of a public body may be requested under the Act. Public bodies conduct a line by line review of the requested records and release whatever information is not excepted from disclosure.



***FOIPP PROVISIONS - continued***

Exceptions that may apply to drafts or working materials depend on the nature of the information they contain. Exceptions may include:

- Cabinet confidences, for example, a reference to an issue to be discussed in Cabinet or Treasury Board (see section 12 of the Act and Section C.4.2 of the Manual). All decisions related to requests for Cabinet submissions and related records (for example, a Cabinet minute or agenda) are made by the Cabinet Office. Ministry decisions on the release of references to a Cabinet matter contained in the records are subject to approval by the Cabinet Office, through consultation with the Director of Information and Privacy for the Ministry of Finance and Corporate Relations;
- draft legislation (see section 12 of the Act and Section C.4.2 of the Manual);
- personal information, where its disclosure would constitute an unreasonable invasion of a third party's privacy; for example, information about an individual's finances (see section 22 of the Act and Section C.4.13 of the Manual);
- government economic or financial information; for example, information about negotiating strategy in upcoming contract talks (see section 17 of the Act and Section C.4.8 of the Manual);
- third party business information, where its disclosure would harm the third party (see section 21 of the Act and Section C.4.12 of the Manual);
- advice or recommendations (see section 13 of the Act and Section C.4.4 of the Manual); and
- legal advice (see section 14 of the Act and Section C.4.5 of the Manual).



**KEY POINTS TO REMEMBER**

1. Drafts or working materials are "records" as defined in the Act and are subject to access requests.
2. As a rule of thumb, a draft or working paper must be retained and kept on file if it is needed to document the evolution of government decisions or actions (for example, drafts of Cabinet submissions and significant drafts of briefing notes).
3. Public bodies are responsible for ensuring that their staff make consistent decisions about the retention of drafts and working materials. Your Ministry Records Officer can provide advice and help develop guidelines for specific types of drafts and working materials.
4. Contact your ministry's Director or Manager of Information and Privacy for more detailed assistance concerning drafts and working materials and information requests.

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