

## **POLICY ADVISORY - ELECTRONIC MAIL**

### **TOPIC**

Treatment of electronic mail (E-mail) messages under the *Freedom of Information and Protection of Privacy Act* (the Act). See also Section C.1 of the cross-government Policy and Procedures Manual (the Manual).

### **BACKGROUND**

E-mail messages are government records and are, therefore, subject to disclosure under the Act. There are two categories of E-mail messages:

**Transitory** -- records of temporary usefulness that are needed only for a limited time in order to complete a routine action or prepare an ongoing record. Transitory records are not incorporated in standard records control or filing systems, for example, E-mail phone message notes.

**Non-transitory** -- records that a public body uses to control, support or document the delivery of programs, to carry out operations, to make decisions, or to account for activities of government.

E-mail is subject to the same controls as other government records, including the disposition requirements set by the *Document Disposal Act* and the retention periods defined in approved records schedules.

### **FOIPP PROVISIONS**

Information applicants have the right to request access to any record in the custody or under the control of a public body, including an E-mail message. See subsection 4(1) of the Act and Section C.1 of the Manual.

Public bodies conduct a line by line review of the requested record and release whatever information is not excepted from disclosure. Information that may be excepted from E-mail messages includes any information that falls within the exceptions of the Act:

**FOIPP PROVISIONS - continued**

- Cabinet confidences, for example, a reference to an issue to be discussed in Cabinet (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, a dental appointment or a private meeting (see section 22 of the Act and Section C.4.13 of the Manual);
- government economic or financial information; for example, investment holdings (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);
- legal advice (see section 14 of the Act and Section C.4.5 of the Manual).

**KEY POINTS TO REMEMBER**

1. E-mail messages are subject to access requests under the Act. The only exception to this rule is transitory E-mail messages, such as telephone message notes, and even these are subject to request as long as they exist. See point #2.
2. Transitory documents which have not been destroyed at the time a request is received for such records are subject to the Act.
3. Electronic records deleted from systems but still present in a back-up system have been deemed not to be records for the purposes of the Act.
4. Non-transitory records must not be destroyed. Public bodies should place a hard copy on the appropriate files for retention and then delete the electronic copies from the system.

5. Each public body should take steps, where possible, to ensure that transitory E-mail is deleted from back-up tapes since this information is requestable under the Act.
6. Contact your ministry's Director or Manager of Information and Privacy for more detailed assistance concerning E-mail messages and information requests.

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