

## ***POLICY ADVISORY - TRANSITORY RECORDS***

### **TOPIC**

Treatment of transitory records 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**

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. Transitory records are not incorporated in standard records control or filing systems.

Records that are required by a public body to control, support or document the delivery of programs, to carry out operations, to make decisions, or to account for activities of government, are **not** transitory records.

The following are common types of transitory records:

- Convenience copies -- Extra copies of records made and kept only for convenient reference or for information. Convenience copies do **not** include day files or chronological files of correspondence.
- Unnecessary duplicates -- Stocks of publications, pamphlets, blank forms, informational material, etc., that have no further use for the public body.
- Some, **but not all**, drafts or working materials are transitory records. Examples of transitory drafts and working materials include rough copies of routine correspondence and preliminary drafts such as the Hansard "Blues", issued for convenience. See the separate policy advisory on drafts and working materials for a more detailed discussion.
- Some, **but not all**, electronic mail (E-mail) records are transitory records. See the separate policy advisory on E-mail for a more detailed discussion.

A special records retention and disposition schedule authorizes public bodies to destroy transitory records when they are no longer needed.



## **FOIPP PROVISIONS**

Any transitory records 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 record and release whatever information is not excepted from disclosure.

Exceptions that may apply to transitory records 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 (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);
- legal advice (see section 14 of the Act and Section C.4.5 of the Manual).

## **KEY POINTS TO REMEMBER**

1. Transitory records are subject to access requests under the Act.
2. As a rule of thumb, a record that is needed to document the evolution of a government decision or action is not a transitory record and must be retained and kept on file.
3. Don't assume that all drafts or working papers are transitory records.
4. Don't assume that all E-mail records are transitory records.

5. Marginal notes and comments or "post-it" notes attached to records are part of the record, not separate transitory records. If the record is requested, such attached notes are reviewed for release together with the rest of the record.
6. Public bodies are responsible for ensuring that their staff apply the transitory records schedule correctly. Your Ministry Records Officer can provide advice and help develop guidelines for specific types of records.
7. Contact your Director or Manager of Information and Privacy for assistance concerning information requests for transitory records.

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