

## Preparing for Legal Review of Records Schedules

### OVERVIEW

The following guidelines are intended to help Records Officers and records schedule developers ensure that legal counsel has everything needed to facilitate their review of a records schedule. If you are responsible for a new or amended [Operational Records Classification Schedules \(ORCS\)](#) or other government [records schedule](#), then you will need to arrange for review by legal counsel **before** seeking executive endorsement of the records schedule (i.e., sign-off of the ARS008 Records Retention and Disposition Authority form by ministry/agency authorities).

This review is required because protecting the [legal values](#) of records is one of the main reasons for establishing a records schedule. It helps ensure that records are retained as long as required to protect government against significant legal risks while also meeting business requirements.

### IS A LEGAL REVIEW REQUIRED?

If your schedule is a minor amendment that reflects changes in business practice but not in records retentions, you may not need a legal review. Consult the records schedule development experts at the central records services agency, Government Records Service (GRS).

### WHEN ARE YOU READY FOR THE LEGAL REVIEW?

Your records schedule is ready for legal review when:

- The developer has completed the records schedule and it is ready for executive sign off.
- Subject matter experts within the relevant ministry/agency have reviewed the records schedule to ensure that it is accurate, complete, and that the retention periods are appropriate to meet work requirements.
- The archival appraisal and standards review has been completed by the central records services agency and any required revisions have been made.

**What if you need a legal question answered before the entire records schedule is ready for legal review?** Identify the appropriate legal counsel (see step 2 below), and explain that you have a question relating to one aspect of the records schedule. Also mention that you will contact them again later to arrange for full review.

## THE 5 STEPS FOR YOUR LEGAL REVIEW

### 1. DEVELOP A SUMMARY OF RECOMMENDATIONS

Use the [Summary for Legal Review ORCS Format](#) (available in the zip file on the *Standard ORCS Kit* web page) to list all the new/amended primary and secondary numbers, titles, and recommended retention periods, as well as relevant notes from the records schedule. Also provide additional notes entitled "NOTE TO COUNSEL", if needed, to flag any specific questions you might have.

If this is an **amendment**, ensure that the summary explains the reasons for the changes. It may also be useful to provide information about the previous legal review, including the reviewer's name.

You may not need this summary if your records schedule/amendment is only a few pages long.

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### 2. IDENTIFY LEGAL COUNSEL

If the records schedule covers ministry records, your legal counsel is the Legal Services Branch solicitor assigned to that ministry. While advice from ministry staff with legal training is helpful, it does not fit the definition of legal review for purposes of the [Public Documents Committee](#).

If the records schedule is for use by a broader public sector agency, the legal review should be conducted by in-house legal counsel.

### 3. CONTACT LEGAL COUNSEL

Send a calendar request specifying the legal counsel's office as the meeting location. Separately send a memo containing a high-level explanation of the records schedule, with key documents attached (see Appendix A for suggested contents and attachments).

### 4. MEET WITH LEGAL COUNSEL

At the meeting, discuss the following matters:

- The significance and value of the legal review.
- Records schedule general purpose and requirements, and how to read it.
- Overview of this particular schedule/amendment ("walk through").
- The review areas highlighted in the introductory memo.
- Timeline for legal review feedback (2 weeks recommended, longer if necessary).
- Any additional questions that either party might have.

### 5. LEGAL COUNSEL FEEDBACK

Generally, a written response from legal counsel via email will provide adequate information and direction for the legal review to be considered complete. However, another meeting with legal counsel may be required to discuss the feedback. Follow up by sending a summary of decisions and requesting an email response for the records schedule development file (ARCS 432-40; if central agency, use *REMS ORCS* instead).

**Final disposition:** If counsel requests changes to final disposition, explain that this is an archival appraisal decision and any continuing legal requirement for records should be addressed through the active and semi-active records life-cycle phases. Perhaps discuss the possibility of an SO (superseded/obsolete) note that encompasses legal counsel's concerns.

Incorporate any changes requested by counsel into the schedule, and inform program area executive of the outcome of the review. The legal review process is now complete.

### RELEVANT POLICY

[RIM Policy 02-07](#) Review and Approval of Records Retention and Disposition Schedules under the *Document Disposal Act*

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### APPENDIX A: SAMPLE MEMO TO LEGAL COUNSEL

RE: Request for legal review of the ??? *ORCS* for NAME OF MINISTRY/AGENCY

Good morning,

This is a request for you to conduct a legal review of the proposed retention periods for the attached **records schedule/amendment**, to ensure that they satisfy legal requirements. This schedule covers records created and received by the Ministry of ??? regarding ???.

Please find attached the following documents:

- **The *ORCS* Summary for Legal Review** – a quick overview of the classifications and retentions highlighting any relevant issues for each classification (“secondary”). This provides a quick way to identify any classifications of interest/concern. **FOR AMENDMENTS:** Since this is an amendment, only the new or changed records series are listed.
- **USE THIS BULLET IF RELEVANT: Summary of Amendments** (*ORCS* Appendix A): This provides a high-level listing of new and changed secondaries. The original *ORCS* can be found here: **GIVE LINK TO *ORCS* IN *ORCS* E-LIBRARY.**
- ***ORCS* Primer for Reviewers** – provides brief explanations of *ORCS* concepts and terms.
- **Relevant sections of the *ORCS***, numbered to indicate the order in which the sections should be read. **FOR AMENDMENTS:** Changes to the document are indicated by red font.

In particular, please review the *ORCS* with consideration of the following:

1. **Litigation risks** – are records being kept long enough to meet requirements of the *Limitation Act* and other legislation with limitation specifications?
2. **Claims issues** – are the records which could be relevant to a claim being adequately retained? Please consider this question in light of the history of legal actions relating to the functions covered by the *ORCS* (e.g., personal injury, wrongful dismissal, breach of contract).
3. **IF RELEVANT: Records that relate to organizations and people, especially children** – are the retentions appropriate for those records? (For children in care, people under a disability, records commonly need to be retained for the entire lifespan of the individual.)
4. **Issues likely to arise:** Do any of these records relate to current or future legal “hot spots” that you are aware of, and if so are they being retained adequately?

The main purpose of this meeting is to provide an introduction to the schedule/amendment as well as explain the retention period rationale. **IF APPLICABLE:** I have several questions, which I can send in point form separately if you prefer to consider them in advance.

The second purpose of the meeting is to set a date for completion of the legal review; i.e., the date by which you plan to send me your comments about whether the *ORCS* meets legal requirements or, if not, your recommendations for changes. Normally we aim for two weeks after the meeting.

Thank you for your effort, and I look forward to working with you on this,

**(INSERT SIGNATURE BLOCK)**

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### Additional Information

Contact your [Records Officer](#) or check out the Records Management website.