

# Members of the Legislative Assembly: Guide to Government Information Management

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## Purpose

To assist Members of the Legislative Assembly (MLAs) in determining when records they create or receive are subject to the *Freedom of Information and Protection of Privacy Act* (FOIPPA), the *Information Management Act* (IMA), and government Information Management (IM) policies. To provide guidance on compliance with these laws and policies.

## Background

MLAs fulfill a variety of different roles and receive a range of material (e.g. letters, briefing materials, emails, texts, and telephone messages) from a variety of sources (constituents, fellow MLAs, ministry staff, interest groups, and others). All of these materials must be managed appropriately so that, should any additional action be required — such as responding to a freedom of information (FOI) request or discovery in a court case — it is easy for MLAs or staff to locate and provide the appropriate records.

Government information created or received by MLAs when carrying out government business is a valuable public asset. The appropriate creation and maintenance of government information supports openness and transparency, facilitates effective decision making, provides evidence of government policies, programs and decisions, and contributes to the historical record for future generations.

## When Government Information Management Requirements Apply to Members of the Legislative Assembly

The first step in understanding how to manage records is to determine whether a record relates to a person's work as an MLA, or is related to their work as a representative of a government ministry. Government IM legislation and policies apply to records that have been created in the course of carrying out the business of a ministry.

This would include when an MLA is:

- serving as a minister or minister of state;
- serving as the head of another broader public sector entity that is subject to FOIPPA or IMA;
- acting as a member on a committee or task force reporting to a minister; or
- assisting a ministry or other public body in carrying out its mandate (e.g. attending an event or carrying out a function on behalf of the minister responsible).

When an MLA creates or receives records to fulfill a government purpose, that MLA is acting on behalf of a ministry, and the records are subject to government IM legislation and policies. In these situations, elected officials must follow the same legal and policy requirements as an employee of a ministry. This includes FOIPPA, IMA, and the [Appropriate Use of Government Information and Information Technology Resources Policy](#) (“Appropriate Use Policy”).

## When Government Information Management Requirements Do Not Apply to Members of the Legislative Assembly

MLAs will create and receive information related to caucus or political party work, constituency business, and Legislative Assembly business. For example, a constituent may write to raise an issue of concern, an MLA may receive an invitation to a community event, or the MLA may be provided documents relevant to business of the Legislative Assembly, such as the debate of bills.

Government information management requirements do not apply in these situations. Where these records relate strictly to business of the Legislative Assembly, the records must be kept according to any standards that may be set by the Legislative Assembly Management Committee.

## Key Government Information Management Requirements

### Handling Personal and Other Confidential Information

When personal information is involved, in order to collect, use, and disclose the information, public bodies (including MLAs acting as employees of public bodies) must ensure they have the authority under FOIPPA to do so.

- Public bodies may only collect personal information that is directly related to, and necessary for fulfilling, a legitimate government purpose.
- Generally, public bodies may only use personal information for the reason it was originally collected (or a reason that has a direct connection to the original reason). Using personal information for a different purpose requires a legal authority under FOIPPA to do so (e.g. with an individual's consent).
- Public bodies may only disclose personal information for a purpose authorized in FOIPPA.

When the information in question is confidential but not personal information, (e.g. the information is subject to Cabinet confidence or protected by solicitor-client privilege), due care must also be taken to prevent inappropriate disclosure.

### Creating and Storing Working Documents

Government information must be stored on a "protected government system". In general, this means information must be stored in a ministry's recordkeeping system.

This does not include locations that are only available to one person, such as a desktop or the hard drive of a computer. Mobile media, such as encrypted USB sticks and portable hard drives, are not appropriate places to create or store government information. These locations should not be used to store government information over the long term.

In order to ensure that government information remains available and is complete, these kinds of media should only be used when absolutely necessary. When there is no other alternative, the

information should be transferred back into the ministry's recordkeeping system as soon as possible. Similarly, documents in a collaboration system, such as SharePoint, should be moved to the record-keeping system when the project or initiative is complete.

## Retaining Official Records

Official government records must be maintained in an appropriate recordkeeping system. This includes the master or file copies of records that document decisions, decision-making processes, and substantive activities of the ministry.

Government records are now increasingly digital (e.g. electronic messages and documents) and are maintained in many locations by multiple responsible bodies. Records typically are received from many offices, acted upon by the MLA, and then routed to other offices for action and/or retention.

While practices may vary somewhat among ministries, the following are best practices:

- For most records received by or sent from an MLA acting as or on behalf of a minister or minister of state, the Office of Primary Responsibility is the deputy minister's office.
  - Most records are sent to the deputy minister's office for retention, when no longer needed by the MLA.
  - The deputy minister's office is able to provide continuity and appropriate public service administration of the records of successive ministers.
  - In some cases, certain minister's office records are best maintained along with other related records within the appropriate functional area within the ministry.
- Cabinet records go to Cabinet Operations.
- Expense records go the Ministry of Finance.
- Other types of records (e.g. approved decision notes) may go to the appropriate functional area within the ministry.

## Managing Transitory Information

Transitory information is information of temporary usefulness that is only needed for a limited period of time to complete a routine action, enter into a digital system, or prepare an official record. This information does not have ongoing value for supporting or documenting the work of the ministry, and therefore does not need to be maintained as part of the official records of the ministry.

Note that it is the content and use of a record that determine its value, not its form (e.g. an email may be either transitory or official).

It is good practice for MLAs to regularly dispose of transitory information when it is no longer useful. This makes it easier to identify and manage the official records.

Transitory information can and should be disposed of when it is no longer of value, with one important exception: if the MLA receives an FOI or litigation search request, all relevant records

must be provided, including transitory information that exists at the time of the request. Transitory information that is subject to such requests must be retained pending completion of the applicable FOI response process and review period or the applicable litigation activities (contact Information Access Operations and Legal Services Branch, respectively, for guidance on particular cases).

For further guidance see the [Transitory Records Guide](#).

## **Maintaining Separation between MLA Information and Government Information**

Elected officials should keep government records separate from records related to their personal affairs, caucus or political party work, constituency business, or Legislative Assembly business. This will avoid potential confusion should an FOI request be made for the government information.

## **Handling Mixed Records**

Where a single record (e.g. an email thread) contains information related to an MLA's personal affairs, caucus or political party work, constituency business, or Legislative Assembly business, and that information is inseparable from and integrated into a government record (e.g. in a single email thread or on the same page of a notebook), the entire record is subject to FOIPPA and must be treated as responsive to an FOI request.

## **Using Confidentiality Agreements**

In order to ensure that confidential government information is protected, committees, task forces, or other groups with members that are not employees of public bodies or members of the Executive Council, should use confidentiality agreements where appropriate, depending upon the sensitivity of the information. Terms of reference and similar documents should reference relevant requirements related to confidentiality, access to information and privacy where appropriate. Ministry solicitors can advise and instruct on specific circumstances and requirements of such agreements.

## **Contact**

Contact your [Records Team](#).