

**Submission of the Provincial Archives to the *Right to Information Act* and  
*Protection of Information Act* Review Task Force**

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## **Submission of the Provincial Archives to the *Right to Information Act* and *Protection of Information Act* Review Task Force**

### Background

The Provincial Archives was established in the late 1960s as a result of the need to have a repository for the preservation of the official records of the Province. This need was made immediate by the Equal Opportunity Program of the government of Premier Louis J. Robichaud because a home was required for the records of defunct county councils, closed or amalgamated schools, the Legislative Assembly, and government departments designated to move into the newly-constructed Centennial Building in Fredericton.

Then, in the 1970s a fledgling records management program was transferred to the Archives to ensure that active records were managed and records of permanent value were identified and transferred to the Archives in a timely fashion. Thus, when the *Right to Information Act* was passed in 1978, a critical element -- records and information management -- was already in place to support the legislation. It is clear the administrative model wherein the Provincial Archivist oversees a comprehensive records and information management program\* has reaped many benefits for New Brunswick:

- records of permanent value are being identified and preserved;
- semi-active paper records of government are being stored economically;
- researchers by the millions are locating desired information in the Archives via the website, on microfilm, and in person;
- assistance is provided to government departments in the development of records and information policy and procedures and records classification and retrieval systems, etc;
- records retention and disposition schedules that authorize destruction or transfer to Archives are issued regularly;
- records having no archival value are being destroyed in a timely manner; and
- training in information management principles and techniques for government records personnel.

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\* We use the terms 'records management', 'information management', and 'records-keeping' interchangeably to describe the broad range of tasks, policies, resources, and personnel involved in managing information in all formats.

## Information Management Specialization

The archival program in place today is a result of a good foundation laid decades ago. The Archives has a unique perspective of the historical development of New Brunswick government and the management of government's records. (Some Archives' employees made comment on the original *Right to Information Act* when it was circulated in draft form in 1978!) The Archives corporately has also developed a specialization in historical records-keeping as well as in modern information management. This is evidenced by the role staff have filled in commenting on access legislation and in the co-ordination role assigned to the Archives in respect to the *Protection of Personal Information Act*.

The major impediment to the Archives delivery of a comprehensive information management and records-keeping program has been resources. The mandate of the Archives includes historical records, modern records management, records in all formats, as well as records of crown corporations, commissions and municipalities. The Archives has kept apace of the responsibilities only by using supplementary sources of funding. This situation is now made critical by the technological demands inherent in developing and implementing solutions to preserve electronic records in this Information Age. Electronic records need immediate attention. *Records are being lost because the Provincial Archives has not had the resources to take a leadership role in the management and preservation of government's electronic data.*

## Electronic Information Management

Over the last four years the Archives has worked to spearhead an Electronic Information Management Initiative (EIMI) to provide a corporate solution to the needs of departments to manage electronic information. This initiative is essential to ensure information is saved, can be located when needed, can be shared across government as appropriate and disposed of in accordance with established retention schedules. The corporate approach is designed to provide consistency across government, economies of scale in purchasing hardware and software and in training and implementation, and to ensure that historical data can be transferred to the Archives when its active period within departments is over. This initiative received wide support within government but has floundered at the point of funding.

### *Role re. Protection of Personal Information Act:*

Also, Archives was part of the intergovernmental committee that met regularly to prepare government for the passage and implementation of the *Protection of Personal Information Act*. The Archives had significant input in advising the committee concerning issues of records and information management. Furthermore responsibility for the *Act* was assigned to the Minister of Supply and Services and delegated to the Archives on the basis of the expertise and experience of the Archives in dealing with information. Therefore the Archives continues to have an advisory role (to the Minister of Supply & Services) on the administration of the *Act*, and provides coordination of policy and advice to departments. However, because no additional resources were provided with this assignment all of the Archives' activity relating to the *Protection of Personal Information Act* has been reactionary rather than pro-active. The coordination role should include coordination of responses, a role in appeal, the establishment of training modules, and promotion of public and civil service awareness concerning the legislation.

Good records-keeping is essential to timely and accurate requests for information -- be they requests from senior management, from the Legislative Assembly, or from the general public. Responses will be adequate in proportion to the quality of the information management system in place. To senior bureaucrats and operational staff, the result of poor information management will show up in less than effective planning and uninformed decisions, but to the public the result of not getting a full response is the violation of a constitutional right.

## Legislated Responsibilities of Provincial Archives re Access to Records and Information

### Definition of Archives Includes All official records

The Provincial Archives has the responsibility under the *Archives Act* to receive and maintain the historical records of the Province of New Brunswick. Indeed, section 3 says:

The Archives are to consist of all the records in the care, custody and control of the Provincial Archivist at the coming into force of this Act, all records that under this or any other Act are placed in the care, custody and control of the Provincial Archivist and books, papers and records vested in Her Majesty under the *Public Records Act*.

Section 1 of the *Public Records Act* states:

The books, papers and records kept by or in the custody of any officer of the Province, a municipality or a rural community in pursuance of his duty as such officer are vested in Her Majesty the Queen and her successors.

A close examination of the legislation allows one to see that the "archives" of the Province are more than those records deposited with the Provincial Archives: rather, the "archives" are composed of those items deposited as well as those items still with agencies, boards, commissions, departments, task forces, and so on.

Clearly, the intention of the Legislature was to ensure that the records of the Province were to be protected during the early part of their life-cycle while still in the hands of the creating entity and that those records of historical value would be identified and cared for when they ceased to be operationally necessary.

### Destruction of Records Authorized in the *Archives Act* only:

This inclusive view of archives is supported by the manner in which the legislature made provision for the destruction of records. Simply stated, no public record can be destroyed except in accordance with a records retention and disposition schedule issued by the Provincial Archives. Only the *Archives Act* authorizes destruction of the records of the Province. The *Act* says the Provincial Archivist is:

5(1)(b) to prepare records schedules governing the retention, destruction and transfer of public records to the Archives

and that, furthermore:

8 Public records shall not be destroyed or removed from the ownership or control of the Province unless such destruction or removal is authorized under this Act.

## Access to Records Transferred to the Provincial Archives

The *Archives Act* establishes, in section 10, a basic principle of access:

all public records transferred to the Archives and in the possession, care, custody and control of the Provincial Archivist are available for public inspection.

The *Act* describes exceptions to this principle for various categories of information and, for some categories, the number of years before such information will be available for public inspection.

It may be stating the obvious, but the Provincial Archivist is not a disinterested party in any process which pertains to the records of the Province, whether those records have yet to be transferred to the care, custody and control of the Archives or yet remain with the departments.

New Brunswick's legislators have made provision to ensure that the records of the Province not only be preserved and transferred to Archives when they become "historical", but that they be managed with efficiency and economy during their entire life-cycle.

This management of records includes authorization for the Archivist to establish records schedules which direct the departments concerning the timely disposition of records. The definition in section 1 of the *Archives Act*:

"records schedule" means a timetable that describes the lifespan of a record from the time of its creation through active and dormant stages to its final disposition either as waste or as a record of legal or historical value to be permanently preserved;

The duties of the Archivist also include the maintenance of the Records Centre

to provide economical storage facilities for public records and to encourage the use of such facilities;

and to assist with file plans and with the adoption and application of new technologies to manage the information resources of the Province. The Archivist is mandated

to encourage the use by departments, municipalities and rural communities of modern records storage and classification systems in order to ensure that important policies and programs are documented and that public records are protected against deterioration, loss and destruction;

### *Records Management Policy*

The *Records Management Policy* established by the Board of Management (see Appendix I) establishes that "Records management is an early stage in the archival process" and that records "must be managed in a manner that removes barriers to access and makes information available to those who need it". "Records" in this policy includes the traditional formats along with electronic records and all other machine readable records, regardless of format. The *Policy* establishes the obligations of the departments and the Provincial Archivist in the partnership of managing the information of government.

Legislation and policy give the Archives specific roles and responsibilities in matters of information access and privacy protection.

Moreover, with their unique training and experience, the employees of the Archives serve the government and Province of New Brunswick by providing professional comment and direction concerning records and information management. It is from this professional perspective, therefore, that the Archives makes the following observations and recommendations to the Task Force on:

- I. Records and Information Management,
- II. The *Right to Information Act*, and
- III. The *Protection of Personal Information Act*.

I. Observations and Recommendations on Records and Information Management:

1. It is highly probable that requests under the *Right to Information Act* are not being fully met because information is not being managed according to best practices. We recommend that public bodies be required to: adopt the records management standards established by the Archives, have a robust records management program, and approved records retention and disposition schedules for all records (responsibilities established in the Records Management Policy).
2. Unstructured electronic information (such as email, correspondence, spreadsheets and reports) is not being managed adequately, and therefore requests for information cannot be responded to in the fullest and most timely manner. Emails are particularly vulnerable: not being retained, filed, managed, or transferred to Archives according to retention schedules. The management and preservation of recorded information is not optional -- the quality of that management will be reflected in the responses to information access requests.
3. The government of New Brunswick is not managing its electronic records. We recommend that government adopt and enhance the Archives' standards for the management, scheduling, and preservation of electronic records, and that, concurrently, funding be provided to implement a corporate system of electronic records and information management.
4. The government of New Brunswick does not have a repository for the preservation of electronic records of historical value. Digital records are not being managed and historical records in digital format are not being preserved in the Archives for lack of resources. We recommend that the government immediately fund a digital archives component within the Provincial Archives.
5. Departments and public bodies purchase and implement new technologies without consideration of the effects upon records and information management, and without consulting either records managers or the Provincial Archives. The contribution of information specialists would enhance the application of technology to information retrieval, maintenance, storage and preservation. We recommend that a coordinating committee be established to bridge the gap between information management and technology specialists.
6. Not all departments and public bodies are caring for public information adequately. Records created in regional offices especially, but not exclusively, are often poorly managed and suffer

neglect. We recommend this situation be rectified so that Ministers and the public will be more confident of getting full responses to *Right to Information Act* requests.

7. Not all departments and public bodies have fully qualified records and information managers. Classification, training, knowledge level, and "status" of records and information managers across government is uneven and this inevitably affects the outcome of any search for information. We recommend that every public body be required to have a qualified records and information manager overseeing its records.
8. We recommend that the Provincial Archives be mandated to create, and that the Board of Management issue, a records and information handling protocol to assist all employees of government in their creation and oversight of information in any format.
9. We recommend that all employees be required to be knowledgeable of a records and information handling protocol, the *Right to Information Act*, the *Protection of Personal Information Act*, the *Archives Act*, the Records Management Policy, the E-Mail Policy, and other relevant documents.
10. We recommend that as appropriate the Comptroller, Ombudsman or Auditor General be authorized by legislation to audit and report to the Legislative Assembly on records management within public bodies, and that the heads of public bodies be specifically accountable for their records management programs.

## II. Observations and Recommendations on the *Right to Information Act*:

11. That the *Right to Information Act* provide definitions parallel to the *Archives Act* as to what is and is not a record.
12. That the *Right to Information Act* contain a clause which clearly establishes all records as being public records (notwithstanding or limiting other proprietary rights inherent, such as copyright or jurisdictional rights).
13. That the *Right to Information Act* declare as operative a culture of openness concerning information and public access to that information. We believe that discretion must remain with the ministers and heads of public bodies, but the principles informing the *Act* must be declared clearly, even as preamble in the *Act*.
14. That since a culture of openness cannot permeate government as long as employees fear for their jobs whenever they release even routine information, we recommend that the *Right to Information Act* should contain statements which protect employees who release information in good faith, and also, that it set out reasonable penalties for those who wilfully and knowingly release or destroy information without authorization.
15. That the *Right to Information Act* contain statements clearly prohibiting the destruction of records (including electronic records) except according to records retention schedules established by the Provincial Archivist in accordance with the *Archives Act*.
16. That guidelines be established for all *classes* or *categories* of records excluded in the *Right to Information Act* (and the *Archives Act*) as to when the exclusion no longer applies
17. That, in the spirit of openness, the term for exclusion of legal opinions be changed from 50 years to 30 years to be parallel to the closure period for opinions and recommendations to a minister.
18. That forms be developed for those classes or categories of records for which there is no right of access (such as legal opinions, advice to ministers, etc.) as a means of assisting in their identification and management as records

III. Observations and Recommendations on the *Protection of Personal Information Act*:

19. That the *Act* make the heads of public bodies accountable to the Legislative Assembly or the Ombudsman for the state of departmental policies and procedures in place for the protection of personal information.
20. That standards be developed and adopted to serve as benchmarks of compliance, and that audits be conducted as to compliance.
21. That a process be put in place whereby any exchange of information between departments (and between departments and other public bodies) must be approved and monitored in order to further protect the information divulged by the citizens of New Brunswick to the government of New Brunswick, but allow for efficiencies in program administration.
22. That the *Protection of Personal Information Act* include statements concerning the right of privacy of the individual along with statements concerning the right of the government of New Brunswick to administer programs and policies with efficiency and reasonableness.
23. That oversight of the *Act* be better defined and that the role of the Minister of Supply & Services (i.e., the Provincial Archives' coordination role) be defined within the *Act* and that resources be allocated for this role.

## Appendix I - Records Management Policy (AD-1508)

**Number: AD-1508**  
**Section: SERVICES**  
**Subject: RECORDS MANAGEMENT**  
**Last update: 00/00/00**  
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### 1. APPLICATION

This policy applies to the public service as defined in section 6 (4) of the *Financial Administration Act*.

### 2. AUTHORITY

*Archives Act*, R.S. A-11; *Public Records Act*, R.S. P-24; section 5 (1) (c) of the *Financial Administration Act*, R.S. F-11; Treasury Board Minute, 78-470; Board of Management Minute 93.0870.

### 3. EFFECTIVE DATE

December 15, 1993.

### 4. INTRODUCTION

Records management is an early stage in the archival process, intended to provide integrity, accessibility and appropriate confidentiality of recorded information. With emerging electronic technologies, it becomes increasingly urgent that early attention be paid to the needs of records management when choosing systems and equipment, and when establishing procedures. The Provincial Archives assists departments in the design, implementation and support of effective records management programs. It is thereby ensured that standards are applied in creating and maintaining information, and that information of enduring value is identified and is transferred to the Archives.

Records management results in both the improved use of information resources, giving immediate benefits to the organization, and specific cost avoidance and cost reductions. Records management allows government to exploit information as a resource. The various forms of information (paper, maps, plans, drawings, photographs, sound and moving images, and electronic data and images) must be globally managed, from time of creation and throughout their use, and they must be managed in a manner that removes barriers to access and makes information available to those who need it. Through setting standards, common classification

schemes and indexing processes, and through retention scheduling, information is managed to enable better, more informed decisions by the department.

A records management program that is organized to encompass all recorded information brings together many diverse elements which traditionally have been hidden expenditures, or have been spread across the organization. The savings and efficiencies which derive from both improved techniques and a certain economy of scale are well recognized attributes of sound records management.

## **5. POLICY**

**5.1** *Records* and *recorded information* mean correspondence, memoranda, forms and other papers and books; maps, plans and charts; photographs, prints and drawings; motion picture films, video tapes; sound recordings, magnetic tapes, optical disks, microfilm and electronic images, electronic and all other machine readable records, information derived from records in electronic and machine readable form; and all other documentary materials regardless of physical form or characteristics.

**5.2** This policy applies to recorded information in all formats.

**5.3** All departments, agencies, corporations and commissions must:

- manage recorded information (regardless of physical form) efficiently, as a significant resource;
- assign the necessary resources for the implementation and maintenance of systems for managing records;
- ensure timely access to reliable information from records in active, semi-active and inactive stages;
- reduce storage costs through records conversion and use of Records Centre storage;
- dispose of valueless records in a timely and secure manner; and
- ensure that records with archival value are identified and preserved, and placed on archival media prior to their disposition as an inactive record.

**5.4** Some departments have substantial organizational and monetary investments in records management programs which may be at variance with elements of this policy. Therefore, accommodations may be made to allow departments to continue with effective established program components.

## **6. ROLES AND RESPONSIBILITIES**

**6.1** Records must not be destroyed or removed from the control of the Government of New Brunswick, unless such action is authorized under the *Archives Act*.

**6.2** The Provincial Archives is required to:

- preserve and provide access to records of enduring value; and,
- administer the *Archives Act* and the implementation of all legislation which designates a role to the Archives.

The Provincial Archives ensures the security and integrity of recorded information of government, and the economy and efficiency of records management in government by:

- developing policy, and establishing standards and guidelines;
- providing technical and consultative services in the development, implementation and maintenance of programs to manage recorded information in all formats;
- providing microform and document imaging services;
- providing training and facilities for the effective management of records;
- ensuring that applications of micrographic and imaging technologies benefit from technical and archival standards;
- ensuring that applications of computer technology to departmental records management programs benefit from standards and directives; and
- identifying and defining archival and records management issues at the beginning of the life cycle of information and image based systems.

### 6.3 Departments are required to:

- assume responsibility for the administration, control, preservation and security of records within their custody, in accordance with legislation and the standards and guidelines for the management of records established by the Provincial Archives;
- develop and maintain a plan for the management of recorded information which identifies and addresses program goals on an annual basis and responds to recommendations made in the course of program reviews undertaken by the Provincial Archives;
- establish and adequately staff the records management program, and assign responsibility for the management of all departmental information resources to a records manager who reports to senior management; and
- designate a senior management position which is accountable for all records management activity.

Departments manage recorded information by:

- maintaining a system of description that organizes all information holdings, regardless of physical form, which is filed with the Provincial Archives and updated on a regular basis;
- applying the *Classification Plan and Retention Schedules for Administrative Records* issued by the Provincial Archives for retention scheduling;
- establishing a file classification plan for operational records;
- establishing filing centres, which are centralized or decentralized, at head office and in the regions;
- developing and maintaining written policies and procedures;
- ensuring that all information, in any format, has an approved retention and

disposition status through the use of the *Authority for Records Retention and Disposition*;

- taking advantage of the centralized records storage and retrieval services of the Provincial Archives Records Centre.

## **7. IMPLEMENTATION**

The Provincial Archives is responsible for evaluating the effectiveness of this policy. The Provincial Archives will submit an annual report to the Public Records Committee assessing the current state of records management, and will make recommendations for the modification of this policy and the achievement of greater adherence. To facilitate implementation, the Provincial Archives will regularly conduct a review of each department, both to examine current issues and to assist in planning for program development over time.

## **8. INQUIRIES**

For further information, please contact the Provincial Archives, Records Management Section, at 453-2897