

The logo consists of the letters R, M, R, and F in a bold, white, sans-serif font, each letter separated by a vertical white line. The letters and lines are set against a solid blue rectangular background.

R | M | R | F

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Records Management and Retention: Privacy Considerations

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Road Map

- Give legal background and identify obligations
- Discuss considerations for records management
- Provide some practical tips

Note: Records management is an entire area of study and professional focus. A good system needs to be responsive to a particular organization.

Underlying Legal Obligations

- Arise from statute:
 - *Municipal Government Act*, RSA 2000, c. M-26
 - *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 ("FOIPPA")

MGA: CAO's Responsibilities

Performance of major administrative duties

208(1) The chief administrative officer must ensure that

...

(b) all bylaws, minutes of council meetings and other records and documents of the municipality are kept safe

MGA: Council's Authority

Destruction of records

214(1) A council may authorize the destruction of the original bylaws and minutes of council meetings if the originals have been recorded on microfiche or on another system that will enable copies of the originals to be made.

(2) A council may pass a bylaw respecting the destruction of other records and documents of the municipality.

MGA

(3) A bylaw under subsection (2) must provide that if an individual's personal information will be used by the municipality to make a decision that directly affects the individual, the municipality must retain the personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.

FOIPPA – What's the Point?

- Section 2 – Purposes of Act include:
 - allow people to **access** records
 - **Control** how records are collected, used, disclosed
 - Allow people to request **corrections** to personal information

FOIPPA – When does it apply

- FOIPP applies to all records in the custody or under the control of a public body (section 4)(with some exceptions)
 - So ... what are records? What are public bodies? What is custody? What is under the control of?

FOIPPA - Records

- Defined term section 1(1)(q) “record” means a record of information in any form and includes notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner but not the software or any mechanism that produces records

FOIPPA - Records

- Note:
 - Very broad
 - Specific examples are given but anytime information is kept that can result in a record
 - Many forms
 - Focus on the capture of information not how it is done

FOIPPA – Public Body

- Includes many things, for our purposes know:
- Section 1(1)(p)(vii) public body includes local public body
- Section 1(1)(j)(iii) local public body includes local government body
- Section 1(1)(l)(l) local government body includes a municipality as defined in the *Municipal Government Act* (includes summer villages)

FOIPPA – Custody/Control Of

- Used a lot (22 times), not defined in FOIPPA
- Definition has developed over time in various decisions arising out of FOIPPA
- *Alberta Emergency Management Agency, Re*, 2017 decision of Alberta Information and Privacy Commission

FOIPPA – Custody/Control Of

- “an enforceable right of an entity to possess a record or to obtain or demand it, if the record is not in its immediate possession”

FOIPPA – Custody/Control Of

- “also imparts the notion that a public body has duties and rights in relation to a record, such as the duty to preserve or maintain records, or the right to destroy them”

FOIPPA – Custody/Control Of

- “if it can be said that a public body has an enforceable right to possess records or obtain or demand them from someone else, or has duties in relation to them, such as preserving them, it follows that this entity would have control or custody over the records”
- Many factors will be considered but this summary gives you the idea

FOIPPA – Rights of Access

- FOIPPA affords a broad right of access to records:
- Section 6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant
- Specific exceptions are outlined (but we won't cover those)

FOIPPA – Obligations

- Section 10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely
- Records Management should be responsive to obligations
 - Remember there are also time limits on responding

FOIPPA – Obligations

- Records Management allows responses which are:
 - Timely
 - Open
 - Accurate
 - Complete

Records Management

- Records Management, an effective system must address/consider ALL records which will be under the control of a public body
 - Letters/Emails
 - Pictures/Maps
 - Digital files
 - Other?

Records Management

“Who”

- who saves a record
 - i.e. if three people receive the email, they should all understand who saves it
- Consideration should also be given to identify who a record relates to (so information can either be disclosed ... or not, as appropriate)

Records Management

“What”

- criteria to identify what will be a record
 - Email relating to a particular property
 - Email relating to office potluck
 - Picture of unsightly property
 - Picture of cute kitten from internet

Records Management

When

- Timelines for saving records (as they arrive, weekly, monthly, yearly?)
- Timelines for purging records (legal requirements, "business" requirements)

Records Management

“Where”

- Ideally a record will be kept in only one place which is consistent for that type of record
- This might vary depending on what the record is
- Might involve moving records from one form to another (i.e. scanning documents received to save digitally)

Records Management

“How”

- need established processes which are clear
 - All users should be aware of naming protocol/classification
 - Mislabeled records will not be found
- All users should be aware of searching protocol
 - Knowing how a record will be sought out helps make sense of the system

Records Management

- Practical Tips:
 - Inventory: Records are likely already maintained in one form or another – you can't decide how to manage those until you know what you have
 - Train: No system will work if it is not used, everyone who has a role (likely everyone) must understand and employ policies/procedures

Records Management

- Practical Tips:
 - Audit: checking in can ensure the system functions but also that it's being used
 - Protect: records should be kept appropriately to avoid inadvertent disclosure
 - Ensuring access limited to necessary access, records maintained in locked areas, appropriate security measures (physical and digital)

Records Management

- Practical Tips:
 - Processes: not only for saving records but for accessing them
 - Are they signed out? Is a record kept of who has accessed?
 - Storage: costly, strike balance in record keeping with record archive or disposal

Records Management

- Practical Tips:
 - Everyone: records management is everyone's responsibility, it can seem like a hassle at first but must be emphasized
 - Failure: can mean excessive expenses in searching or correcting records, dealing with the Commissioner (reviews or inquiries)

Records Management

- Practical Tips:
 - Disaster Planning: what should happen if the worst should happen?
 - Review: regular review will ensure procedures remain relevant and responsive and permit for improvement where identified

Records Retention Bylaws

- Council may pass a bylaw regarding the destruction of municipal records and documents, subject to s. 214(3) of MGA
- FOIPPA does not prohibit storage or destruction of a record if authorized by council (bylaw, or resolution) (s. 3(e)(2))

Relevant Legislation

- *Limitations Act*, RSA 2000, L-12, s. 3(1)(b): “ultimate” 10 year limitation period
- *Local Authorities Election Act*, RSA, c. L-21: disposition of election material

Additional Resources

- Municipal Affairs, *Retention and Scheduling of Municipal Records* (October 2014)
([http://www.municipalaffairs.alberta.ca/documents/ms/Retention and Scheduling 2014.pdf](http://www.municipalaffairs.alberta.ca/documents/ms/Retention%20and%20Scheduling%202014.pdf))
- Service Alberta, *FOIP Guidelines and Practices* (2009), Chapter 8: Records and Information Management
([http://www.servicealberta.ca/foip/documents/cha pter8.pdf](http://www.servicealberta.ca/foip/documents/cha%20pter8.pdf))

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Thank You For Your Attention Questions Are Welcome

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