

Provincial Archives of Saskatchewan Guidelines for Transferring Custody of Records

Reorganization is a common occurrence in government and may result in a transfer of functions, responsibilities or programs from one Government Institution to another. In cases where a function, responsibility or program is transferred between Government Institutions in Saskatchewan, custody of all records related to it (legacy records and semi-active records, as well as active records) must be considered part of the transfer arrangement.

The following guidelines are intended to assist in the transfer of records from one Government Institution to another.

1) The institution in question must draft a Memorandum of Understanding (MOU) concerning the transfer of custody of the records.

- The MOU must determine responsibility for inactive records.
- The MOU should specify whether the transfer of records will be limited to active records, or also include any inactive (semi-active and legacy records) belonging to the originating institution.

2) The Records Coordinator of the institution currently responsible for the records should:

- Inform the Information Management Unit at the Archives that records in their possession are to be transferred to another institution.
 - Provide the Archives with the name of the institution to which the records will be transferred.
 - Identify any existing records classification and retention schedules (ARMS, ORS or comprehensive, corporate-wide) applicable to the records.
- If no inventory of the records exists, create an inventory of the records to be transferred, specifying their format (paper, electronic, microfilm, etc.).
- If relevant records are housed in the offices or personal drives of staff, rather than in a central filing system, notify staff of the upcoming transfer and request that they file these records in the central filing system to ensure that they will be included in the inventory.
- If any transitory records are discovered when conducting the inventory, destroy these records according to your institution's internal procedures for such records. Refer to *The Transitory Records Guidelines* for further information.
- Request that staff remove any non-work related records (paper and electronic) from the filing system, as these should not be transferred (e.g. personal records).
- Locate all transfer forms and inventories of inactive records housed in offsite storage facilities (Ministry of Central Services Records Centre, private facilities, etc.).

- Gather together all information pertaining to the records to be transferred, including inventories of active records, any classification and retention schedules relevant to the records (ARMS2014, ORS or comprehensive, corporate-wide), regulatory requirements, special procedures and, if part of the transfer arrangement, any documentation concerning inactive records including inventories, documentation of records placed in offsite storage facilities, etc.
 - If inactive records are part of the transfer arrangement, the receiving institution may also wish to have copies of disposal requests concerning the records so that they may respond in the event of a Freedom of Information Request or other request for legacy records.
 - Forward all the material to the Government Institution taking custody of the records.
- Box active records and transfer them to the receiving institution.
- Ensure that the transfer of electronic records is done securely and in a manner that retains the authenticity and integrity of the records.
- Ensure that electronic records being transferred are accessible and legible at the time of their transfer.
- Document the transfer of custody and keep a record of this transaction using the appropriate retention schedule.

3) The Records Coordinator of the Government Institution receiving the records should:

- Ensure adequate space is available for the incoming records (physical and electronic).
- Ensure that the means are available to make incoming electronic records accessible and legible.
- Acknowledge receipt of the records in writing and keep a record of this transaction using the appropriate retention schedule.

What should be done if custody of records must be transferred to or from a non-government organization?

Records created in the administration of public affairs are still considered public records as defined by *The Archives and Public Records Management Act*, after their transfer to a non-government organization. As such, once transferred the records must continue to be governed by *The Archives and Public Records Management Act*, and the applicable retention schedule(s) by the non-government organization that has received them. Disposal of the records by the non-government organization will have to be coordinated with and requested by the Government Institution that was responsible for the records prior to the transfer. Please contact the Information Management Unit for further information.

If the Government Institution transferring the records wishes to relieve the non-government organization of the duty to coordinate disposal of records with them, the Government Institution may elect to make copies of the records which will be transferred to the non-government agency. The Government Institution will continue to be responsible for managing the original records (it will also be responsible for any legacy records) as per the terms of *The Archives and Public Records Management Act*. However, since this solution is not always feasible and may not be possible depending on legal requirements, the Government Institution may need to consider the option presented in the paragraph above.

In situations where records are transferred from a non-government organization to a Government Institution, any active records necessary for the Government Institution to administer the programs or responsibilities it has acquired from the non-government organization are considered public records and must be managed as per the terms of *The Archives and Public Records Management Act*. Any inactive or legacy records which are transferred to the Government Institution remain subject to the policies/standards that applied to them as private records; however, before disposing of such records the institution must submit an inventory and allow the Archives the opportunity to appraise the records.

Before a Government Institution transfers records to or receives a transfer of records from a non-government organization, the Government Institution should draft an agreement outlining the terms under which custody of records will be transferred. This may be a separate agreement or a section of a general transfer agreement that addresses custody of records. The agreement should determine whether the transfer of records will be limited to active records, or also include any semi-active and legacy records belonging to the originating organization. In addition, the agreement should address the fact that records transferred to a non-government organization continue to be governed by *The Archives and Public Records Management Act*, and the applicable retention schedule. Please consult the Archives in this regard.

Any agreement to transfer records that is negotiated between a Government Institution and a non-government organization must be reviewed by the government institution's legal counsel; this is particularly important if the records in question contain confidential or sensitive information.

What should be done with records if a Government Institution ceases to exist altogether?

In the event that a Government Institution ceases to exist and its programs and functions are not transferred to another Government Institution or non-government organization, please contact the Information Management Unit of the Archives for assistance with the management and/or disposal of the records

Works Consulted

Provincial Archives of New Brunswick, Recorded Information Management Unit.
What happens when the Office of Primary Responsibility changes? June, 2011.