
Alberta Records Management Committee (ARMC)

ARMC Circular: 96/97-004

Topic: Management and Disposition of Ministers' Records

1. Introduction

The purpose of this circular is to provide updated instructions to departments related to the management and disposition of Ministers' records. This circular supersedes and cancels SRO Circular #95/96-003, and supplements the publication [Managing Records in Ministers' Office](#). Those guides have been revised to take into account a legal opinion from Alberta Justice, regarding Ministers' records created before April 1, 1995. Because the [Records Management Regulation](#) does not contain a retroactivity clause similar to Section 90 of the [Freedom of Information and Protection of Privacy Act](#), the status of Ministers' records created before April 1, 1995, in relation to the government records management program, was not clear.

There are two categories of Ministers' records:

- **Departmental and Cabinet Records**, generated by Ministers in their capacity as Ministers of the Crown; and
- **Personal and Constituency Records**, generated by Ministers in their capacity as members of the Legislature and private citizens.

On April 1, 1995, the *Records Management Regulation* came into effect. Under its terms, Ministers' Departmental and Cabinet records became the property of the Crown and subject to the government records management program. Ministers' Personal and Constituency records continued to be the Ministers' personal property and could be disposed of as Ministers saw fit. The legal opinion from Alberta Justice clarified that all Ministers' records created before April 1, 1995, regardless of whether they were Departmental and Cabinet records, belong to the Minister in question. It further stated that all Ministers' Departmental and Cabinet records created after April 1, 1995, belong to the Crown and are subject to [Government Organization Act](#) and *Records Management Regulation*. It is important to note, however, that the Office of Information and Privacy Commissioner would not comment on this position.

This circular is designed to assist Senior Records Officers and their staff in distinguishing between the two types of Ministers' records and in understanding their responsibilities related to Ministers' records under the *Government Organization Act* and the *Records Management Regulation*. It also provides guidance in disposing of the records of former Ministers who have left Cabinet or changed portfolios.

2. Ministers' Departmental and Cabinet Records

What they are:

Ministers' Departmental and Cabinet records relate directly to a Minister's portfolio responsibilities and other government responsibilities assigned to the Minister by legislation or Cabinet. They also include the records of Ministers' political staff related to the Minister's portfolio responsibilities. Departmental and Cabinet records should be organized and maintained separately from Ministers' Personal and Constituency records. They typically include:

- records of internal deliberations involving a Minister and his or her staff on matters relating to the Minister's portfolio;
- communications between Ministers on matters relating to the portfolio of the Minister possessing the records;
- external communications on matters relating to a Minister's duties or office;
- records concerning administrative matters pertaining only to a Minister's duties or office;
- records relating to a Minister's activities as a member of Cabinet, Treasury Board or their committees; and
- special projects or committees such as Standing Policy Committees.

What to do with them:

Senior Records Officers for government departments are responsible for coordinating records scheduling and disposition for their Minister's Office, whether or not there are other Senior Records Officers appointed for affiliated agencies that also report to the Minister.

Under the terms of the *Records Management Regulation*, Ministers' Departmental and Cabinet records created after April 1, 1995, must be disposed of according to records retention and disposition schedules approved by the Alberta Records Management Committee (ARMC). Departmental and Cabinet records created before April 1, 1995 remain the property of the Minister concerned.

The retention requirements of Ministers' Departmental and Cabinet records created after April 1, 1995 should be determined by the needs of the Minister and department, not by the tenure of the individual Minister. Senior Records Officers and staff should:

- assess retention requirements;
- advise Ministers' office staff on the use of common government-wide schedules including the Transitory Records Schedule and the Administrative Records Disposition Authority (ARDA); and
- develop records retention and disposition schedules for all unscheduled Ministers' Departmental and Cabinet records.

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Public access to Ministers' Departmental and Cabinet records is governed by the *Freedom of Information and Protection of Privacy Act*, except for those records excluded under Section 4(1)(l) of the Act. The Provincial Archives of Alberta will ensure that the provisions of this Act are strictly observed for records transferred to it under approved schedules.

3. Ministers' Personal and Constituency Records

What they are:

Ministers' Personal and Constituency records typically relate to:

- the Minister's constituency business and role as a member of the Legislature;
- political party matters (such as election campaigns, party organization, caucus affairs and political appointments);
- the private life and personal interests of the Minister.

What to do with them:

Ministers' Personal and Constituency records are their own personal property and may be disposed of as they wish. These records, whether created before or after April 1, 1995, are not subject to the *Government Organization Act* or the *Records Management Regulation*.

Ministers' Personal and Constituency records are also not subject to the *Freedom of Information and Protection of Privacy Act* when they are organized and maintained separately from Ministers' Departmental and Cabinet records. The Ontario Information and Privacy Commissioner has ruled, for instance, that Personal and Constituency records may fall under the jurisdiction of the Ontario Act if they are integrated with other records held by the ministry (Order P-267). This may set a precedent for Alberta. It would be wise therefore to ensure that Ministers' Personal and Constituency records are organized and maintained separately from Ministers' Departmental and Cabinet records.

4. Records of Ministers Who Have Left Cabinet or Changed Portfolios

- **Personal and Constituency Records** - Ministers have four disposition options for these records:
 1. **Transfer to the Provincial Archives of Alberta** - Ministers' Personal and Constituency records provide important documentation of Alberta's political process. Therefore, the Provincial Archives of Alberta is very interested in acquiring these records through a private deposit agreement with the Minister. Any Minister leaving Cabinet and politics should be encouraged to consider the Provincial Archives as the logical repository for their Personal and Constituency records. Records acquired by the Provincial Archives through a private deposit agreement are explicitly exempt from the terms of the *Freedom of Information and Protection of Privacy Act*. Access provisions for Ministers' Personal and Constituency records transferred to the Archives are determined by the Provincial Archivist in consultation with the donating Minister and are included in the

deposit agreement.

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2. **Deposit With Legislative Assembly Office** - If a Minister does not leave instructions regarding the disposition of his or her Personal and Constituency records, Legislative Assembly Office will assume responsibility for them. They will store them and obtain disposition instructions from the Minister directly.
 3. **Send with the Outgoing Minister** - If the Minister chooses to take Personal and Constituency records with him or her, the arrangements will depend on the Minister's individual requirements.
 4. **Destroy** - If the Minister decides to destroy the records, shredders in individual offices or throughout the Legislature Building may be used. Not all shredders securely destroy documents, so it is important to ensure that the shredded paper is also protected. Another alternative is to send the records or the shredded paper to the Alberta Records Centre for pulping. This is coordinated by the Senior Records Officer.
- **Departmental and Cabinet Records**

If records created before April 1, 1995 are included, Ministers must decide whether or not to treat them as their personal property. If they decide to treat them as their personal property, they would handle them the same as they would their Personal and Constituency records. If they do so, however, they must understand that there is a risk that the records could be subject to the *Freedom of Information and Protection of Privacy Act* and they could be obligated to produce them in the event of an access request under FOIP. This could come about if the Information and Privacy Commissioner rules in the future that Departmental and Cabinet records created before April 1, 1995 are subject to the FOIP Act by virtue of the retroactivity clause (Section 90) in the Act that covers records created before the Act came into effect on October 1, 1995. To date, the Commissioner has not ruled on this issue but reserves the right to do so in the future.

If Ministers decide not to treat the records as their personal property, they should be asked to sign a waiver, allowing the department to schedule the pre-April 1, 1995 records as government records.

Such a waiver should include the following wording:

"I hereby waive any interest I might have in any records created before April 1, 1995 and agree to have them transferred to the Provincial Archives of Alberta under a records retention and disposition schedule to be developed by the Department of _____."

The latter option is the preferred approach and Ministers should be encouraged to follow it.

If Ministers still decide to retain pre-April 1, 1995 Departmental and Cabinet records as their personal property, they should be encouraged to donate the records to the Provincial Archives of Alberta through a private deposit agreement, since these records provide important documentation of the policies, programs and organization of the Government of Alberta. As with Personal and Constituency records, any Departmental and Cabinet records donated to the Provincial Archives through a private deposit agreement are explicitly exempt from the terms and conditions of the *Freedom of Information and Protection of Privacy Act*.

5. Further Information

The Records and Information Management Branch (RIMB) of Service Alberta can offer advice to departments regarding the management and disposition of Ministers' Departmental and Cabinet records and provides records management training courses that may be of interest to Ministers' office staff. For further information contact RIMB at sa.informationmanagement@gov.ab.ca or (780) 427-3884. To enquire about the deposit of Ministers' Personal and Constituency records and Departmental and Cabinet records that pre-date April 1, 1995 to the Provincial Archives of Alberta, contact the PAA at paa@gov.ab.ca or (780) 427-1750.

Original Signed by

Sue Kessler, Chair

July 31, 1996

Date