



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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SPECIAL REPORT

A FAILURE TO ARCHIVE - RECOMMENDATIONS TO MODERNIZE GOVERNMENT RECORDS MANAGEMENT

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Commissioner's Message

Archiving is a public good. Records about key actions and decisions of government must be preserved in a lasting historical record for future generations. Without a comprehensive public archive, access to information and the 'right to know' is significantly and severely impaired.

As a person with training in, and commitment to, archival science and archival best practices, I was disturbed to learn that 33,000 boxes of valuable government records have been accumulating in warehouses for the past 10 years rather than being deposited in the BC Archives.

This failure to archive has its beginnings in a policy decision by government in 2003, when it was decided that responsibility for BC Archives would be transferred from a government ministry the Royal British Columbia Museum. When government transferred the responsibility for archives to the Museum, the Museum determined that it only had sufficient resources to maintain the existing collection. To resolve this funding imbalance, the Museum established an expensive fee schedule for the processing of archival material, which has led Ministries to warehouse, rather than transfer, government archival records.

There has not been a resolution to this impasse over the last decade, and to my best estimation no resolution is on the horizon, primarily because the archiving of our public history is not an issue that is 'top of mind' but rather easily ignored.

The status quo cannot continue without significant financial and historical consequences. Government must act now to address this risk.

This special report makes three recommendations to remedy the failure to archive and modernize BC's records management program. I hope these recommendations will provide motivation to and a guide for action by the Ministry of Technology, Innovation and Citizens' Services and the Royal British Columbia Museum to finally resolve this impasse, to the benefit of all British Columbians.

Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

Executive Summary

Records, whether paper or electronic, perform a basic function in society – to document its transactions, events, stories and decisions.

In a government context, records – whether of a transitory nature such as a meeting invitation, or evidential, such as the investigation of a citizen’s claim or a cabinet submission – are the key to a well-functioning government organization.

Good records, properly created, organized, stored and classified are critical for government’s success across the thousands of services that it provides, manages or authorizes.

However, records do not need to be retained by government forever and at the end of their operational life they are either destroyed or retained in the BC Archives consistent with legislative requirements.

Under the authority of section 42 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) I have undertaken an investigation and issued this report because of failures in the records management system of the BC Government. I will comment on three areas of concern.

The first deficiency is the result of a standstill within government regarding the responsibility for paying the cost to archive government records. Formerly the BC Archives was part of core government and was funded from general revenue. However as a result of a government policy decision flowing from the 2001/2002 Core Review, BC Archives became part of the Royal British Columbia Museum, a provincial Crown corporation, and a fee for service was established to archive government records. As a result of this fee, currently \$454 per box of records, no government records have been transferred to the BC Archives in the last ten years. Consequently approximately 33,000 boxes of government records that are earmarked for archiving are languishing in warehouses and government has no plan currently in place to resolve this standstill.

I recommend that government either repatriate the BC Archives to the Ministry of Technology, Innovation and Citizens’ Services and fund the archiving of currently stored records from general revenue as was formerly done, or maintain the BC Archives within the Museum and set a new fee schedule bilaterally with the Museum that will create the basis for archiving records on an ongoing basis. I also recommend that government provide a one-time grant to the Museum to deal with the backlog of 33,000 boxes of records.

The second deficiency is the lack of a practical method for archiving government’s electronic records. The vast majority of records produced are now

in digital form, and when they no longer serve an operational purpose, are stored either on government servers or in a storage system managed by the Government Records Services.

Stashing away electronic records indefinitely on ministry servers, without appraisal for archival value, is not a solution; it is analogous to warehousing paper records without evaluation for preservation and historical value – those records either need to be destroyed or archived depending on their value to government and to British Columbians.

The current policy for transferring electronic records to the BC Archives is for ministries to print their records and then transfer them in paper form to the Archives, which would then transfer the paper records to microfilm for long term access and preservation. This method is impractical and expensive – ministries have not been utilizing this cumbersome process.

To deal with this matter I have recommended the Ministry of Technology, Innovation and Citizens' Services initiate legislation to provide a legal basis for archival preservation of government's electronic records with an electronic archives capability established and funded within the Ministry.

An underlying challenge, and the third area I investigated is that the current legislative basis for records management is antiquated. The *Document Disposal Act*, originally passed by the Legislative Assembly in 1936 is no longer adequate to deal with the evolution of recordkeeping in the last 78 years, particularly with the advent and reliance on digital records.

Consequently, I recommend that government replace the current legislative framework with modern records management legislation at the earliest opportunity.

1.0 INTRODUCTION

Effective record keeping and the proper maintenance of government records is an important public good and is essential to good governance. The responsible management of these records ensures the maintenance of institutional memory, that appropriate information is available to decision-makers, that evidence of a public body's activities is retained, and that legal requirements are met. Records management is also necessary to meet the goals and requirements of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). **Without the proper creation and management of records, any statutory right of access to records will prove unenforceable in practice.**

Good records management goes beyond the ability to locate records efficiently. It is also concerned with how and which records should be created, how long they should be retained, and with their ultimate disposition – usually destruction or transfer to the archives. Records management in the B.C. Government is governed by the *Document Disposal Act*. This Act was first passed in 1936, and is no longer capable of addressing modern needs for records management.

Government's records management classification system was intended to ensure that records were retained for sufficient periods of time to meet the legal, operational, audit and fiscal obligations of government. Records schedules identify classes of records that have enduring historical value for transfer to government archives. Records scheduling also provides for the timely destruction of records when they are no longer required to support the operational or administrative needs of government.

As the final step in a records management program, public archives serve as the corporate memory of societies, nations, provinces, municipalities and institutions. Whether it be the hundreds of records in the Cumberland, B.C., municipal archives or the millions of records held by Library and Archives Canada (LAC), archives maintain evidence of our rich, complex, and sometimes controversial past for access and use by current and future citizens.

In British Columbia, the BC Archives in Victoria provides for the preservation of and access to government records that have lasting historical value. The Archives was founded as an official government agency in 1908, but the Legislative Library had already been collecting historical records since 1894.

The first challenge facing archiving and records management in B.C. has its origin in the government "Core Review" that took place in 2001/2002 when it was decided to transfer the BC Archives to the Royal British Columbia Museum. Prior to 2003, the BC Archives was part of core government and was the responsibility of the Ministry of Management Services. This transfer was effected in 2003

when the *Museum Act* created the Museum as a provincial Crown corporation, and formally transferred the BC Archives into its care. However, neither that Act nor government policy provided adequate funding for the transfer of records into the Archives. To address this change in financing, the Museum adopted a charge-back system where ministries were to be charged a fee to archive records. **However, as government did not provide ministries with the resources to pay this fee, no government records have been transferred to the BC Archives since 2003.**¹

The second pressing information management and archiving issue is the result of government's increased use of and reliance on electronic records, which cannot be archived in the same manner as paper records. While records that are created, used, and disposed of entirely in electronic form must be archived or disposed of as required by the *Document Disposal Act* according to the same schedules that apply to paper records, the BC Archives does not have the capability to accept or archive those records. This challenge has been addressed in other jurisdictions, but B.C. has yet to make any significant progress in managing the archiving of electronic records.

The third major challenge facing records management is more fundamental. The legal framework for government records management in B.C. is derived from the *Document Disposal Act* which does not support or guide modern recordkeeping and archiving needs. That Act was designed in 1936 to regulate the retention of a much smaller assortment of paper records. It does not address the full life-cycle of a record, from creation to disposition, and does not provide for oversight or sanctions where records are improperly disposed of or where important historical records are not transferred to the BC Archives.

As my office has a statutory duty under s. 42 of FIPPA to comment on the implications for access to information posed by legislation or the programs and activities of government, I decided to investigate this issue because of its significance for access to information and open government in B.C.

The failure of archiving has implications for two distinct access to information issues which have been the subject of recent reports by my office: the *Government of British Columbia's Open Government Initiative* ("Open Government Report") and the *Increase in No Responsive Records to General Access to Information Requests* ("No Responsive Records Report").²

¹ Since 2003 there have been only two instances of government records being transferred to the BC Archives. The first was several boxes of records from the Hughes Commission, which have subsequently been recalled by government. The second was 60 boxes of historical court records dating back to 1897. Neither of these instances are examples of the routine archiving of government records that is the subject of this report.

² Investigation Reports F13-03, 2013 BCIPC 19 (CanLII) and F13-01, 2013 BCIPC 7 (CanLII), respectively.

Thus the three foci of this report are the current backlog of paper records which need to be archived, the need to build or procure capability to archive electronic records and the need for a robust records management program supported by modern information management legislation.

2.0 ISSUES

2.1 A SYSTEMS FAILURE – AN INABILITY TO TRANSFER IMPORTANT GOVERNMENT PAPER RECORDS

The BC Archives is responsible for the preservation of and provision of access to those government records that have lasting historical value and represents the final stage in the life-cycle of government records. As public archives are often the sole reliable record of government action and decision-making, they play an essential role in our society and system of government. Through the creation and preservation of government records, archives sustain society's cultural and historical identity, help preserve our rights and obligations and define our sovereignty.

Government has routinely made use of records in the BC Archives to advance the public interest. For example, government has relied on such records in litigation against tobacco companies in order to recover health care costs. Along with other litigants, government has used archived records to assist the court in assessing First Nations land claims, where public records were instrumental in documenting the history of indigenous peoples, providing evidence of historical land use and rights. Ministries often access the BC Archives for information about past decisions and actions either as background to current policy development or to address challenges from the public. The Public Guardian and Trustee frequently requests divorce, probate and bankruptcy records to fulfil its public mandate.

Government involvement in litigation relating to events that took place years or decades ago frequently necessitates the preservation and cataloguing of records. For example, when governments are involved in class action litigation based on allegations such as abuse in government institutions like hospitals and schools the information preserved in public archives is instrumental in crafting a defense or in quantifying damages.³

B.C. researchers have also used the Archives to shed light on many issues of significant public interest. University of British Columbia researchers have used patient records held by the Archives to study how psychiatric illnesses have

³ For example, see *Dolmage v. HMQ*, 2013 ONSC 6686; and *McKillop and Bechard v. HMQ*, 2014 ONSC 1282.

changed over time. Archival research on government's 130-year-old decision to levy a head-tax on Chinese immigrants helped foster a public dialogue, ultimately leading to the recent apology to Chinese-Canadians by the B.C. Legislature. Similarly, archived records relating to the internment of Japanese-Canadians during World War II helped inform discussion leading to the apology to the Japanese-Canadian community in 2012.

Traditionally, the BC Archives has been the ultimate repository for records of historical value that are no longer serving an operational purpose within government. The classification of records is relatively complex, essentially all records are classified into schedules as required by the *Document Disposal Act*. Some records, such as child welfare records, have to be maintained by government for 99 years and then destroyed. Other records make the transition from active, to semi-active, and finally to inactive status, at which point they may be transferred to the BC Archives or destroyed.

Those records with historic value, approximately 3% of all records created, are supposed to be transferred to the care of the Archives where they are arranged and described, assessed for any preservation issues, and if necessary copied or reformatted for long-term storage. Through this routine process an important historical record is created and organized such that it can be easily accessed by government officials, historians, journalists and citizens.

As discussed above, a decision of the Core Review of government programs was to transfer responsibility of the BC Archives from a government ministry to the Museum. In 2003, the *Museum Act* tasked the Museum with the responsibility for the funding and management of the BC Archives.

Government currently provides the Museum with some annual funding for the BC Archives. However, this amount, which was approximately \$2.7 million in 2003, has been reduced by approximately 20% over the last decade, and is only sufficient to maintain the pre 2003 collection and to facilitate public access. It is not sufficient to finance the transfer of new records into the BC Archives.

To finance the deposit of new records, the Museum implemented a "charge back", or "fee for service" model where the BC Archives sets archiving fees and charges government ministries based on the services required.

However, as a result of this fee, ministries have chosen not to archive records. Government ministries currently pay \$6.72 per year to store a box of documents in off-site storage. In the absence of additional funding to archive their records, it is not surprising that ministries have chosen to warehouse their records rather than pay \$454 to deposit them in the BC Archives.

The only other province or territory where government agencies are charged a fee to archive records is Saskatchewan, where ministries are charged a nominal amount of \$15 per-box to transfer records into the archives.

British Columbia also lags behind all other provinces in per capita spending on public archiving. The total annual budget for the BC Archives is \$0.62 per British Columbian. In contrast, Alberta spends \$0.83 per person. Ontario spends \$1.39 per person which is almost two and a half times more than British Columbia. Even in terms of total actual dollars, B.C. spends less than all provinces except for New Brunswick, Nova Scotia, and Prince Edward Island.⁴

The result of this funding structure is that 33,000 boxes of records that are scheduled to be transferred to the BC Archives are languishing in off-site storage. These documents detail the public's business but have not been assessed for preservation issues and are not being made publicly available through archival catalogues and finding aids.

The Museum's fee schedule, which has not been updated since 2003, provides a base estimate of \$454 to archive one box of textual records.⁵ However, since each box of archival records in the government's possession is different, the cost of transferring them to the BC Archives may vary. As the fee schedule states:

Conservation costs escalate as records age. In future, costs will be determined based on the age and condition of the records.

Whether this is a reasonable or accurate estimate of the cost to archive a record has yet to be determined because no records have been archived pursuant to that fee schedule.

It should be possible to find efficiencies and cost savings in the archiving process to lower the cost of addressing the backlog. For example, the Archives of Ontario estimates that the average box of government records costs them approximately \$270 to process. In addition, while the BC Archives seeks to transfer most records to microfilm – perhaps the “gold standard” for preservation but at considerable cost – some other archives in Canada choose to store the paper records instead.

Government has recently initiated plans to convene a Government Archives Committee comprised of representatives from government and the Museum. One of the first tasks for this committee should be to investigate the actual cost to archive records, including the possibility of using modern technology to ensure

⁴ Statistics prepared for the 2013 National Provincial Territorial Archivists Conference.

⁵ See Appendix 2 for the fee schedule.

the preservation of government records while also enabling public access to those records.

One thing is for certain; ignoring the problem will not make it go away. It will continue to grow at a rate of over 3000 boxes per year.

The cost of archiving is only one of the challenges caused by removing archives from core government management. I mentioned earlier that archiving is only one aspect of the life cycle of records. A proper information management system considers the record right from the moment of its creation to its final disposition, whether that be destruction or archiving. The ability to achieve this comprehensive treatment is impeded where the archiving process is effectively orphaned outside of the core government ministries that have responsibility for records management.

However, one example of why archiving is connected to and should be fully integrated within core government information systems is government's responsibility to respond to access to information requests.

While warehousing records represents a short term cost saving to ministries, it imposes other costs that transferring the records to the BC Archives would avoid. Ministries currently process a large volume of access to information requests⁶ under FIPPA – approximately 80,000 requests over the last 10 years – and are finding it increasingly more difficult to meet the statutory timelines for responding to those requests. However, once the BC Archives receives a record, the source ministry is no longer responsible for responding to requests to access that record and would no longer be responsible for the administration and processing of access requests. It is in government's interest to reduce the volume of records that ministries are responsible for, particularly where those documents are no longer serving an operational purpose.

Transferring records to the Archives is also of considerable benefit to the public because it makes access to records significantly more convenient. Archived records that are designated as open access are easily accessible at the BC Archives facility at no cost. The BC Archives also provides catalogues and other finding aids, many of which are tailored to reflect unique aspects of a particular collection or class of records. Even those collections that remain subject to access restrictions under FIPPA can be made available through research agreements.

This archiving stalemate is the result of government not allocating sufficient resources to fund the archiving of new records; government must find an

⁶ BC Government Corporate Request Tracking System, URL:
http://www.gov.bc.ca/citz/iao/foi/crts_statistics/yearly_archive.html

administrative solution that ensures the safety of our provincial cultural, political and historical legacy.

Any successful funding model must ensure the efficient coordination and management of government records throughout their lifecycle. As I have discussed above, it is essential that the **BC Archives be involved in decisions relating to the creation of records as well as their disposition**. Policies around file formats, classification, management, access and retention should consider their effect on archiving. I believe this is best accomplished if the BC Archives is returned to core government so that all relevant stakeholders can more easily and effectively approach records management from the same perspective and within the same policy framework.

The repatriation of the BC Archives to government also makes sense from a financial perspective and from the point of view of the goals of a modern museum versus a public archive. The Museum is partially based on a revenue generation model where the public pays to view exhibitions. In contrast, a public archive is not exhibition-based and charging fees to enter an archive or view archival holdings is inconsistent with the purpose of a public archive. While the BC Archives provides important services to the province, it is not able to generate revenue in the same way as a museum. This misalignment of goals will only increase with the move towards electronic records because those records will provide even fewer displayable artifacts than paper records.

RECOMMENDATION 1:

Government should repatriate the BC Archives into government and fund it on the same basis as other valuable public programs.

Alternatively, government should develop a policy or legislative framework where the fees to archive records are set on a basis that is acceptable to both government and the Royal British Columbia Museum rather than the current unilateral process set by the Museum. Ministries should then be provided with sufficient resources to enable the transfer of records to the BC Archives.

To address the backlog of 33,000 boxes of records, government should provide funding to the Royal British Columbia Museum from the 2014/15 Estimates – Contingencies in an amount to be determined.

2.2 THE NEED TO BUILD OR PROCURE AN ELECTRONIC ARCHIVES CAPABILITY

The *Document Disposal Act* and current government policy and practice related to information management and archiving in B.C. are currently premised on paper records. Government has yet to develop a policy or technical infrastructure for the transfer of electronic records to the BC Archives, and for the long-term access and storage of such records.

As I have discussed above, the BC Archives does not currently have the ability to accept electronic records from government for archiving. Were it not for the fact that no records have been transferred from government in the last decade, the growth in the use of electronic records would have imposed considerable challenges on the current records management regime.

Information in electronic form is ephemeral and dependent upon a potentially confusing and quickly changing blend of hardware and software. Unless carefully managed and protected, government will be unable to guarantee its availability, authenticity and usability. Developing a modern statutory framework for information management and the handling of electronic records is critical to ensuring this availability and the accessibility of government information to the public.

Currently, most electronic records remain on ministry servers, though some reside in a system managed by the Government Records Service. While there are no government-wide policies for the long-term management of electronic records, the Government Records Service does provide advice to ministries on best practices for the storage of electronic records and databases.

At present, the policy for transferring electronic records to the BC Archives is to print the record and then transfer it as a paper record. The BC Archives then scans the paper record and converts it to microfilm for long term preservation. This inefficient process illustrates the need for a new approach.

The storage of digital records requires the creation and maintenance of a trusted digital repository for archiving electronic records. I believe this repository should be managed by the Ministry of Technology, Innovation and Citizens' Services and either built internally or procured from a provider specializing in such services.

Given the rapid evolution of modern technology, government must ensure that its electronic records are not growing obsolete. A trusted digital repository should address long-term data preservation and provide a logging feature that clearly describes how a record has been accessed or manipulated. Further, it should

accept a variety of file formats and be sufficiently flexible to allow the implementation of new technology and best practices.

File format obsolescence is a potential problem in both physical and digital records. For example, consider a 1960s era computer punch card. Unless the information contained in the punch card was migrated to a contemporary file format it would be very difficult if not impossible to recover. Digital formats pose a more significant problem because they evolve or change more rapidly. Government already has records that are difficult to access because of obsolete file formats.

Government must develop a digital infrastructure that enables the transfer of electronic records to the BC Archives, so that they may be stored in the trusted digital repository. Both of these pieces are necessary. It makes no sense to build a transfer infrastructure without a repository to store those files, and it makes no sense to build a repository without an infrastructure to enable the transfer of those files.

An electronic archiving infrastructure must preserve the authenticity and reliability of a record. The identity, content, future readability, and metadata of a digital record must be retained in order for the record to be reliable and verifiably authentic. In other words, an archive must be able to prove that a particular electronic record, as accessed at a point in time, is the same record with the same content as when it was created.

While archiving electronic records poses significant challenges there are examples of government doing so successfully. The City of Vancouver has developed a system for archiving electronic records that began operating in 2010.⁷ The City took responsibility for archiving the records for the 2010 Winter Olympics, which were composed almost entirely of records that were “born digital”.

In collaboration with software developers from the company Artefactual, City of Vancouver Archives staff developed an open source digital archiving system comprised of several integrated software components, each of which can be easily upgraded or replaced to accommodate future digital developments. The system took approximately three years to build with a total cost to the City of about \$1 million. As a large city, comparable in population to some smaller Canadian provinces, the City of Vancouver provides a good example of how the

⁷ There are also international examples of successful digital archiving such as the UK National Archives and Washington State Archives Digital Archives. See www.nationalarchives.gov.uk and www.digitalarchives.wa.gov, respectively, for more information.

challenging problem of digital archiving of government records can be addressed in a relatively short period of time and without prohibitive expense.⁸

Effective archiving of electronic records requires the involvement of the BC Archives during the full life cycle of a record. An electronic records management infrastructure should provide for the BC Archives to have input into decisions at the creation of a record as well as at its disposal. For example, archivists should help determine the adoption of file formats in order to ensure the capture and retention of a file's metadata when it is ultimately archived and to ensure that electronic records are compatible with the infrastructure developed for the archiving of those records.

There may also be a digital component to addressing the 33,000 box backlog of un-archived records. As the cost of scanning records onto microfilm is a significant element of the total cost of archiving a box of records, there may be an economy in applying this cost to digitizing the paper records currently awaiting transfer to the BC Archives. This approach would align well with the B.C. Government's commitment to and leadership in open information/open data programs.

RECOMMENDATION 2:

The Minister of Technology, Innovation and Citizens' Services should initiate the creation or procurement of an electronic records archiving infrastructure to ensure the management and archival preservation of government's electronic records. The repository for the electronic archives should be within the Ministry and should be publically funded.

2.3 THE NEED FOR MODERN INFORMATION MANAGEMENT LEGISLATION

The challenge underlying all records management in British Columbia is that the current legislation, the *Document Disposal Act*, does not sufficiently support and guide a requirement for recordkeeping and archiving, largely because it was designed in 1936 to deal with a paper based system of records.

The primary purpose of that Act is to prevent the unauthorized destruction of government records; however, it does not address the creation of a record or require the archiving of a record.

⁸ For more information on the City of Vancouver digital archives, see <http://opensourcearchiving.org/content/archivematica-city-vancouver-archives>.

The *Document Disposal Act* sets out a cumbersome and lengthy approval process for records schedules. Ministries first submit a proposed schedule to the Public Documents Committee, which includes among its members the Provincial Archivist and the Comptroller General. Once that committee has approved the schedule, the Ministry must submit it to the Public Accounts Committee of the Legislative Assembly. This is a committee of Members of the Legislative Assembly that meets a couple of times a year and only when the Legislature is in session. Finally, a vote in the Legislative Assembly is required for those schedules that the Public Accounts Committee approves. Ministries often face challenges getting the approval of their schedules on the agenda for the Public Accounts Committee and the Legislative Assembly.

This cumbersome process may have been the state of the art in 1936 when records were produced by manual typewriters; however, in 2014 it has resulted in a one year backlog in approving and amending record schedules.

In contrast, some other provinces do not require their Legislature's approval of records schedules and instead rely either on the approval of their provincial archivist⁹ or a committee appointed by government.¹⁰ Such approval processes can ensure that professional archivists are involved in schedule development, providing a more effective process for modern government records management.

Other Canadian and international jurisdictions have modernized their records management legislation and policies to reflect the challenges of electronic records management and to provide a role for public archives in the development of schedules for record creation, retention and disposition.

For example, in 2013 the Government of Alberta published a government-wide information management strategy that emphasizes the importance and value of managing electronic records.¹¹ The state of Queensland in Australia passed a *Public Records Act* in 2002 that includes a duty for each public authority to "make and keep full and accurate records of its activities".¹² The *Public Records Act* of New Zealand requires government bodies to "create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice".¹³ It also requires them to maintain their records in "an accessible form, so as to be able to be used for subsequent reference" until a disposition of the records is legally authorized.¹⁴

⁹ For example, see the *Ontario Archives and Recordkeeping Act, 2006*, S.O. 2006, c. 34; and the *Archives and Recordkeeping Act*, C.C.S.M. c. A132.

¹⁰ For example, see the *Alberta Records Management Regulation*, A.R. 224/2001.

¹¹ [http://www.im.gov.ab.ca/documents/publications/Information_Management_Strategy_FINAL_\(Web\).pdf](http://www.im.gov.ab.ca/documents/publications/Information_Management_Strategy_FINAL_(Web).pdf)

¹² Section 7.

¹³ Section 17(1).

¹⁴ Section 17(2).

Norway has developed a world leading electronic records management system where the “Noark Standard” governs recordkeeping. This standard requires government agencies to register documents in a defined manner. Basic document metadata such as document title, case numbers, date of creation, and names of senders and recipients is included in the register. Registration allows efficient tracking of documents and creation of logs and reports.

British Columbia needs a modern statutory framework for information management that addresses the full life-cycle of a record, from creation and management through to final disposition and archiving. This legislated framework would provide the legal basis for modernization of records management in government and would, in itself, be a valuable legacy.

Government’s recordkeeping legislation, policies and practises have a direct impact not only on the quality of the varied public services which it provides, but also on the historical legacy that government leaves for future generations.

A modern information management statute should incorporate the following key components:

- the provincial archivist should play a prominent role in decisions around the creation of electronic records as well as the approval of retention schedules;
- the process for the approval of records schedules should be more efficient, and should not require the approval of the Legislature or of the Public Accounts Committee; and
- the legislation should provide for oversight of information management requirements and for sanctions when those requirements are not met.

In a previous report,¹⁵ I have recommended a legislated duty to document key government decisions. This “duty to document” should also be a component of the new information management legislation. I think there is general agreement about the need for government to record its key decisions, and how it arrived at and implemented them. It is only with the creation and preservation of adequate documentation of action and decision-making that access to information regimes and public archives can be effective.

Similarly, it is important that government clearly define in legislation what constitutes a transitory record. Transitory records are not required to meet

¹⁵ Investigation Report F13-01, Increase in No Responsive Records to General Access to Information Requests: Government of British Columbia, 2013 BCIPC No. 7.

statutory obligations or to sustain administrative or operational functions, and are routinely destroyed shortly after they are created. My office has found¹⁶ that some government ministries and program areas apply a liberal interpretation to what constitutes a transitory record, basing the determination on the medium of communication, such as email, rather than on the content of the communication, such as whether it is a record of action or decision-making. I believe that the determination of whether a record is transitory is technology neutral, and depends solely on the content of the record or communication. It is critical that this matter be dealt with in legislation or regulation, and not left to policy or agency best practices.

RECOMMENDATION 3:

Recognizing changes in information management in the last decade, Government should replace the *Document Disposal Act* of 1936 with a modern statutory framework to address the needs and realities of the digital age.

3.0 CONCLUSION

Government information is a valuable public asset that needs to be managed responsibly. Over the past decade British Columbia has inefficiently and inadequately resourced its public archive and relied upon an antiquated records management regime. This has not only resulted in the unacceptable failure to archive and preserve the public's informational legacy, but has also placed British Columbia in the vulnerable position of having no strategy for the life-cycle management of paper and electronic records from their creation to ultimate disposition.

The coincidence of this simultaneous failure of managing both paper and electronic records puts us at a critical point where the status quo cannot continue without significant financial and historical consequences. However, this critical juncture also presents an opportunity to re-evaluate the organization and funding of the BC Archives and to benefit from the progress and innovation that has occurred around the world.

In this report I have addressed three key issues resulting from government's current information management statutory and policy scheme: the failure to transfer government records to the BC Archives since 2003; the need to create

¹⁶ Investigation Report F13-01.

or procure an infrastructure for the transfer and archiving of electronic records; and the need for a robust records management model supported by modern information management legislation. The three recommendations in this report, if adopted, will address those issues, ensure the ongoing preservation of government records and enable information management in our province to move into the digital age.

As I have expressed throughout this report, providing proactive public access to government records through public archives is a fiscally efficient means of enabling open government and access to information. However, the value of a comprehensive and adequately resourced public archive cannot be measured simply in dollars. It enables the development of effective government policy by providing both the public and government with a historical perspective of government action, and strengthens our democracy by providing transparency in government decision making.

As Commissioner, I am deeply concerned about the state of records management and its impact on the public's right to access government information. There is a decade of neglect in this state of affairs. A lack of sound records management has impaired the ability of ministries to create, maintain and effectively use institutional memory. As a result, wheels are re-invented, the ability to audit decisions is compromised and the right of access is undermined.

However, through my discussions with both government and archivists while conducting this special investigation, I have become optimistic that government has both the motivation and expertise needed to address the challenges facing the BC Archives. British Columbia's present archiving framework is more reflective of the last century than the current one. I am confident that the implementation of my recommendations can move our province to the forefront of information management and archiving, both within Canada and around the world.

4.0 ACKNOWLEDGEMENTS

The Government of British Columbia and the various government ministries have cooperated fully with my Office's investigation. I also sincerely appreciate the willingness of archivists, historians' and journalists across Canada who assisted in analyzing the current system in B.C. and suggesting a way forward.

I would like to thank Evan Kelly, Policy Analyst and Bradley Weldon, Senior Policy Analyst, who conducted this investigation and contributed to this report.

July 22, 2014

ORIGINAL SIGNED BY

Elizabeth Denham
Information and Privacy Commissioner
for British Columbia

OIPC File No.: F13-55121

Appendix 1

Investigative Process

In researching this report my office interviewed stakeholders across British Columbia and Canada to ascertain the current state of archival and records management. These interviews included B.C.'s Provincial Archivist, representatives from other federal, provincial and city archives, government's records management staff, and historians and journalists.

We reviewed archives and records management legislation across Canada and internationally. We also reviewed academic literature and generally accepted records management policies and systems.

Historians and journalists that we interviewed all used government records held by the BC Archives or other provincial archives in their work. They were of the firm opinion that the preservation of government records for future use is essential to gain an understanding of provincial history, to review actions taken by government, and to ensure the proper functioning of our democratic institutions. As users of archives, they described the utility of archived materials for research: the availability of archivists and archival finding aids that allow for more effective and efficient research in contrast to other processes such as making access to information requests.

Notable users of archived government records included:

- Stephen Hume, a historian and journalist with the Vancouver Sun, who used archived government records in researching and writing nine books on the history of B.C., including a biography of Simon Fraser.
- Bob MacDonald, Professor Emeritus of History at UBC, who used archived government records in his work, including in a history of Vancouver.
- Patricia Roy, Professor Emeritus of History at the University of Victoria, who has written three books about Chinese immigration to Canada in the early 20th century.¹⁷ These books include a description of how the B.C. Government lobbied the Federal Government in support of the Chinese head tax and strict Chinese immigration restrictions. She informs us that several Chinese-Canadians have used her books to help research and support claims for redress arising from these immigration laws.

¹⁷ A White Man's Province, The Oriental Question, Triumph of Citizenship.

- Bill Waiser, a history professor at the University of Saskatchewan pointed out a crucial role that archived government records have played in the prairies. The Federal and Saskatchewan Governments kept records of homesteaders in the early 20th century. In many cases these records were the only accurate information about homesteads and have been used to prove citizenship, date events such as birthdays, and prove entitlements to pensions.

As part of this report, we asked five B.C. Government ministries which were likely to produce large volumes of records to provide us with details and comments about how they manage and archive their records. The responses indicated that while transfer of their records to the Archives would be more secure and preserve records of historical value in the long-term, “virtually no” records in their possession had been transferred since 2003.

Statistics for the off-site records storage utilized by these ministries is presented in the table below.

Ministry	Boxes in off-site storage (as of March, 2014)	Average annual rate of change	Annual cost of off-site records storage (2013/2014)
Forests, Lands, and Natural Resource Operations	116, 671	10% increase	\$793,196.32
Health	38,644	2% increase	\$257,467 (not including records subject to tobacco litigation holds)
Social Development and Social Innovation	51,690	4% decrease	\$346,402
Justice	206,328	17% increase	\$1,360,083
Children and Family Development	84,233	6% increase	\$553,687

Appendix 2

Royal British Columbia Museum Archival and Cost Recovery Schedule

PERPETUAL CARE OF RECORDS	
ONE TIME PAYMENT	
	per records storage box
Microfilm (3rd party) ⁽¹⁾	\$ 195.80
Staff costs: (\$60.50 per hour - average cost)	
Arrangement & description of records (1.5 hours)	90.75
Processing costs (.65 hours)	39.33
Conservation (.5 hours)	30.25
Destruction of original records after duplication	6.00
One time costs to provide ongoing access and storage ⁽²⁾	92.50
Total cost for one box of textual records	\$ 454.63

Notes:

1. Services will be provided in house if the condition of the documents is fragile or they contain sensitive information
2. Master copy held offsite, duplicate copy prepared for access purposes
3. If Ministries/Agencies provide microfilm rolls to our specifications, their costs would be reduced by \$210.80 per textual box
4. Costs based on 1990 record groups. Conservation costs escalate as records age. In future costs will be determined based on the age and condition of the records.

PAYMENT BASED ON CANADIAN COUNCIL OF ARCHIVES RATES