

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, service or program is transferred between government institutions in Saskatchewan, custody of all records in any format related to it must be considered and addressed in the transfer arrangement. 'All records' refers to active, semi-active, and inactive records (including records from defunct programs and processes or those that have been inherited by the institution, otherwise referred to as 'legacy records').

The following guidelines are intended to assist in the transfer of records from one government institution to another. All records along with all responsibilities related to their maintenance, retention, and disposal should be transferred to the government institution taking over the program or function unless there are legislated requirements for the originating institution to retain them.

1) If transfer of records has not been addressed along with transfer of other assets in any of the official documents required to effect the reorganization (e.g. O.C., Transfer Agreement, etc.), the institutions in question should draft a Memorandum of Understanding (MOU) concerning the transfer of custody of the records.

- An example MOU template can be found at the end of these guidelines in Appendix A.
- Consulting with your legal counsel when creating an MOU is imperative. Your legal counsel can help ensure that all required stipulations are included, assist in determining if there are legislative requirements for retaining any records by the originating institution, and advise on what arrangements may be necessary to address those requirements.

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

- Inform the Information Management Services 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 any documentation concerning inactive records including inventories, documentation of records placed in offsite storage facilities, etc.
 - 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 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?

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

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 Services 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, all records transferred are considered public records and must be managed as per the terms of *The Archives and Public Records Management Act*.

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 inactive 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.

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, the government institution that is ceasing to exist needs to ensure that another government institution is designated to take responsibility for the records until they are eligible for disposal in accordance with an approved schedule. If an effective records schedule does not exist, an O.C. can be arranged for their disposal. Please contact the Information Management Services of the Provincial Archives for assistance with the management and/or disposal of the records.

Appendix A

Example MOU Template

*****NOTE:** This template is for informational purposes only. It is meant to assist government institutions in creating an individualized MOU by providing examples of information that needs to be considered when programs are transferred between government institutions. The parties involved should contact their legal counsel to assist with the preparation and review of an MOU.

When records are transferred to and from different types of institutions or organizations (non-government to government or vice versa), the MOU will need to be more complex. Please consult your legal counsel to ensure all required provisions are included.

Memorandum of Understanding

Effective the ___ day of _____ 202__

Between:

[Government Institution/Organization Name] in the province of Saskatchewan [*“Abbreviation of name”*]

and

[Government Institution/Organization Name] in the province of Saskatchewan, [*“Abbreviation of name”*]

This Memorandum of Understanding [*“MOU”*] details the agreement for the transfer and custody of public records between ___ and ___ [*“the Parties”*].

WHEREAS:

A.

B.

C.

etc.

[Include a brief description of the situation, e.g. a government branch moving from one government institution to another, an operation or function moving to a different government institution, etc.]

THE PARTIES ACKNOWLEDGE AND AGREE AS FOLLOWS:

1.0 Legislative Requirements

1.1 The *The Archives and Public Records Management Act* [“APRMA”] provides that records made or received by a government institution in carrying out that government institution’s activities; ministerial records; records made or received by the Legislative Assembly, the Legislative Assembly Service or an Officer of the Legislative Assembly; court records; and administrative records of a court are public records, and it requires that public records be maintained, stored and disposed of in accordance with the APRMA. A “record” means “a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include a computer program or other mechanism that produces records”.

2.0 Transfer of Public Records

2.1

2.2

2.3

(etc.)

[Considerations that should be addressed here include:

Assigning the records management responsibilities for the management/preservation, storage of all active and inactive records (semi-active and legacy) including their disposal. This includes records in any format (paper, electronic, etc.) pertaining to the transferred function. All responsibilities for the records (active and inactive) should be transferred to the receiving government institution/organization unless there are requirements within legislation for the original government institution to retain the records.

Which government institution/organization will be responsible for payment of fees associated with the maintenance/preservation, storage, and disposal of the records. Also include a statement that addresses the responsibility for ensuring a safe method of transfer for all active and inactive records in any format and how the payments of any fees associated with the transfer will be shared.

Preparation of an inventory of all active and inactive records in all formats pertaining to the transferred function. The inventory should be retained by both parties in the case of any inquiries related to the records.

Identification of personal information and applicable requirements for the proper management and protection of this information during and after the transfer of records.]

3.0 Other

[If required]

4.0 Amendment

4.1 Any amendments to this MOU must be in writing and signed by the Parties.

The Parties have executed this Memorandum of Understanding effective as of the date first above written.

For the *[name of government institution or organization]*:

_____ **Date:** _____

Name:
Position:

For the *[name of government institution or organization]*:

_____ **Date:** _____

Name:
Position: