

CONFIDENTIAL

EC 2005-██████

## MEMORANDUM TO THE EXECUTIVE COUNCIL

**TITLE:** *The Management of Government Information Act*

**ISSUE:** Whether to approve legislation governing the management of public records and information.

**RECOMMENDATIONS:**

**The Premier, as Minister responsible for the Office of the Chief Information Officer, recommends that legislation entitled "*The Management of Government Information Act*", attached as Annex A to the Submission, be approved for introduction into the Spring 2005 session of the House of Assembly without further reference to Cabinet.**

**BACKGROUND:**

At present, the *Archives Act* provides the Provincial Archives of Newfoundland and Labrador with the legislated mandate to collect, manage, store and, where appropriate, make available all public records delivered to it. The *Archives Act* also provides for authority for the records management branch of the archives to coordinate Government's overall records management functions, including the responsibility to:

- counsel departments in the management and preservation of public records;
- develop a uniform file classification system;
- maintain public records until they are destroyed / transferred to the archives or otherwise disposed of; and,
- give effect to a disposal schedule established in accordance with the *Archives Act*.

The current records management functions and responsibilities of the provincial archives apply not only to government departments, but to the agencies, boards, commissions and Crown Corporations that report to them. However, it has been known for some time that due to a lack of resources applied to records management there has been an overall lack of policy leadership with respect to information management in government, a fact that was confirmed by a consultant's review (Goss Gilroy) in 1999.

Currently four entities within government (Justice, Government Services, Treasury Board, and the Department of Tourism, Culture and Recreation) have some responsibility for information management. While all have clear mandates, and to some degree rely on each other, no structure or direction currently exists to require these units to interact with each other to achieve their respective goals. Having these separate entities scattered as they are currently, is an inefficient way to approach a core business function and creates a "disconnect" between information management and the business needs of departments. Furthermore, an overall lack of standards and policies can have serious legal, legislative, audit, political, and cost implications.

The entire purpose of a government having a records management program and a legislated mandate to manage its records and information appropriately is about four main things: i) accountability; ii) access to information as appropriate by members of the public, especially in light of the new *Access to Information and Protection of Privacy Act* (ATIPP); iii) maintaining only those records deemed to have enduring or archival value and destroying the rest in a timely manner so that they do not use valuable and costly space for storage; and iv) maintaining the "corporate memory" of Government by retaining for posterity those Government records with archival value.

Under the proposed *Rooms* legislation, the records retention and lawful destruction of records functions of the provincial archives would be maintained when that institution is formally transferred to The Rooms Corporation. This transfer would form part of the broader establishment of the provincial museum and the art gallery under that statutory Crown Corporation. However, with respect to the overall policy role dealing with records and information management currently exercised by the archives, the Departments of Tourism, Culture and Recreation, Justice and Executive Council recommend that these functions be kept within the provincial government and held under the Office of the Chief Information Officer within Executive Council, and not The Rooms Corporation.

The need to maintain these responsibilities within the provincial government and to elevate them to an executive level are clear. Given the current lack of a co-ordinated approach to information management practices, there exists a potential for several liability and vulnerability issues. With the proclamation of the ATIPP legislation, Government will be relying on its records management capacity to respond to requirements under this legislation. Government's commitment to openness and transparency could very well be questioned if we are unable to respond in the time allotted, or not at all. For example, in 2004 under the *Freedom of Information* legislation, 25% of the requests were not dealt with within the required 30 day time limit. Likewise, the inability to properly manage and retrieve records could cause embarrassment to Government and have legal implications where records are not available as proof to resolve a legal conflict.

The Office of the Chief Information Officer is of the view that all of these functions and responsibilities are best maintained at an executive level within government and not in a Crown corporation where the ability to respond and access to the information would be the responsibility of a non-governmental Board of Directors. Given the importance of a sound information management infrastructure to the success of the Office of the Chief Information Officer, it is recommended that the Office of the Chief Information Officer be assigned responsibility for government-wide information management policies and practices and that this legislation be housed within that Office. It is felt that this addition would also compliment the information technology and online services mandate of the Office.

#### *The Management of Government Information Act*

This proposed legislation, attached as a Annex A to the Submission, is contained in one part and describes the specific details of what constitutes a record (such as correspondence and other documentary material regardless of physical form), a public record (records created by a public



body), and records management (meaning a program of information management). The legislation indicates that all public records are the property of the Crown and that no public records can be destroyed except in accordance with the provisions of *The Rooms Act* and exercised by the provincial archives.

Under this legislation, the Minister is responsible for (i) developing standards for schedules for public records and to assist public bodies, (ii) developing and implementing a management program for public records, and, (iii) providing advice to assist public bodies with the development, implementation and maintenance of records management. The Minister also has the authority to employ or appoint those persons necessary to carry out the purposes of this Act.

Other administrative sections also included dealing with possible offenses with respect to this legislation and the subsequent repealing of the *Archives Act*, given that all other functions dealing with records retention and lawful destruction of records continue to be held with the provincial archives pursuant to *The Rooms Act*.

#### ALTERNATIVES:

1) Allow the records and information management functions to remain with the Provincial Archives as a part of The Rooms Corporation.

Pro: By keeping both the records management and archival responsibilities together, the management of these tasks would be conducted by the same people and therefore create efficiencies with respect to personnel and administrative costs.

Con: The policy responsibilities for records/information management would be vested outside the Government and held by a statutory Crown Corporation administered primarily by the a non-governmental Board of Directors. Government would lose day-to-day control of this critical responsibility and in light of the new requirements of the ATTIP legislation, it would be vesting authority with a Crown Corporation to sanction Government if it is unable to deliver on these requirements.

2) Implementation of a new *Management of Government Information Act* to be administered by the Office of the Chief Information Officer within the Department of Business. This is the recommended alternative.

Pro: It is viewed that a solid records and information management program held within a central agency of government, facilitated and supported by the archival functions of The Rooms Corporation will ensure an efficient and effective approach to dealing with these significant responsibilities.

Cons: This involves the implementation of new legislation that requires the consent of the House of Assembly. Also, additional resources will be required for the Office of the Chief Information Officer to take on these new records

management responsibilities.

#### **LEGISLATIVE CONSIDERATIONS:**

As noted above, the introduction of this legislation will involve the repealing of the existing *Archives Act*.

#### **LEGAL CONSIDERATIONS:**

With the proclamation of the ATIPP legislation, Government will be relying on its records management capacity to respond to requirements under this legislation. Government's commitment to openness and transparency could very well be questioned if it is unable to respond in the time allotted, or not at all. It is felt that by having these records and information management functions held within the Office of the Chief Information Officer, Government will be better positioned to have an information management infrastructure which supports its needs in this area.

#### **FINANCIAL CONSIDERATIONS:**

In 1999, a consultant, Goss Gilroy, indicated that \$800,000 worth of government space in St. John's was being used to store records. Many of the premises being used are maintained (heat and light) solely for this purpose. As part of the Program Renewal exercise, Transportation and Works is considering to move away from storing records in vacant and inappropriate Government buildings. To ensure the success of this approach, it will be necessary for government to develop and implement information management policies and procedures.

At the present time, with only 1.5 FTE's assigned to records management within the archives, the program is close to non-functional. In New Brunswick, by comparison, the records management program has 10 full time staff, including three who are dedicated to running the Provincial Records Centre. If it is agreed that this legislation be adopted, the Office will be working with Treasury Board Secretariat to determine the appropriate levels of staffing required to effectively deliver these responsibilities within Government.

#### **INTERDEPARTMENTAL CONSIDERATIONS:**

The proposed legislation was prepared by the Office of Legislative Counsel. The Department of Justice has also reviewed the legislation and has provided input into the drafting process.

The Department has also worked closely with officials with the Department of Tourism, Culture and Recreation in the preparation of this Submission to ensure that the linkages between the proposed *Rooms Act* and the proposed *Management of Government Information Act* are clear and that the functions of both The Rooms Corporation and the Office of the Chief Information Officer with respect to records management, retention and destruction are complementary.



**INTERGOVERNMENTAL CONSIDERATIONS:**

N/A

**OTHER JURISDICTIONS:**

Records management and archives program are most frequently in the same institution in Canadian jurisdictions. Moving the Government's Records Management Program out of the provincial archives is an anomaly in the country. However, nowhere else has Government's records and information management program been separated from it and placed in a Crown Corporation, as Government's would be if it allowed these functions to remain with the archives as part of the Rooms Corporation. The National Library and Archives of Canada were not made into a Crown Corporation upon their merger because the federal government also determined it would be inappropriate to have the federal government's records and information management program in a Crown Corporation and thereby separated from Government.

**CONSULTATIONS:**

N/A

**ENVIRONMENTAL CONSIDERATIONS:**

N/A

**COMMUNICATIONS AND CONSULTATION SYNOPSIS:**

See attached.

**ANNEXES:**

- A. *The Management of Government Information Act*
- B. Communication Synopsis

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Danny Williams, Q.C.  
Premier

**Annex A**

**Annex B**

**COMMUNICATIONS AND CONSULTATIONS SYNOPSIS:**

<b>Consulted with:</b> Gary Norris, Deputy Minister	<b>Date Drafted:</b> March 15, 2005	<b>Anticipated Announcement Date:</b> N/A
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**Goals**

- To be prepared to respond to inquiries related to the new *Management of Government Information Act*.
- To provide background on the importance of records management in Government, particularly with the introduction of the new *Access to Information and Protection of Privacy Act* (ATTIPP) and *Transparency and Accountability Act*.
- To communicate Government's commitment to providing a clear legislative mandate for information management.

**Target Audiences**

- Deputy Ministers and staff of the Government of Newfoundland and Labrador (particularly those with a responsibility for information management)
- Auditor General
- Public Records Committee
- Federal government
- Opposition
- Members of the House of Assembly
- Media
- General public

**Anticipated Media Attention:**

Moderate: This issue is expected to generate moderate media attention. While information management in Government may be seen as an administrative matter, criticisms by the Auditor General and recent events such as the Federal Sponsorship Scandal have pointed to the importance of proper information management.

**Anticipated Reaction:**

Positive: Government's commitment to information management will be welcomed by the general public, the media and the Auditor General. There will be questions about Government's commitment in this area and if adequate resources will be applied to address this issue.

**Possible Headlines:**

**Positive:** Government demonstrates new commitment to information management.

**Negative:** Old commitment to information management, new approach; but will it work?

**Messages:**

- The purpose of Government having an information management program and a legislated mandate to manage its records and information appropriately will help to ensure accountability; access to information as appropriate by members of the public; maintaining only those records deemed to have enduring or archival value and destroying the rest in a timely manner so they do not use valuable and costly space for storage; and maintaining the "corporate memory" of Government by retaining records with archival value.
- Government recognizes the importance of information management and is committed to take a leadership role to ensure that information services in Government are properly managed.



- Government has a legislative responsibility through the new Access to Information and Protection of Privacy Act to provide information to the public on a timely basis. This can only be done when Government's records are properly managed and recorded.
- Recent examples across the country, including the Federal Sponsorship Scandal, have reiterated the importance of records management and have demonstrated the potential situations that could occur from inadequate records management.
- The records management function of Government will be held under the Office of the Chief Information Officer. Given the importance of a sound information management infrastructure to the success of the information technology mandate of this office, the responsibility of records management would complement the information technology and online services mandate of the office.
- Government will allocate resources in Budget 2005 to begin the process of information management and the development of a strategic plan. However, the commitment to records management is a long-term commitment that will require the support of the public service to implement.
- Through this legislation, Government recognizes that information is an important resource that needs to be managed. This commitment is consistent with Government's continued commitment to openness and transparency.

**Activities:**

- The Premier and the Minister of Tourism, Culture and Recreation will be briefed on the matter, and prepared to respond to inquiries as necessary. (Appropriate briefing materials will be prepared.)

**Sustaining the Message:**

- The Minister of Tourism, Culture and Recreation will respond to inquiries where recommended.
- Media monitoring will be conducted, and measures will be taken to correct any misinformation.

**Prepared by:** Tansy Mundon

**Approved by:** Gary Norris