

## Transitory Records

### What are Transitory Records?

The [Management of Information Act](#) defines a transitory record in section 2(h) as “a government record of temporary usefulness in any format or medium having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record.”

Transitory records are needed only for a limited period of time. Transitory records may be used to complete a routine task, to prepare an ongoing document or as copies of reference, for example. Transitory records are records for which there is no legislative requirement to maintain, or which are not required to be maintained for administrative or operational functions such as finances, audits, or human resources. These records can exist in paper or electronic format.

The Office of the Chief Information Officer’s best practice for [Identifying and Disposing of Transitory Records](#) provides examples of transitory records. It is important to note that the categories of information listed are not, by themselves, determinative of whether a record is transitory. For example, not all draft papers are transitory records; if those records are retained as evidence of the evolution of a final document or of the decision-making process they are not transitory. Similarly, not all copies are transitory records. Copies may need to be kept to understand related records or provide context. Furthermore, the medium in which a record exists is not determinative of whether or not the record is transitory. For example, a post-it note or a text message may or may not be transitory depending on the content, rather than the format.

The Office of the Chief Information Officer’s [Instant Messaging Directive](#) stipulates:

*[i]nstant messages are subject to legal, audit and responsive to access to information requests and must be managed appropriately. Therefore, where they record government business activities, instant messages must be retained. The information owner must ensure it is converted to a recordkeeping format and managed appropriately.*

Instant messages that document/record government business are not transitory records. Context and content of records govern whether they are transitory. The medium of communication is, on its own, never determinative of whether a record is transitory. Additional guidance in relation to instant messages can be found in [Report A-2018-020](#).

### Are Transitory Records Subject to Access to Information Requests?

Yes. If a public body receives an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”), then any and all responsive records in the custody or control of that public body must be provided to the applicant, subject to any exceptions that may apply. This includes transitory records.



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Once an access to information request is received, no responsive records may be destroyed regardless of any records retention schedule or policies that are in place. Employees must be made aware of this obligation. Section 115 of the *ATIPPA, 2015* makes it an offence to destroy or erase a record with the intent to evade an access to information request.

As noted in Report A-2018-020, once an access request has been received “[the] preservation of records is particularly critical where they involve BBMs, PINs or similar forms of electronic text communication.” The Commissioner further noted that “immediacy of action” is required where instant messages comprise part of an access request. The duty to assist requires coordinators to take immediate action on receipt of an access request to ensure records are preserved, including “the halting of any manual or automatic destruction measures until the responsive records had been gathered”.

### **Can Transitory Records be Destroyed?**

Yes. Unless they are responsive to an access to information request, transitory records may be destroyed, in accordance with the public body’s records retention schedule and policies, when they are no longer needed.

Section 5.4(3) of the *Management of Information Act* allows for the disposal of transitory records when they are no longer of value “through means which render them unreadable, including secure shredding or in the case of electronic records, secure electronic erasure.”

Similarly, section 5(2)(b) of the *ATIPPA, 2015* does not prohibit the destruction of a record in accordance with legislation or a by-law or resolution of a local public body.

### **How Long Must a Public Body Wait Before Destroying Transitory Records?**

If personal information in a transitory record was used to make a decision that directly affects the individual, section 65 of the *ATIPPA, 2015* requires that public bodies retain that information for at least one year. Furthermore, if that information was the subject of a request for access or correction, that information must be retained for as long as necessary to allow the individual to exhaust any recourse under the *ATIPPA, 2015*.

Public bodies can and should continue to destroy transitory records that are not responsive to any current access to information requests according to their records retention schedule.

### **Why is Managing Transitory Records Important?**

The management of transitory records, including their destruction, is crucial in enabling public bodies to easily determine whether responsive records exist, the extent/volume of the records and where the records are located. This promotes efficiency, makes it easier to establish a reasonable search and allows public bodies to avoid unnecessary costs for storing and processing transitory records.