

ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on the Government of Alberta's Management of Ministerial Emails (Investigation #F5924)

November 30, 2011

INTRODUCTION

[para 1] Following media reports in September 2011 regarding Ministers using secondary email addresses in the performance of government work, I decided to conduct an investigation to examine the Government of Alberta's management of Ministers' email addresses and emails generally, in particular as records under the Freedom of Information and Protection of Privacy Act, R.S.A. (the "FOIP Act"). My authority to investigate this matter is pursuant to section 53(1)(a) of the FOIP Act, which reads:

53(1) In addition to the Commissioner's powers and duties under Part 5 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

- (a) conduct investigations to ensure compliance with any provision of this Act or compliance with rules relating to the destruction of records
 - (i) *set out in any other enactment of Alberta,...*

OBJECTIVES OF INVESTIGATION

[para 2] In my announcement on October 4, 2011, I made it clear that my investigation on this matter was not in the nature of an offense investigation or a breach investigation. In other words, I was not investigating a contravention of the FOIP Act. The objectives of my investigation are to:

- Assess the extent to which secondary email addresses are established and used by Ministers;
- Examine rules or policies established by the Government of Alberta in relation to the management of Ministers' emails, including any rules or policies on the use of multiple email addresses by Ministers with respect to government work;
- Identify issues or implications to access to information in the Government's management of Ministers' emails; and
- Make recommendations to ensure that the Government's management of Ministers' emails is in accordance with the provisions of the FOIP Act and any records retention and disposition schedules established under the Records Management Regulation, Alta. Reg. 224/2001.

INVESTIGATION

[para 3] On September 30, 2011, I sent a questionnaire to 22 Ministers asking for information regarding the use and management of their email addresses. Completion of the questionnaire was on a voluntary basis. My Office received 13 completed questionnaires.

[para 4] I also wrote to the Minister of Service Alberta on September 30, 2011 to invite representatives from that ministry to meet with me and provide information regarding how Ministerial email addresses are created and information regarding the management of emails and other records in Ministerial offices in relation to the records management program within the Alberta Government. The Minister of Service Alberta is responsible for establishing a records management program and for establishing, maintaining and promoting policies, standards and procedures regarding the creation, maintenance, retention and disposition of records in custody or under the control of provincial government departments. Service Alberta is also responsible for the creation of email accounts for the Alberta Government.

[para 5] I also decided to interview Senior Records Officers and FOIP Coordinators from a number of ministries. I invited Senior Records Officers from Infrastructure and Transportation, Energy, and Health and Wellness to meet with me regarding the records management within their respective ministries and with their respective Minister's office. I invited FOIP Coordinators from Human Services, Finance, Environment and Water, and Health and Wellness to meet with me in relation to their processing of access requests involving Ministerial records.

[para 6] All individuals were asked to submit relevant information to my Office prior to the interviews held on November 7 to 9, 2011.

[para 7] Given the time constraints, my investigation is not intended to be a comprehensive review of the Alberta Government's records management program. However, I did obtain some valuable information which resulted in the following recommendations. Although the primary focus of my investigation is on the treatment of Ministerial emails as records under the FOIP Act, the recommendations below are not limited to Ministerial records but can be applied to government records in general.

RECOMMENDATIONS

Recommendation #1 - The Government of Alberta should develop a policy regarding the issuance of multiple government email addresses to Ministers and other users. The policy should set out the circumstances under which a Minister or a user may be assigned more than one email address and the purposes for which the multiple email addresses may be used. Furthermore, the Client Administration Form, used to request a new email address, should be amended to indicate whether the user has other existing email addresses.

[para 8] The 13 completed questionnaires submitted to my Office indicate:

- Ministers have at least two email addresses: one Legislative Assembly email address (“----@assembly.ab.ca”) and one Government of Alberta email address (“----@gov.ab.ca”).

- 4 Ministers have two Legislative Assembly email addresses – one address that shows the Minister’s name and one that is a general constituency office email address.
- 8 Ministers have two Government of Alberta email addresses – one address that shows the Minister’s name and one generic (e.g. Minister@gov.ab.ca).

[para 9] The Ministers indicate they use their Legislative Assembly email addresses in relation to their constituency work and their Government of Alberta email addresses for their ministry work.

[para 10] I understand that the “---@assembly.ab.ca” email addresses are set by the Legislative Assembly Office (LAO) for Members of the Legislature and are separate from the Alberta Government issued “---@gov.ab.ca” email addresses. I will not review the circumstances under which the LAO creates its email addresses to Members of the Legislature as that is outside the application of the FOIP Act.

[para 11] I was told that each government ministry has employees who are designated as Service Request Coordinators (SRC). To create a new government email address for individuals within their ministry (referred to as the “client” or the “user”), the SRC completes and submits to Service Alberta a Client Administration Form. The Client Administration Form does not indicate whether a user has other existing government email addresses.

[para 12] Service Alberta says it is the service provider, fulfilling requests authorized by the ministries. Service Alberta considers email requests received from a ministry SRC as approved for implementation and takes the position that it does not have the mandate to question a request unless the email address is not appropriate or does not follow the naming standards established for the Government of Alberta. This means that Service Alberta does not review whether a request for a new email address is appropriate or necessary; rather, its review is limited to ensuring the email address requested is consistent with the established naming protocol, and that the request itself is submitted by an SRC.

[para 13] Service Alberta said it does not know whether a user has more than one government email address. In addition, Service Alberta says any ministry staff, not just Ministers, may request multiple email addresses and that there are no policies dictating how many government email addresses can be assigned to a single user.

[para 14] In my opinion, there is nothing inherently wrong with individuals having several email addresses. I understand there may be valid reasons for which a user is assigned more than one government email addresses. For example, a user may have one government email address in the user’s name (e.g. John.Doe@gov.ab.ca). That user may also have another government email address that is a general office email address (e.g. HelpDesk@gov.ab.ca).

[para 15] I also appreciate that a Minister may decide to use multiple government email addresses to manage the volume of emails he/she receives. In the questionnaires submitted to my Office, several Ministers indicated they use one government email address for external communications and another government email address for internal use.

[para 16] It is not a contravention of the FOIP Act for a Minister or government employee to have more than one government email address. However, it is important to note that government emails are records as defined by section 1(q) of the FOIP Act and must be managed in accordance with the Government of Alberta records retention and disposition schedules. I am concerned that there does not appear to be anyone in the Government of Alberta authorized to review or question whether an additional government email address requested is warranted, or to ensure that emails to and from all such additional email addresses are managed properly.

[para 17] I was informed that ministry SRCs are often administrative support personnel. Given the level of their positions, I believe it is highly unlikely that a SRC would question a Minister, an Executive Assistant or other Executive member about the reasons for, or merits of, an email address request. It seems to me that the ministry SRC's role is primarily to ensure the forms are completed correctly and the required signatures are obtained. As stated earlier, Service Alberta says it is not their mandate to question an email address request, except if the email address is not consistent with the government naming standards. Consequently, even if Service Alberta knows the user already has an existing government email address, it would not question why an additional government email address is being requested for that user.

[para 18] It also appears that there are no requirements to track and monitor users with multiple government email addresses. The Client Administration Form, used by a ministry SRC to request a new email address from Service Alberta, does not indicate whether a user has other existing government email addresses. When creating a new government email address, Service Alberta would not know that the user has another existing government email address.

[para 19] Service Alberta says it is within each ministry's discretion whether it maintains a listing of all the email addresses assigned to users in the ministry. Service Alberta provides a monthly consumption report to each ministry Chief Information Officer (CIO) that lists all accounts and email addresses within their respective ministry. However, Service Alberta would not know which government email addresses are assigned to a particular user unless it is clearly evident based on the name of the email address. The purpose of providing monthly consumption reports to ministry CIOs is to ensure that ministries are properly charged for the number of accounts in their respective ministries. It appears that the purpose for the CIO review is financial and not an assessment as to whether the multiple government email addresses are appropriate and truly required.

[para 20] The lack of policy or controls governing the creation of multiple government email addresses raises the potential risk that "records" may not be captured in the government's records management program and could be missed in relation to a formal access request under the FOIP Act.

Recommendation #2: Ministries should maintain a listing of all government issued email addresses and their respective users. This listing must be available to the FOIP Coordinators for the purpose of responding to access requests made under the FOIP Act.

[para 21] Section 10 of the FOIP Act places a general duty on public bodies when responding to applicants. Section 10(1) of the Act states:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 22] One aspect of the public body's duty under section 10 is to conduct an adequate search for records that are responsive to an access request.

[para 23] It is essential that a FOIP Coordinator know whether a user has multiple government email addresses when conducting a search for records responsive to an access request made under the FOIP Act so that records linked to one user's additional email addresses are not inadvertently missed.

Recommendation #3: All individuals within a ministry, including staff at the Executive levels and **in the Minister's office, should** be required to undertake training in records management and in the application of the FOIP Act. The training should be regular and mandatory, and include refresher training.

[para 24] Under sections 9, 10 and 11 of the Records Management Regulation, the responsibility for the retention and disposition of records within a ministry rests with the deputy head. Consequently, each ministry has its own set of records retention and disposition schedules.

[para 25] However, records in a Minister's office are subject to the Records Retention and Disposition Schedule 2002/041 ("Schedule 2002/41"), which is a cross-government schedule. Representatives from Service Alberta said Schedule 2002/041 "reduces the duplication that each department would have to go out and create their own" schedule for their Minister's office. Schedule 2002/041 excludes administrative records, which are subject to the Administrative Records Disposition Authority (ARDA); personal and constituency records; Ministerial Action Requests; and electronic records related to Action Request Tracking System (ARTS).

[para 26] The Government of Alberta also has a cross-government Transitory Records Schedule (Schedule 1995/007-A001) which authorizes the deletion or destruction of transitory records. Under Schedule 1995/007-A001, a transitory record is a record that has "no further value to government beyond an immediate and minor transaction" or will "only be required for a short time until they are made obsolete by an updated version of a record or by subsequent transaction or decision". The Schedule notes that not all drafts and working materials are automatically transitory and that in some cases "offices may need to keep various drafts, research and working materials in order to have a record of changes that were made and why".

[para 27] The Information Management Branch with Service Alberta has produced publications such as:

- "Managing Records in Ministers' Offices"; and
- "Managing Electronic Mail in the Government of Alberta".

[para 28] Both publications include information regarding transitory records. Appendix 1 of "Managing Electronic Mail in the Government of Alberta" provides a flowchart to assist in determining whether a record is or is not transitory. Service Alberta said records management staff are trained regarding the differences between transitory records and official records. However, it cannot be said with certainty whether non-records management staff are trained and knowledgeable as to the differences between transitory records and official records. As indicated in Schedule 1995/007-A001, whether a record is or is not transitory is not always readily apparent on the face of the record or easily determined.

[para 29] Service Alberta says it provides records management training and that ministries are also responsible for providing records management training to their staff. Service Alberta also says each ministry is responsible to ensure that their Minister's office is knowledgeable about the records management requirements.

[para 30] However, from the interviews, it appears that the level of interactions that a ministry SRO may have with a Minister's office appears to be limited. It is also apparent that training of ministry staff in records management and the FOIP Act varies from ministry to ministry. Some ministries appear to have comprehensive training programs while training appears to be less established in other ministries. I was told that training is mandatory in some ministries but only encouraged in others. Therefore, it seems to me that the level of knowledge that ministry staff may have with respect to records management and the FOIP Act is inconsistent.

[para 31] Completed questionnaires to my Office indicate that staff in Ministerial offices have varying levels of knowledge and training in relation to records management and the application of the FOIP Act. Six out of the 13 Ministers who responded to the questionnaire said their staff have no or limited training on records management or the FOIP Act.

[para 32] We live in an "Information Age". Every individual within a ministry and a Minister's office has a responsibility to manage information in accordance with the established records retention and disposition schedules and to understand the application of the FOIP Act. However, when ministry employees and staff in Ministerial offices do not know or are uncertain as to their legislative obligations under the FOIP Act or the requirements of their respective records retention and disposition schedules, this then affects an individual's right to access information and the ministry's ability to demonstrate that it has complied with the obligations under the FOIP Act. The proper management of information is also a risk management matter.

[para 33] Consequently, training of staff must be mandatory and ongoing. However, I appreciate a one-size-fits-all training across government may not work. To be meaningful, the training should incorporate material and information that is relevant to that particular ministry.

Recommendation #4: Ministers should utilize their ministry records management staff in the structure and organization of the records in their offices. Furthermore, decisions regarding the retention and disposition of records **in a Minister's office** when a Minister leaves a ministry should be made by ministry records management personnel and not Ministerial staff.

[para 34] Records in a Minister's Office are subject to Schedule 2002/41. In my opinion, Schedule 2002/041 is overly broad and does not provide sufficient description as to how records in the Minister's office should be structured. While the generality may be intended to allow Ministers some flexibility in relation to the records management system for their offices, this means that the organization and classification of records in a Minister's office may be made by staff with little or no records management knowledge.

[para 35] I understand that ministry SROs are not always consulted by Ministerial staff as to the records management system for a Minister's office. I was encouraged to hear that some new Ministers have contacted their ministry records management staff to provide records management orientation for Ministerial staff. However, it seems to me that Ministers should utilize the expertise of

trained records management personnel as a standard practice – these individuals can be a valuable resource to the Minister and his/her office.

[para 36] I was informed that information (e.g. emails, letters and other materials) from a Minister's office is generally forwarded to the office of the Deputy Minister. Information forwarded to the Deputy Minister's office and other personnel should then be captured by that ministry's records retention and disposition schedules. If a Minister's office manages its records in a timely and efficient manner, it is my understanding that there should be few records remaining in a Minister's office.

[para 37] However, I am concerned to hear that ministry records management personnel are not always consulted when a Minister leaves office or changes ministry. As a result, decisions to retain or dispose of records are made by Ministerial staff or Executive Assistants who may or may not know the records management requirements. Further, these staff may not know what constitutes a transitory or official record. They may also fail to turn their minds to the FOIP Act and its requirements.

[para 38] I was impressed with the model adopted by Alberta Environment and Water in which all records from the Minister's office and offices of the Deputy Minister and Assistant Deputy Ministers are housed in an executive file room that is managed by an experienced records management practitioner. This ensures that records are retained and disposed in accordance with the appropriate records retention and disposition schedules.

[para 39] Having one central executive file room may not be appropriate in other ministries. However, it is essential that records in a Minister's Office be managed by individuals who are trained in and knowledgeable about records management.

Recommendation #5: Ministries must ensure all their records are captured by a records retention and disposition schedule.

[para 40] Ministries have a number of records retention and disposition schedules. I was told that one particular ministry had approximately 115 records retention and disposition schedules.

[para 41] However, I am concerned to hear that some records in ministries are not encompassed in a records retention and disposition schedule. Consequently, there is no classification of these records and no authority or rules relating to the destruction of these records. This becomes an issue if those records are the subject of an access request or a complaint of improper destruction under the FOIP Act.

[para 42] Therefore, I recommend that ministries ensure all ministry records are covered by a records retention and disposition schedule. I understand there are a number of records management initiatives currently underway that may address this matter. However, I want to encourage all ministries to make this a priority with specific timelines for completion.

Recommendation #6: Ministries should ensure their organizational structures supports and promotes effective information management.

[para 43] As a result of technological advancements, ministries are increasingly communicating and exchanging information with the public and their stakeholders through emails, collaboration software

products such as SharePoint, and online social networking tools. Electronic information raises issues that do not exist for paper documents such as metadata, the ability to recover deleted data and the relatively easy manipulation of electronic data.

[para 44] Thus, records management is no longer limited to paper. The Government of Alberta needs to ensure that all records retention and disposition schedules adequately address electronic information. Ministries must consider the management of electronic information when responding to an access request under the FOIP Act or in relation to ongoing or anticipated litigation (e-Discovery).

[para 45] I understand ministries are trying to address the challenges presented by electronic information. This is not an easy task given the rapid rate of change in technology. Added to this challenge are limited staffing and financial resources along with dated, inadequate or non-existent gaps in records retention and disposition schedules that may currently be in place.

[para 46] Alberta Energy said it adopted a model that consolidated its information management personnel i.e. information security and information technology, Seniors Records Officers and FOIP personnel under the ambit of its ministry CIO. I was told that the consolidation enables the ministry CIO to consider the IT requirements as well as the records management and FOIP requirements in the ministry's strategic planning. While such a consolidation may not be suitable to all ministries, it is essential that a ministry has an organizational structure that enables its records management and FOIP personnel to be in a position of influence on strategic planning.

[para 47] Alberta Energy says there is “a lot of respect for records management” within that ministry and that “it starts right from the DM’s office on down”. This reinforces the critical importance of leadership from Ministers and Deputy Ministers in establishing a culture that promotes and supports effective information management.

CONCLUDING COMMENTS

[para 48] In my report, I have noted Alberta Environment and Water and Energy as providing examples of “best practices” in managing their information. However, I also appreciated the information provided by the representatives from Human Services, Finance, Health and Wellness, Infrastructure, Transportation and Service Alberta. I respect the work performed by these individuals and the dedication to their professions and to the Alberta Public Service. I also want to thank the Ministers who responded to my questionnaire.

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