



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

ARCHIVES AND RECORDS ACT

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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ARCHIVES AND RECORDS ACT

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ARCHIVES AND RECORDS ACT

CHAPTER A-19.1

1. Definitions

(1) In this Act

- (a) “**Committee**” means the Public Records Committee established pursuant to section 13;
- (a.1) “**court**” means
 - (i) the Supreme Court,
 - (ii) the Court of Appeal, or
 - (iii) the provincial court;
- (a.2) “**court administration record**” means a record relating to matters of court administration for which the Attorney General or Government is responsible by law;
- (a.3) “**court record**” means a record filed with or received by a court or created or maintained in relation to a court proceeding, but does not include a court administration record or a judicial administration record;
- (b) “**Department**” means the Department for which the Minister is responsible except where the context otherwise requires;
- (c) “**head**”, in relation to a public body, means
 - (i) the member of the Executive Council who presides over, or is responsible for, the public body by order of the Lieutenant Governor in Council, where the public body is
 - (A) a department, branch or office of the Government, or
 - (B) a body referred to in subclause 1(1)(f)(iii) or (iv) that reports directly to that member of Executive Council respecting its day-to-day operations,
 - (ii) the Chief Electoral Officer, where the public body is the office of the Chief Electoral Officer,
 - (iii) the person designated as the head of the public body in the regulations, where such a designation has been made, or
 - (iv) the presiding officer of the public body, where subclauses (i) to (iii) do not apply;
- (c.1) “**judicial administration record**” means a record relating to a judge of any court, including
 - (i) the scheduling of judges and trials,
 - (ii) the content of judicial training programs,
 - (iii) statistics of judicial activity prepared by or for a judge, and
 - (iv) any record of a judicial council;

- (d) “**Minister**” means the Minister of the Government designated by the Lieutenant Governor in Council to have the responsibility for the administration of this Act;
- (e) “**Provincial Archivist**” means the Provincial Archivist appointed pursuant to section 4 and includes a designate;
- (f) “**public body**” means
 - (i) a department, branch or office of the Government,
 - (ii) the office of the Chief Electoral Officer,
 - (iii) a body designated as a public body in the regulations pursuant to clause 20(c), and
 - (iv) an agency, association, board, commission, committee, council, foundation, office, tribunal, task force or other body, whether incorporated or unincorporated, of which all the members, or all the members of its governing body, are
 - (A) appointed by order of the Lieutenant Governor in Council,
 - (B) officers or employees of the Government, or
 - (C) working under contract, under the supervision of an officer or employee of the Government;
- (f.1) “**public record**” means a record created, received or maintained by a public body in the course of its activities, and includes a court administration record;
- (g) “**record**” means a record of information in any form, including electronic form, but does not include a mechanism or system for generating, sending, receiving, storing or otherwise processing information;
- (g.1) “**record of the Legislative Assembly**” means a record created, received or maintained by the Legislative Assembly, or an office established by or within the jurisdiction of the Legislative Assembly, including those offices described in subsection (2), in the course of its activities;
- (h) “**records retention and disposition schedule**” means a records retention and disposition schedule prepared in accordance with subsection 16(1).

Not public bodies

- (2) For greater certainty, the following are not public bodies:
 - (a) the Legislative Assembly and its committees;
 - (b) the Legislature;
 - (c) the office of the Clerk of the Legislative Assembly;
 - (d) the office of the Speaker of the Legislative Assembly;
 - (e) the office of a political party leader or caucus;
 - (f) the office of the Auditor General;
 - (g) the office of the Conflict of Interest Commissioner;
 - (h) the office of the Information and Privacy Commissioner;
 - (i) any other office, not including the office of the Chief Electoral Officer, appointed by, or within the jurisdiction of, the Legislative Assembly or the Speaker of the Legislative Assembly.

Not public records

- (3) For greater certainty, the following are not public records:
 - (a) a court record or judicial administration record;

- (b) a record of the Legislative Assembly;
- (c) a personal, political, party or constituency record of a member of the Legislative Assembly or the Executive Council;
- (d) a record placed in the care and control of the Provincial Archivist by or for a person, agency or organization other than a public body. *2001,c.28,s.1; 2015,c.20,s.1; 2017,c.60,s.1.*

2. Application

- (1) ~~(2)~~ Repealed by *2017,c.60,s.2. 2001,c.28,s.2; 2017,c.60,s.2.*

3. Purposes of Act

The purposes of this Act are

- (a) to vest public records in the Government;
- (b) to provide for the comprehensive and accurate description and classification of public records;
- (c) to authorize the retention and disposition of public records;
- (d) to provide for the functions, powers and duties of the Public Archives and Records Office, the Provincial Archivist and the Public Records Committee; and
- (e) to provide for the duties of the head of a public body with respect to the management and preservation of public records. *2001,c.28,s.3; 2017,c.60,s.3.*

4. Minister

- (1) The Minister is responsible for the administration of this Act.

Provincial Archivist

- (2) The Minister shall appoint an employee of the Department to be the Provincial Archivist, who shall, at the direction of the Minister, ensure that the intent and purposes of this Act are carried out. *2001,c.28,s.4.*

5. Public Archives and Records Office

- (1) There is hereby established the Public Archives and Records Office of Prince Edward Island, which shall be a part of the Department.

Objects and functions of Office

- (2) The objects and functions of the Public Archives and Records Office are
 - (a) to acquire and preserve private and public records of provincial significance and to provide access to them;
 - (b) to develop policies, standards, procedures and services for effective records management in government;
 - (c) to be the permanent repository of public records; and
 - (d) to encourage and assist archival activities and the archival community. *2001,c.28,s.5; 2017,c.60,s.4.*

6. Powers of Provincial Archivist

- (1) The Provincial Archivist may carry out such activities as are incidental or conducive to the attainment of the objectives and functions of the Public Archives and Records Office and may
- (a) acquire records and obtain the care, custody or control of records;
 - (b) take such measures as are necessary to classify, describe, identify, appraise, preserve and restore records;
 - (c) provide access to records, in accordance with the laws of the province;
 - (d) place, by agreement with the donor of private papers and related material, such restriction on the use of the papers as may be stipulated in the agreement;
 - (e) provide information, consultation, reference and other services related to archives;
 - (f) make known information concerning archives through publications, exhibitions, the copying of records and such other means as the Provincial Archivist may consider expedient;
 - (g) advise and assist public bodies in meeting the requirements of this Act and related enactments;
 - (h) provide reproduction, records storage, and other archival records services to public bodies;
 - (i) provide training in archival practices and related management of records;
 - (j) provide professional and technical support in aid of archival activities and the archival community;
 - (k) cooperate with and undertake activities with organizations interested in archival matters and related records management through exchanges, joint projects and such other means as the Provincial Archivist may consider expedient;
 - (k.1) enter into an agreement with a person, agency or organization other than a public body, including the Legislative Assembly or a court, with respect to the management and disposition of the records of the person, agency or organization, as the case may be, including the transfer of the records to the care and control of the Provincial Archivist;
 - (l) carry out such other functions as the Lieutenant Governor in Council may specify.

Destruction of records

- (2) Subject to the terms and conditions under which records have been acquired or obtained, the Provincial Archivist may destroy or dispose of any record in the Public Archives and Records Office, where the Provincial Archivist considers that it is no longer necessary to retain the record. *2001,c.28,s.6; 2017,c.60,s.5.*

6.1 Directives

- (1) The Provincial Archivist may, with the approval of the Committee, issue a directive to the head of a public body in relation to the management of public records in the custody or under the control of the public body.

Request for information

- (2) The Provincial Archivist may request information from the head of a public body in relation to the management of the public records in the custody or under the control of the public body. *2017,c.60,s.6.*

6.2 Annual report

- (1) The Provincial Archivist shall make an annual report in writing to the Minister, at the time required by the Minister, respecting
 - (a) the work of the Public Archives and Records Office;
 - (b) the degree or rate of compliance within public bodies with
 - (i) records retention and disposition schedules,
 - (ii) directives issued under subsection 6.1(1), and
 - (iii) requests for information under subsection 6.1(2); and
 - (c) such other matters related to the objects and functions of the Public Archives and Records Office as the Provincial Archivist considers appropriate.

Report to Assembly

- (2) The Minister shall lay each annual report before the Legislative Assembly as soon as possible. *2017,c.60,s.6.*

7. Records may not be destroyed, except

Repealed by *2017,c.60,s.7. 2001,c.28,s.7; 2017,c.60,s.7.*

8. Access to public records

- (1) Subject to subsection (3) but notwithstanding any other Act, including the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01, and the *Health Information Act* S.P.E.I. 2014, Cap. 41, the Provincial Archivist shall have access to any public record for the purposes of this Act.

Confidentiality

- (2) The Provincial Archivist shall, with respect to access to a public record referred to in subsection (1), satisfy any confidentiality requirements applicable to, and take any oath of confidentiality required to be taken by persons who normally have access to that record.

Consent required

- (3) Where a public record contains information the disclosure of which is restricted by or pursuant to an enactment, the Provincial Archivist shall have access to the record only with the consent of the head of the public body with custody or control of the record. *2001,c.28,s.8; 2017,c.60,s.8.*

9. Public record of archival importance

Notwithstanding any other Act, including the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act*, where the Provincial Archivist is of the opinion that a public record in the custody or under the control of a public body is of archival importance, the head of the public body shall ensure that the record is transferred to the care and control of the Provincial Archivist in accordance with the applicable records retention and disposition schedule approved by the Committee. *2001,c.28,s.9; 2017,c.60,s.9.*

10. Where public body no longer exists

Except as otherwise directed by the Lieutenant Governor in Council, the Provincial Archivist shall have the care and control of all public records of any public body, the functions of which have ceased. *2001,c.28,s.10; 2017,c.60,s.10.*

11. Library, museum materials

Sections 8 and 9 do not apply to records that are library or museum materials kept by a public body for reference or exhibition purposes. *2001,c.28,s.11; 2017,c.60,s.11.*

12. Certified copy

A copy of any document in the custody of the Public Archives and Records Office, certified by the Provincial Archivist to be a true copy, may be admitted in evidence as *prima facie* proof of the authenticity and correctness of the record and of the contents of the record without proof of the signature or appointment of the Provincial Archivist. *2001,c.28,s.12.*

13. Public Records Committee

(1) There shall be a Public Records Committee consisting of

- (a) the Provincial Archivist;
- (b) the Deputy Minister of Finance or designate;
- (c) the Clerk of the Executive Council;
- (d) the Deputy Minister of Justice and Public Safety and Deputy Attorney General or designate; and
- (e) not more than two other persons appointed by the Lieutenant Governor in Council.

Chair

(2) The Provincial Archivist shall be the Chair of the Committee. *2001,c.28,s.13; 2010,c.31,s.3; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

14. Duties of Committee

(1) The Committee shall

- (a) review records retention and disposition schedules submitted to it by a public body;
- (b) review procedures for the retention, preservation, destruction or alienation of records identified in a records retention and disposition schedule; and
- (c) approve records retention and disposition schedules.

Powers of the Committee

(2) The Committee may, on the request of the Provincial Archivist,

- (a) review the policies, procedures and legislation applicable to public bodies respecting the management of public records;
- (b) provide advice with respect to the management of public records; and
- (c) approve the issuance of a directive under subsection 6.1(1).

2001,c.28,s.14; 2017,c.60,c.12.

15. Compliance with retention and disposition schedule

Repealed by *2017,c.60,c.13. 2001,c.28,s.15; 2017,c.60,c.13.*

16. Records retention and disposition schedules

- (1) The head of a public body shall ensure that one or more records retention and disposition schedules are prepared, in respect of the public records in the custody or under the control of the public body, that
- (a) describe, classify and index the public records;
 - (b) set out the retention periods for the public records; and
 - (c) provide for the disposition of the public records, whether by transfer to the care and control of the Provincial Archivist, alienation or destruction.

Schedule to be submitted to Committee

- (2) The head of a public body shall submit each records retention and disposition schedule to the Committee for review and approval by forwarding it to the Provincial Archivist.

Approval of schedule

- (3) Upon completion of its review of a records retention and disposition schedule, the Committee shall
- (a) approve the records retention and disposition schedule; or
 - (b) return the records retention and disposition schedule to the head of the public body with the Committee's recommendations.

Effective date of schedule

- (4) A records retention and disposition schedule of a public body has effect upon approval by the Committee. *2001,c.28,s.16; 2017,c.60,c.14.*

17. Duties of head of a public body

The head of a public body shall

- (a) ensure that the public records in the custody or under the control of the public body are
 - (i) protected and maintained so that the records are accessible, legible, understandable, usable and transferable throughout the life cycle of the records, from creation to final disposition,
 - (ii) maintained in formats, media and conditions that ensure the retention and preservation of the records, and
 - (iii) retained and disposed of in accordance with the retention and disposition schedules approved by the Committee in respect of the public records;
- (b) comply with any directives issued under subsection 6.1(1);
- (c) respond within a reasonable time to a request for information under subsection 6.1(2); and
- (d) take reasonable steps to ensure that officers and employees of the public body do not contravene subsection 19.1(1). *2001,c.28,s.17; 2017,c.60,s.15.*

18. Destruction or transfer of court records

- (1) Repealed by *2017,c.60,s.16. 2001,c.28,s.18; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3; 2017,c.60,s.16.*

19. Ownership of public records

A public record is the property of the Government, regardless of whether it is in the custody or under the control of a public body or has been transferred to the care and control of the Provincial Archivist. *2001,c.28,s.19; ; 2017,c.60,s.17.*

19.1 Prohibition

- (1) No person shall, with the intent to deprive a public body, the Public Archives and Records Office or the Provincial Archivist of the custody, control or use of, or access to, a public record,
- (a) destroy or damage a public record;
 - (b) erase or remove information from a public record or make a public record illegible;
 - (c) remove or conceal a public record from the public body or the Provincial Archivist; or
 - (d) direct, counsel or cause any person to do anything mentioned in clause (a), (b) or (c).

Exception

- (2) Subsection (1) does not apply with respect to the disposition of a public record in accordance with a records retention and disposition schedule approved by the Committee.

Offence and penalty

- (3) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

Discipline, termination

- (4) In addition to and apart from the sanction provided for in subsection (3), an officer or employee of a public body who contravenes subsection (1) may be subject to disciplinary action, up to and including termination from employment. *2017,c.60,s.18.*

20. Regulations

The Lieutenant Governor in Council may make regulations

- (a) designating and establishing classes of public records for the purposes of retention, destruction or permanent preservation of the records;
- (b) respecting practices to be observed in dealing with public records for the purposes of disposition, retention or transfer of records to the Public Archives and Records Office;
- (c) designating as a public body an agency, association, board, commission, committee, council, foundation, office, tribunal, task force or other body, whether incorporated or unincorporated,
 - (i) of which any member, or any member of its governing body, is appointed by the Lieutenant Governor in Council or a member of the Executive Council,
 - (ii) in which the Government or an agency of Government has a controlling interest in the share capital, or
 - (iii) that performs functions pursuant to an enactment;
- (d) defining any word or expression used in this Act; and
- (e) respecting any other matter necessary for or ancillary to the administration of this Act. *2001,c.28,s.20; 2015,c.20,s.2; 2017,c.60,s.19.*

21. Repeal

The *Archives Act* R.S.P.E.I. 1988, Cap. A-19 is repealed. 2001,c.28,s.21.