



Office of the Information and
Privacy Commissioner of Alberta

Investigation Report F2018-IR-02

Investigation into the Balancing Pool's management of transitory records

June 19, 2018

Balancing Pool

Investigation 004383

Summary

Two applicants made similar access to information requests under the *Freedom of Information and Protection of Privacy Act* to the Balancing Pool on April 4, 2016 and August 23, 2016 related to Power Purchase Agreements. The Balancing Pool responded to both requests on November 4, 2016 and February 9, 2017, respectively.

Subsequent to each response, both applicants wrote the Office of the Information and Privacy Commissioner with concerns about how their requests were processed. The first applicant had general concerns about records management and retention, as well as about an instruction in an email to delete a draft briefing note. The second applicant was concerned about the instruction to delete a draft briefing note. The email in question included an attachment to the draft briefing note and the body of the email read, "Sensitive and transitory. Please delete." The email was sent from an employee of Alberta Energy to Balancing Pool employees.

The Commissioner opened this investigation to address whether the Balancing Pool destroyed records that were responsive to an access request, and whether the Balancing Pool complied with rules relating to the destruction of records as set out in any enactment of Alberta.

The investigation found that the Balancing Pool did not destroy records that were responsive to an access request. There was no evident connection between the instruction in the email and either of the applicants' access requests or possible future access requests.

Additionally, the instruction to delete the draft briefing note was not followed by the Balancing Pool. The draft briefing note was received by both applicants in their access request responses. However, the email and the draft briefing note were not provided alongside each other (i.e. email with attachment) in the first applicant's response package.

The investigation also found that the Balancing Pool was not fully aware of its records management policies and procedures. Furthermore, employees of the Balancing Pool were not trained at the time to understand the difference between official and transitory records.

The investigation made three recommendations to the Balancing Pool. The first recommendation related to the organization of access request response packages. The second recommendation was to create a records management program. The third recommendation was to ensure officials and employees are trained on applicable records management policies.

Finally, the investigation found that certain Government of Alberta public bodies are designated under Schedule 1 of the *Freedom of Information and Protection of Privacy Regulation*, with the result that those public bodies are subject to the Government of Alberta's *Records Management Regulation*. Others, including the Balancing Pool, are designated as public bodies under the *Freedom of Information and Protection of Privacy (Ministerial) Regulation*, with the result that they are not subject to the Government of Alberta's *Records Management Regulation*. The investigation recommended that the Commissioner write to the Minister of Service Alberta highlighting this inconsistency.

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Background

- [1] On April 4, 2016, an applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to the Balancing Pool (Public Body). The request was for:

...all records related to power purchase agreements (PPA) and specified gas emitters regulation (SGER). Specifically I am looking for information relating to the impact of changes to SGER on PPAs.

Please include but do not limit to: any briefing notes, action requests tracking and cover sheets, memorandum, presentation slides, ministerial orders, 'advice to minister' and 'advice to deputy minister's notes, timelines or summaries of the process (Process for Minister's office or Deputy Minister's Office), requests for decision, business case for the project, description of steps in the process, meeting agendas, as well as emails and letters.

Please note that duplicates may be excluded, as can drafts. In addition, emails may be restricted to final strings where the final string shows the entire conversation.

If the minister or the deputy minister is not the correct title, please use the equivalent term for your organization.

May 5, 2015 – Date Request Received.

I also request all records related to this request to be provided electronically, including the final records and correspondence.

- [2] On November 4, 2016, the Public Body provided records in response to the applicant's request.
- [3] On August 23, 2016, another applicant made a similar request to the Public Body for access to information under the FOIP Act. The request was for:
- Copies of documents, including emails, correspondence, briefing notes, memos, text or instant messages, sent to the Government of Alberta regarding power purchase agreements and termination/withdrawal clauses since May 5, 2015.
- [4] On February 9, 2017, the Public Body provided records in response to the applicant's request.
- [5] On November 24, 2016, the first applicant wrote to the Information and Privacy Commissioner expressing "concerns about records management and retention at the Government of Alberta". Specifically, the applicant was concerned that one of the email records included in the Public Body's response to his access request appeared to provide instruction to delete records. The applicant asked the Commissioner to "investigate this particular email chain, including the redacted portions, to ascertain whether appropriate records management was followed in this case."

[6] On February 23, 2017, the second applicant wrote to the Office of the Information and Privacy Commissioner regarding email records that the Public Body provided in response to his access request. The applicant had received a copy of the same email that the first applicant had referenced, and said, “I am concerned that the email (attached) was instructions to delete documents – documents that should not have been destroyed and thankfully weren’t and were properly released under the Freedom of Information Act in this case... I am concerned that this e-mail demonstrates an attempt to circumvent the Freedom of Information Act and destroy documents to prevent their release.” The second applicant did not request a review of the exceptions to access that the Public Body had applied to the records.

[7] As the applicants raised similar concerns in their letters of complaint, the Commissioner decided to combine the matters in a single investigation. On April 6, 2017, the Commissioner initiated an investigation on her own motion pursuant to section 53(1)(a) of the Act, which reads:

General powers of Commissioner

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...

[8] I was assigned to investigate this matter. This report sets out my findings and recommendations with respect to concerns raised that records responsive to access requests may have been destroyed, or that there may have been direction to destroy records in order to evade an access request.

[9] This report does not address my review of the exceptions to access that the Public Body relied on to withhold information in the records provided to the first applicant. My findings and recommendations from that review are set out in a separate report provided directly to the applicant and the Public Body.

Jurisdiction

[10] According to its website, “The Balancing Pool was created by the Government of Alberta to manage certain assets, liabilities, revenues and expenses arising from the transition to competition in Alberta’s electric industry. The Balancing Pool was originally established in 1998 as a separate financial account of the Power Pool Council and commenced operations in 1999. The Power Pool Council was a statutory corporation established under the *Electric Utilities Act* of Alberta (1995). The requirement to establish the Balancing Pool and its’ [sic] associated mandate was set out in the Balancing Pool Regulation.”

[11] The Public Body’s mandate is to manage the financial accounts arising from the transition to a competitive generation market on behalf of electricity consumers, and to meet obligations

and responsibilities relating to Power Purchase Agreements (PPAs) as defined in section 1(1)(nn) of the *Electric Utilities Act* (EUA).

- [12] The Public Body's "Mandate and Roles Document" (MRD), which was signed by the Public Body and the Minister of Energy in 2015, was developed collaboratively and outlines the roles and responsibilities of each party. As per the MRD, the Public Body interacts with Energy in carrying out its mandate under the EUA. Some of these interactions include, but are not limited to:
- Collaboration on development of regulatory instruments to ensure shared outcomes are achieved
 - Regular contacts between the Chair or CEO of the Public Body and the Minister or Deputy Minister of Energy
 - Ongoing collaboration and communication at the staff level
 - Ongoing interactions with their respective operations staff to ensure efficient and effective work processes
 - Reviewing the Public Body's annual plan with the Minister and participation by the Minister with the Public Body in setting the Public Body's long term objectives and short term targets, if any
 - Filing an annual report with the Minister
 - Advising on key policies which have a significant impact on the Public Body's performance
 - Advising on changes to current policies
- [13] The FOIP Act applies to all records in the custody or under the control of a public body. Section 1(p)(ii) of the FOIP Act defines "public body" to include "an agency, board, commission, corporation, office or other body designated as a public body in the regulations" [my emphasis].
- [14] Section 94(3) of the FOIP Act states that the "Minister may by regulation designate an agency, board, commission, corporation, office or other body as a public body on the same criteria established by the regulation on which the Lieutenant Governor in Council may designate a public body, but only at the request of the Minister responsible for that agency, board, commission, corporation, office or other body."
- [15] The *Freedom of Information and Protection of Privacy (Ministerial) Regulation* states for the purposes of section 1(p)(ii) of the FOIP Act, an agency, board, commission, corporation, office or body listed in the Schedule is designated to be a public body. The Public Body is included in the FOIP (Ministerial) Regulation's Schedule and is therefore, a public body subject to the FOIP Act.

Issues

[16] The following issues were identified for this investigation:

- Did the Public Body destroy records that were responsive to a request for access to information made under the FOIP Act?
- Did the Public Body comply with rules relating to the destruction of records as set out in any enactment of Alberta?

Methodology

[17] I took the following steps as part of my investigation:

- Spoke with the FOIP Coordinator for the Public Body and the FOIP Coordinator for Alberta Energy (Energy).
- Obtained and reviewed redacted and un-redacted copies of records provided by the Public Body to the applicants.
- Obtained and reviewed correspondence between the applicants and the Public Body.
- Reviewed the records management policies, procedures and standards of the Government of Alberta and the Public Body related to official and transitory records.

Analysis and Findings

Issue 1: Did the Public Body destroy records that were responsive to a request for access to information made under the FOIP Act?

[18] As previously noted, on April 4, 2016 and August 23, 2016, two separate applicants made access requests under the FOIP Act to the Public Body for similar records. On November 4, 2016 and February 9, 2017, respectively, the applicants received responses from the Public Body.

[19] Both response packages included copies of email correspondence sent by the former Assistant Deputy Minister (ADM), Electricity and Sustainable Energy, to the former Issues Manager, Office of the Minister of Energy, and the former Chief of Staff, Office of the Minister of Energy, at 1:11:12 p.m. MST on December 9, 2015. The email was also copied to the Chief of Staff, Deputy Minister's Office, the former Deputy Minister, Energy, and the former Executive Advisor for the ADM, Electricity and Sustainable Energy.

[20] The “Subject” of the email was “Fwd: Draft BN” (“BN” in the subject line means “briefing note”). Copies of the records provided by the first applicant for my review show that the body of the email reads as follows:

(First name of former Issues Manager, Office of the Minister of Energy) and (first name of former Chief of Staff, Office of the Minister of Energy)

Attached is a draft briefing note that has yet to be finalized but I believe provides the context that you need for question period...Should something arise.

We will have a more complete version for our meeting at 3 o'clock.

[21] The remainder of the body of the email was redacted, pursuant to sections 24 and 25 of the FOIP Act.

[22] The second applicant only provided one page of records for my review, and this page does not show the body of the email but only the sender, recipients, subject line, and the date and time that the email was sent. Nonetheless, based on these details, it is apparent that the email copy provided to me by the second applicant is the same email as was included in the response package given to the first applicant.

[23] The records provided by both applicants show that the email message was subsequently forwarded by the former ADM, Electricity and Sustainable Energy, to the CEO of the Public Body, at 2:58 p.m. on December 9, 2015. Again, the “Subject” of the email is “Fwd: Draft BN”. The body of the email reads:

Sensitive and transitory.

Please delete.

[24] Neither email appears to show an attachment. The briefing note in question was identified by the Public Body as being called “Potential Power Purchase Arrangement Termination”. It is dated December 9, 2015, and marked “Minister – For Information, AR xxxxx”.

[25] The first applicant notes:

...email was sent December 9th 2015, two days before ENMAX’s application to terminate its Battle River 5 Power Purchase Arrangement (PPA), but the same day that ENMAX’s court records indicate it had discussed doing so with senior government officials including the Deputy Minister of Energy. This particular email was clearly sent in the midst of the government formulating a response. In March, as more companies began terminating their PPAs, this issue became a matter of significant public interest, culminating in the government legal action.

What I find most troubling is that a senior government official, evidently recognizing the “sensitive” nature of the issue, instructed that records be destroyed on the first day the government was aware and began to react.

[26] As previously noted, the second applicant said, “I am concerned that this email demonstrates an attempt to circumvent the Freedom of Information Act and destroy documents to prevent their release.”

Balancing Pool

- [27] I spoke to the FOIP Coordinator for the Public Body about the applicants' concerns who told me that she was not aware of any other instance where Energy has provided instructions to the Public Body to deem a record sensitive and/or transitory. I was advised that, in late 2015 and 2016, the former ADM of Energy would make urgent requests to the Public Body for information to be included in briefing notes intended for the Minister of Energy and/or the Premier. These requests would normally be made via email; the Public Body would review the request, and provide information in Energy's briefing note format. Draft briefing notes would be sent back and forth between the Public Body and Energy for review and comment until considered final by Energy.
- [28] The Public Body was of the view that maintaining an email record of the back and forth review and comment on draft briefing notes would demonstrate its involvement, in the event that any of the information was called into question or incorrectly communicated to government officials. The email records would also provide evidence of the Public Body's interaction with Energy. The Public Body advised me that the Public Body would not consider the briefing note in question to be transitory.
- [29] The Public Body said it assumed Energy's email wording, "Sensitive and Transitory. Please delete" was intended to refer to the draft briefing note that was subject to the email string. The Public Body said the final briefing note has an official number on the top, right corner. The Public Body also said it sometimes received final briefing notes, although in many cases, it did not. The briefing note in question does not have an official number on the top, right hand corner.
- [30] The Public Body said it did not follow Energy's request to delete the draft briefing note. The Public Body retained the draft briefing note in question and produced it to both applicants in response to their access requests.
- [31] In the first applicant's record package, the Public Body said the "Sensitive and Transitory" email note can be found on page 174, the email string concerning the draft briefing note runs from pages 172-175, and the accompanying draft briefing note in question was provided at pages 74 and 75.
- [32] In the second applicant's record package, the Public Body said the "Sensitive and Transitory" email note can be found on page 1, the email string concerning the draft briefing note runs from pages 1-4, and the accompanying draft briefing note in question can be found at pages 5 and 6. The Public Body said a later version of the draft briefing note was provided at pages 8-12 (dated December 10, 2015) and a marked version of the draft briefing note (also dated December 10, 2015) is found at pages 14-18. The emails related to these draft briefing notes are contained in pages 1-23.
- [33] The Public Body explained that the first applicant did not receive the later draft version of the draft briefing note because the first applicant's access request said drafts could be excluded from the response. The Public Body said that the applicants' requests were completed by different individuals in the Public Body. The first applicant's request was completed by a delegated FOIP Coordinator and a contractor, and before April 2016, the

Public Body had only received one other access request. The Public Body said it does not know why the first applicant received the draft briefing note in question when the applicant requested that drafts were to be excluded from his request. The Public Body concluded that the draft briefing note “just got missed” in the processing of the first applicant’s request, and so was included in the response.

Alberta Energy

- [34] The FOIP Coordinator for Energy (Energy) advised me that as part of its regular interaction with the Public Body, Energy would solicit the Public Body’s input on advice to government where the Public Body had specific information that Energy required. Energy would also share information with the Public Body if it was viewed as relevant to the Public Body’s management or board. In cases where Energy asked the Public Body to review or comment on, or bring awareness to, draft briefing notes, Energy expected that these drafts would be treated as transitory, and would be deleted or disposed of appropriately.
- [35] Energy understood “Sensitive and transitory... Please delete” to be referring to the draft briefing note attached to the email.
- [36] Energy believed the draft briefing note was provided to the Public Body for both their awareness and feedback; however, the draft briefing note itself was prepared for Energy’s purposes. Energy said the former ADM of Energy who had provided the document to the Public Body was simply identifying that the document was transitory in nature and therefore should be deleted, once reviewed.
- [37] Energy advised me that, “When a ‘big ‘P’ policy’ is being developed, and an official draft is circulated for review, the draft document is considered “Official” and should not be destroyed as transitory.”
- [38] Energy said the briefing note that was forwarded to the Public Body in this case, was for “information for the Minister” and addressing an operational business issue related to a Power Purchase Arrangement Termination and was not a “policy development” record.

Finding

- [39] Given that the subject line of the email in question identified the briefing note as draft (i.e., “Fwd: draft BN”), the body of the email identified it as “transitory”, and the forwarded email referred to it as “yet to be finalized”, I accept that both Energy and the Public Body understood it was referring to the draft briefing note to be a transitory record. However, the Public Body did not treat the record as transitory and instead saw the draft briefing note as an official record.
- [40] I reviewed the records that the Public Body provided to each of the applicants. The draft briefing note is included in the applicants’ response packages. The direction given by the former ADM, Electricity and Sustainable Energy to delete the draft briefing note was not followed by the Public Body. Instead, the Public Body included the draft briefing note in records provided to both applicants in response to their respective access requests.

- [41] In the first applicant’s response package, the draft briefing note does not appear alongside the email chain referring to it. Therefore, it would be difficult for an applicant to identify that the email and the draft briefing notes were connected.
- [42] I found no evidence to support the allegation that the email direction to “Please delete” was intended to subvert the FOIP Act in order to avoid providing access to records. The email in question was sent on December 9, 2015 – four months before the first of the two applicants made an access request on April 4, 2016, and more than eight months before the second access request was made on August 23, 2016. The Public Body’s FOIP Coordinator confirmed that the Public Body was not handling any access requests at the time the email was sent. There is no evident connection between the email and possible future access requests.
- [43] I find that the Public Body did not destroy records that were responsive to an access request.

Recommendation

- When providing records to applicants, the Public Body should clearly identify the records provided and, to the extent reasonable, provide related documents alongside each other (i.e. email with attachment) in order to assist applicants in understanding the records.

Issue 2: Did the Public Body comply with rules relating to the destruction of records as set out in any enactment of Alberta?

- [44] As previously noted, both applicants raised a concern that the direction to delete records described as “Sensitive and transitory” was an attempt to avoid transparency and accountability by, as one of the applicants said, “destroy[ing] documents to prevent their release.”
- [45] One of the applicants referenced the timing of the email direction, saying that it “was clearly sent in the midst of the government formulating a response” and that “a senior government official, evidently recognizing the ‘sensitive’ nature of the issue, instructed that records be destroyed on the first day the government was aware and began to react.”
- [46] I have already found that the document in question, the draft briefing note dated December 9, 2015, was not destroyed but was instead provided to both applicants. Nonetheless, given the concerns raised by both applicants, I reviewed the Public Body’s records management practices.

Applicability of the Government of Alberta Records Management Regulation

- [47] Under section 53(1)(a)(i) of the FOIP Act, the Commissioner has the power to:
- (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...
- [48] Section 1(3) of the *Freedom of Information and Protection of Privacy Regulation* (FOIP Regulation) states, “For the purposes of the Act, ‘enactment of Alberta’ means an Act or a regulation or any portion of an Act or regulation...”.
- [49] Section 14(2) of Schedule 11 of the *Government Organization Act* enables the *Records Management Regulation* (RM Regulation), which establishes the rules Government of Alberta (GoA) “departments” must follow when it comes to the management of records in their custody.
- [50] Section 14(1) of Schedule 11 of the *Government Organization Act* says that a “department” includes “an agency, board, commission, corporation, office or other body designated as a department in the regulations”.
- [51] Section 1(2) of the RM Regulation (made under the *Government Organization Act*) says that, “For the purposes of this Regulation, an agency, board, commission, corporation, office or other body listed in the Schedule is considered to be a department”.
- [52] As per section 1(1)(f) of the RM Regulation, “‘Schedule’ means Schedule 1 to the *Freedom of Information and Protection of Privacy Regulation* under the *Freedom of Information and Protection of Privacy Act*” [my emphasis]. Therefore, the RM Regulation only applies to Schedule 1 public bodies.
- [53] The Public Body is not a Schedule 1 public body under the FOIP Regulation. As a result, neither the GoA’s RM Regulation or its records management program applies to the Public Body.
- [54] Section 94(4) of the FOIP Act states that a ministerial regulation made under section 94(3) is repealed on the coming into force of a regulation made by the Lieutenant Governor in Council which designates the body as a public body in Schedule 1 of the FOIP Regulation.
- [55] The Public Body has been a public body since 2014 under the FOIP (Ministerial) Regulation. My understanding is that the FOIP (Ministerial) Regulation was supposed to be an intermediary measure to expediently bring bodies under the FOIP Act and the intent was to update Schedule 1 every two years. Schedule 1 was last updated in 2010 by Service Alberta.
- [56] There are currently 24 agencies, boards and commissions (ABCs), plus their subsidiaries, who are designated as public bodies under the FOIP (Ministerial) Regulation, but are not Schedule 1 public bodies under the FOIP Regulation. Therefore, like the Public Body, these ABCs are not subject to the GoA’s RM Regulation nor are the subject to the GoA’s records management program.

- [57] The gap existing between the GoA FOIP (Ministerial) Regulation public bodies and Schedule 1 public bodies under the FOIP Regulation creates a situation where some GoA ABCs are subject to the GoA's RM Regulation and Records Management Program while others are not.
- [58] Section 4 of the RM Regulation makes the Minister of Service Alberta responsible for establishing a records management program, and as part of my recommendations, I will recommend that the Commissioner write to the Minister of Service Alberta highlighting this inconsistency.
- [59] I will next consider whether the Public Body complied with its own records management policies and procedures.

Balancing Pool's Records Management Practices

- [60] The FOIP Coordinator for the Public Body advised me that the Public Body understood that the email direction to "Please delete" was a reference to the draft briefing note attached to the email. The Public Body assumed Energy's request to delete the document related to a draft briefing note that was subject to the email string in question.
- [61] The Public Body's FOIP Coordinator also confirmed that, at the time the email was sent, around December 9, 2015, the Public Body was not handling any access requests.
- [62] With respect to the Public Body's records management practices, I was initially told that the Public Body did not have a records retention schedule that addressed transitory or draft records and, as a result, records were not deleted. Later in the investigation, the Public Body informed me that it did have a Transitory Records Policy statement in effect since 2013. I reviewed that policy statement. With respect to transitory records, the policy statement says:

This policy is intended to provide direction around the use and maintenance of transitory records to ensure the most efficient use of office space and equipment through the elimination of records having no continuing value; enhance the speed and accuracy of the information retrieval by reducing the overall volume of records; and reduce the likelihood of accidental disclosure of sensitive or confidential information.

Transitory records are documents that are required for routine or short-term transactions, and contain little or no information of ongoing value.

To determine if a record is a transitory record, consider whether or not it falls into any of the following categories:

...

(f) Draft documents and Working Materials: including source materials used in preparation of documents and earlier versions of final documents (E.g. drafts of reports, working note or tapes).

(g) Be sure that draft documents of the following types are no longer required for future accountability and documentation purposes:

- (i) legal agreements
- (ii) policies, standards, and guidelines
- (iii) scientific studies.

Transitory documents should be identified and destroyed after the actions to which they relate or immediate purposes are completed...

Despite this policy statement, the Public Body informed me that employees had not been properly trained to understand the difference between official and transitory records as set out in the GoA's published Guide for official and transitory records. I was told that the Public Body is currently reviewing its Transitory Records Policy with management and its board of directors to provide further guidance and direction to employees and board members regarding the disposition of records as official or transitory.¹

Finding

- [63] The Public Body is not a Schedule 1 public body under the FOIP Regulation. As a result, neither the GoA's RM Regulation or its records management program applies to the Public Body.
- [64] Despite this, I cannot find that the Public Body complied with rules related to the destruction of records. Although the Public Body did not delete the draft briefing note in question, and was able to provide it in response to access requests, it appears this was more by accident than the product of thoughtful consideration and the application of its rules related to the management and destruction of records. I arrive at this conclusion because I was initially told that the Public Body did not have a records retention schedule and therefore would not delete records, but that it was developing one. Later in the investigation, I was informed that there had been a policy statement concerning transitory records in place since 2013. I was also told that the Public Body's employees had not been trained to understand the distinction between official and transitory records. The Public Body also informed me it was in the process of implementing a project to review its records management and all related policies and procedures to provide further guidance and direction to employees and board members regarding the disposition of records as official or transitory.

¹ The Public Body said it has since received legal opinions from external counsel regarding the application of the FOIP Act to its Board which included a review of the classification of board material as official or transitory in light of the concerns giving rise to the investigation. Additionally, the Public Body said it plans to undertake a more comprehensive review of its records management practices to more closely align with the RM Regulation given the expectation that the MR will soon be incorporated under the FOIP Act.

Recommendations

- Create a records management program in light of the GoA's RM Regulation and records management program in the anticipation that the Public Body will need to comply with these rules and regulations in the future.
- Ensure officials and employees of the Public Body are trained on applicable records management policies, procedures and standards, including records retention and destruction and the difference between official and transitory records.

Summary of Findings

[65] Findings from my investigation are as follows:

- The Public Body did not destroy records that were responsive to an access request. The Public Body retained the draft briefing note in question and produced it to both applicants in response to their access requests.
- There is no evidence to support the allegation that the email direction to "Please delete" was intended to subvert the FOIP Act in order to avoid providing access to records. There is no evident connection between the instruction in the email and either of the applicants' access requests or possible future access requests.
- I accept that the Public Body understood the draft briefing note to be an official record.
- The Public Body is not a Schedule 1 public body under the FOIP Regulation. As a result, neither the GoA's RM Regulation or its records management program applies to the Public Body.
- I cannot find that the Public Body complied with rules related to the destruction of records. Although the Public Body did not delete the email in question, and was able to provide it in response to access requests, it appears this was more by accident than the product of thoughtful consideration and the application of rules related to the management and destruction of records. The Public Body's employees have not been trained to understand the difference between official and transitory records. The Public Body does not currently have a records management program, but is working towards creating one.

Summary of Recommendations

[66] Based on the findings, I make the following three recommendations:

1. When providing records to applicants, the Public Body should clearly identify the records provided and, to the extent reasonable, provide related documents alongside each other (i.e. email with attachment) in order to assist applicants in understanding the records.
2. Create a records management program in light of the GoA's RM Regulation and records management program in the anticipation that the Public Body will need to comply with these rules and regulations in the future.
3. Ensure officials and employees of the Public Body are trained on applicable records management policies, procedures and standards, including records retention and destruction and the difference between official and transitory records.

[67] In addition to the recommendations made to the Public Body, I ask that the Commissioner write to the Minister of Service Alberta highlighting the inconsistency existing between the GoA FOIP (Ministerial) Regulation public bodies and Schedule 1 public bodies under the FOIP Regulation. This inconsistency creates a situation where some GoA ABCs are subject to the GoA's RM Regulation and Records Management Program while others are not.

Elaine LeBuke
Senior Information and Privacy Manager