



Office of the Information and  
Privacy Commissioner of Alberta



**PUBLIC INTEREST  
COMMISSIONER**

# Investigation Report

*Alleged improper destruction of records by  
Alberta Environment and Sustainable Resource Development*

**January 7, 2016**

*Alberta Environment and Sustainable Resource Development*

*OIPC Investigation Report F2016-IR-01*

*OIPC File #000770*

*PIC Case #PIC-15-01640*

# Table of Contents

- Introduction..... 3
- Background..... 3
- Jurisdiction..... 4
- Issues ..... 6
- Analysis and Findings..... 6
  - Issue 1: Were records in the Minister’s office destroyed in compliance with rules relating to the destruction of records? ..... 7
  - Issue 2: Were records in ARTS destroyed in compliance with rules relating to the destruction of records? ..... 18
  - Issue 3: Did any person wilfully alter, falsify or conceal any record, destroy any records subject to the FOIP Act, or direct another person to do so, with the intent to evade a request for access to the record in contravention of the FOIP Act?..... 24
- Observations Regarding Program Integrity and Support ..... 25
- Summary of Conclusions ..... 28
  - Destruction of records in the Minister’s office ..... 28
  - Destruction of executive records ..... 28
  - Transfer of executive records to the PAA..... 29
  - Records scheduling..... 29
  - ESRD records management directives and government transition ..... 29
  - ESRD records management practices for ARTS records..... 29
  - Controls in place to prevent destruction of records in ARTS ..... 30
  - Wilful destruction of records to evade a request for access..... 30
  - Program integrity and support ..... 30
- Findings..... 30
  - Freedom of Information and Protection of Privacy Act* ..... 30
  - Public Interest Disclosure (Whistleblower Protection) Act* ..... 31
- Recommendations..... 31
- Appendix A..... 34
- Appendix B: Glossary ..... 35

## Introduction

- [1] On May 5, 2015, the provincial election resulted in a change in government.
- [2] After the election, a number of reports emerged in the media and on the Internet about the widespread destruction of records at the Alberta Legislature.<sup>1</sup>
- [3] On May 12, 2015, a disclosure of wrongdoing was made to the Public Interest Commissioner under the *Public Interest Disclosure (Whistleblower Protection) Act* (PIDA), in relation to the Department of Environment and Sustainable Resource Development (ESRD). The disclosure alleged that at a branch meeting, department staff members were instructed to move all briefing material into the Action Request Tracking System (ARTS), and all records within the ARTS would be deleted. On May 8 and 13, the Information and Privacy Commissioner received letters expressing concern about the destruction of records at ESRD, and generally within the Government of Alberta.
- [4] The Information and Privacy Commissioner and Public Interest Commissioner authorized a joint investigation. This report outlines the findings and recommendations from the investigation. The objectives of the investigation, as set out in the news release, were to examine whether:
1. ESRD destroyed records in compliance with rules relating to the destruction of records.
  2. ESRD made reasonable security arrangements to protect against unauthorized destruction of personal information in compliance with section 38 of the Freedom of Information and Protection of Privacy Act (FOIP Act).
  3. Any person wilfully altered, falsified or concealed any record, or directed another person to do so, with the intent to evade a request for access to the record in contravention of section 92(1)(e) of the FOIP Act.
  4. Any government employee contravened rules surrounding the disposal or removal of documents during or following the current transition of government in contravention of section 3(1) of PIDA.

## Background

- [5] The election resulted in concerns about the destruction of records during the transition.
- [6] These concerns, expressed by many individuals on social media, and largely relayed by the media, led the Information and Privacy Commissioner to issue a news release on May 7, 2015 to inform or remind Albertans of the provisions of the FOIP Act in relation to

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<sup>1</sup> (2015, May 7). 'Alberta election 2015: Shredding government documents'. CBC News. Retrieved September 8, 2015, from <http://www.cbc.ca/news/canada/calgary/alberta-election-2015-shredding-government-documents-1.3064715>

destruction of records. This news release<sup>2</sup> highlighted that rules regarding the destruction of records in the Government of Alberta continued to apply during a transition in government. It specified that some categories of records are not subject to the FOIP Act, and therefore not subject to the same rules.

- [7] In the days following the election, uncertainty about records management practices prevailed, due largely to the fact Alberta had not seen a change of governing party in over four decades, and therefore not since the FOIP Act was enacted in 1995.
- [8] On May 12, 2015, a disclosure of alleged wrongdoing was made to the Public Interest Commissioner under PIDA, in relation to ESRD. The disclosure alleged that at a branch meeting, ESRD staff members were instructed to move all briefing material into the ARTS, and that records within the ARTS would be deleted. On May 8 and 13, the Information and Privacy Commissioner received letters expressing concern about the destruction of records at ESRD, and generally within the Government of Alberta.
- [9] On May 13, 2015, the Information and Privacy Commissioner and the Public Interest Commissioner held a news conference to announce their respective offices would jointly investigate allegations records may have been destroyed in an unauthorized manner within ESRD<sup>3</sup>.
- [10] On May 13, 2015, MLA Greg Clark, was quoted in the media as having made “a series of freedom of information requests to all government departments asking for copies of any shredded documents and deleted electronic files”, with the intent to “halt the destruction of records”.<sup>4</sup>
- [11] That same day, Premier-elect Notley requested the Deputy Minister of Executive Council to direct all employees across Government of Alberta departments to suspend all document shredding<sup>5</sup>.

## Jurisdiction

### ***Public Interest Disclosure (Whistleblower Protection) Act***

- [12] The Public Interest Commissioner is authorized to initiate an investigation under sections 18(1) and 44(1) of PIDA, which empowers the Public Interest Commissioner and his staff to

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<sup>2</sup> (2015, May 7) ‘Commissioner responds to questions about shredding of government records’. OIPC website. Retrieved on January 6, 2016 from <https://www.oipc.ab.ca/news-and-events/news-releases/2015/commissioner-responds-to-questions-about-shredding-of-government-records.aspx>

<sup>3</sup> (2015, May 13) ‘Joint investigation launched into alleged improper destruction of records by Alberta Environment and Sustainable Resource Development’. OIPC website. Retrieved on January 6, 2016 from <https://www.oipc.ab.ca/news-and-events/news-releases/2015/joint-investigation-launched-into-alleged-improper-destruction-of-records-by-alberta-environment-and-sustainable-resource-development.aspx>

<sup>4</sup> Ibrahim, M. May 13, 2015. ‘Notley bans destruction of all government documents’. Edmonton Journal. Retrieved September 9, 2015 from <http://www.edmontonjournal.com/news/alberta-politics/Joint+investigation+coming+into+alleged/11052314/story.html>

<sup>5</sup> Giovannetti, J. ‘Watchdogs investigate document shredding at Alberta legislature’. The Globe And Mail. Retrieved on September 8, 2015 from <http://www.theglobeandmail.com/news/national/watchdogs-investigate-document-shredding-at-alberta-legislature/article24430907/>

investigate disclosures of “a contravention of an Act, [or] Regulation” under s. 3(1)(a) of PIDA.

### ***Freedom of Information and Protection of Privacy Act***

[13] ESRD is subject to the FOIP Act as it meets the definition of a “public body” under subsection 1(p)(i) of the FOIP Act.

[14] Under subsection 53(1)(a)(i) of the FOIP Act, the Information and Privacy Commissioner 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,

[15] Section 1(3) of the *Freedom of Information and Protection of Privacy 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...”

[16] Section 14 of Schedule 11 of the *Government Organization Act* (GOA) enables the *Records Management Regulation* (RM Regulation), which establishes the rules Government of Alberta departments must follow when it comes to the management of records in their custody.

[17] Section 4 of the RM Regulation makes the Minister of Service Alberta<sup>6</sup> responsible for establishing a records management program, which all other Government of Alberta departments, including ESRD, must follow. It reads:

#### **Records management program**

4 (1) The Minister is responsible for establishing a records management program.

(2) For the purpose of providing the details for the operation of the records management program, the Minister may establish, maintain and promote policies, standards and procedures for the creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation and destruction of records in the custody or under the control of departments and for their transfer to the Provincial Archives of Alberta.

[18] Section 11 of the RM Regulation makes the deputy head of a department responsible for ensuring records are destroyed in accordance with section 4(2).

[19] The GOA and the RM Regulation are both enactments of the province of Alberta that apply to ESRD and relate to the destruction of records. Therefore, the Information and Privacy Commissioner has jurisdiction under the FOIP Act to investigate and make findings in relation to the destruction of records at ESRD.

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<sup>6</sup> Under subsection 1(1)(d) of the *Records Management Regulation*, “Minister” is defined to mean the Minister of Service Alberta.

## Issues

- [20] The following issues were identified for this investigation.
1. Issue 1: Were records in the Minister's office destroyed in compliance with rules relating to the destruction of records?
  2. Issue 2: Were records in ARTS destroyed in compliance with rules relating to the destruction of records? Were reasonable safeguards in place to protect against the unauthorized destruction of records?
  3. Issue 3: Did any person wilfully alter, falsify or conceal any record, or destroy any records subject to the FOIP Act, or direct another person to do so, with the intent to evade a request for access to the record in contravention of the FOIP Act?

## Analysis and Findings

- [21] We took the following steps during the course of our investigation:
1. reviewed the records management scheme of the Government of Alberta to the extent it applies to ESRD;
  2. obtained and reviewed documentation about destruction of records at ESRD around the date of the election;
  3. obtained and reviewed documentation about requests for access to records made to ESRD under the FOIP Act around the date of the election;
  4. obtained and reviewed documentation about transfer of records from ESRD to the Provincial Archives of Alberta (PAA);
  5. gathered information from Assistant Deputy Ministers (ADMs) about instructions received and given ahead of the election;
  6. interviewed ESRD officials responsible for records management, information management, and the FOIP office;
  7. interviewed Service Alberta officials responsible for information management and for ARTS;
  8. surveyed ESRD employees to determine any knowledge or observations relative to potential wrongdoing concerning the management of ARTS records or documents; and
  9. consulted with a records management specialist on technical issues.
- [22] The analysis of each of the issues above, and the findings, are set out below.

## Issue 1: Were records in the Minister's office destroyed in compliance with rules relating to the destruction of records?

- [23] The RM Regulation was examined to determine how it operates and to what extent it applies to records in the Minister's office.

### Records destruction control at the Government of Alberta: An overview

- [24] Since the early 1970s, the destruction of records in the Government of Alberta has been controlled through a records scheduling program that directs when and how any record created or received by a government agency is destroyed. The current RM Regulation under the GOA establishes the "records retention and disposition schedule" (records schedule, or RRDS) as the sole authority for records destruction: no person can destroy records in the custody and control of the government unless the records can be reasonably identified as records described in a pre-approved records schedule.
- [25] Records schedules establish policy in the Government of Alberta for how long and under what conditions an identified group of records, such as a series of case files or a database, must be kept and whether, at the end of their retention period, they can be either destroyed or transferred to the PAA for permanent preservation (RM Regulation, s. (10)(2)). All records schedules must be reviewed and approved by the Alberta Records Management Committee (ARMC) consisting of 8-10 officials representing records management, legal, financial, and archival agencies of the government (RM Regulation, sections 2 and 3).
- [26] For the purposes of records management, the definition of "record" in s. 1(e) of the RM Regulation is the same as the definition in section 4(1)(q) of the FOIP Act:
- "record" means a record of information in any form and includes notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanisms that produces records.
- [27] The records schedules control the destruction of all recorded information in the Government of Alberta, regardless of form, format or medium, including both paper-based information and recorded digital information, such as data and files kept within personal information manager and email service applications such as Microsoft Outlook, correspondence tracking systems such as ARTS, or electronic platforms such as Microsoft SharePoint.
- [28] Service Alberta is the central records management policy, training, and process support service for departments implementing records scheduling, transfer and destruction in compliance with the RM Regulation. Service Alberta is responsible for maintaining and developing records scheduling process standards, IRIS, and ARTS; however, processing and decision-making using Service Alberta policy and tools is the responsibility of the department Deputy Minister, who may assign some of these responsibilities to a Senior Records Officer (SRO) and other staff.
- [29] The RM Regulation applies to all "departments" of the Government of Alberta using the definition of the GOA, Schedule 11, section 14(1). This definition includes Executive Council

records, however, excludes “personal and constituency records” of the Executive Council member.

[30] Under the Government of Alberta records scheduling system, the following three types of records schedules govern records destruction and retention:

1. “Operational” records schedules (ORS) developed and approved for specific records generated by functions and activities directly providing the core services of a government department, such as children’s services case files, transportation planning records, or Executive Council minutes. Disposition ranges from destruction shortly after the records become inactive to full retention at PAA. Departments are responsible for developing and submitting ORS to the Alberta Records Management Committee (ARMC) for approval as needed. As records and functions change, new operational schedules must be developed and approved to cover these new groups of records. As of May 7, 2015, there were 969 active operational records schedules applicable across Government of Alberta ministries. ESRD, as a department, has 75 specific records schedules, however, it relies on an undetermined number of other records schedules that may apply to any Government of Alberta department.
2. An established “administrative” schedule called the Administrative Records Disposition Authority (RRDS 1986/050-A016, subsequently referred to as ARDA) for over 300 common records “subjects”, function and types generated by housekeeping or purely administrative activities that support operational activities. The common administrative areas covered by ARDA are Administration, Buildings and Sites, Finance, Information, Materials and Equipment, and Personnel. An important feature of the ARDA schedules is all ARDA entries have a final disposition of “destroy.” The ARDA records schedule can be used by any government agency provided the records proposed for transfer or destruction correspond in content and status to one of the specific entries in ARDA. ARDA headings are often used by government departments to label or “classify” files or documents.
3. The Transitory Records Schedule (RRDS 1995/007, subsequently referred to as TRS) provides criteria and standards for government officials to identify records that are not “official records” and which can be destroyed without authorization under either ARDA or an ORS. “Transitory records” are defined as records that “will have no further value or usefulness beyond an immediate and minor transaction; or will only be required for a short time after a transaction, until they are made obsolete by an updated version of a record or by a subsequent transaction, or decision.”

Service Alberta produced a guide titled *‘Official and Transitory Records: A Guide for Government of Alberta Employees’*<sup>7</sup> in November 2011. This document was recently

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<sup>7</sup> Service Alberta. November 2011. ‘Official and Transitory Records: A Guide for Government of Alberta Employees’. Retrieved on May 15, 2015 from <https://www.im.gov.ab.ca/documents/imtopics/OfficialTransitoryRecordsGuide.pdf>



updated<sup>8</sup>; however, the version in effect during the government transition identified the following common types of transitory records:

- i. Advertising material
- ii. Blank information media
- iii. Draft or working material (although drafts of legislation or other significant documents may not be transitory)
- iv. Duplicates

The TRS essentially encourages agencies and officials to destroy transitory records immediately during the course of a case or transaction to ensure official records processed through the records scheduling system using ARDA or an ORS are not needlessly enlarged or obscured by insignificant, irrelevant, or duplicate documents or data.

- [31] Government employees can access and reference all the approved Government of Alberta operational records schedules and ARDA using the Records Scheduling System (RSS); the ARDA is publicly accessible online. However, only a handful of the operational schedules are readily available for public review.
- [32] Departments schedule their own records. Most often, this task is completed whenever the department has identified a series of records it thinks should be transferred out of active office space or destroyed immediately; however, departments should schedule records as they are created and filed as part of an active recordkeeping system.
- [33] Records scheduling requires analysis and interpretation to ensure the authorized schedules are applied accurately and appropriately to the records proposed for either transfer or destruction. The departmental SRO or delegate is responsible for completing this review, before specific official records are destroyed or transferred. The SRO must also complete records disposition documentation (RD documentation) that registers in detail the content of boxes or containers containing the records, the date, or date ranges the information spans, the format of the information, the authorizing schedule reference, and the dates on which destruction or transfer can take place. In addition, the SRO must record when the destruction or transfer is completed for each box or container, and that it was done securely and completely. The destruction of transitory records, however, does not require schedule authorization or documentation.
- [34] RD documentation is completed and stored in the Inactive Records Information System (IRIS), an online system departmental records personnel use to inventory and submit records proposed for transfer or destruction. Destruction and transfer of records are initiated by completing a “Transmittal” in IRIS and assigning inventoried boxes. In effect, IRIS is the key registry of what and when, and by what authorization, official records in the Government of Alberta are destroyed, with the exception of transitory records.
- [35] Records identified as relevant to either an active FOIP request or litigation cannot be destroyed, even if they are transitory.

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<sup>8</sup> This publication was updated in October 2015. The link in the footnote above directs readers to the updated version.

[36] The RM Regulation also applies to records of Cabinet Ministers. A Service Alberta guide titled *Managing Records in Ministers' Offices*<sup>9</sup> (MRMO Guide) is a consolidated explanation of statutory and RM Regulation requirements for managing the retention and destruction of records typically kept as part of a Cabinet Minister's records repository. Consistent with section 4(1)(m) of the FOIP Act, the MRMO Guide distinguishes the two general categories of Ministers' records:

1. Personal and Constituency records relating to a Minister's role as MLA, a member of a political party, and business or personal activities. These are not government records, are not subject to government records schedules, and are not governed by the FOIP Act. They should be kept and managed separately by the Minister as he or she sees fit.
2. Departmental and Cabinet records, which cover all other records, including administrative or housekeeping records of the office, communications and transactions between the Minister and department officials, deliberations and meetings with Cabinet and other Ministers, communications with citizens and other governments and communities as Minister, and records of special projects or committees with the Minister. These are government records covered by the FOIP Act, with exceptions to disclosure. They are fully subject to the RM Regulation.

[37] The version of the MRMO Guide in effect during the transition<sup>10</sup> set out options for how the records in Minister's offices were to be handled. The option ESRD chose said:

The Deputy Minister's office, correspondence unit or a central records repository in the department maintains the Minister's records relating to the department and agencies that report to the Deputy Minister. The heads of agencies reporting directly to the Minister maintain Minister's records relating to those agencies. The Minister's office retains only those departmental and agency records needed for current transactions and returns those records when they no longer need them to the department or agency that sent them. The department and agencies become primarily responsible for the management of Minister's departmental records. The Minister's office only maintains the Minister's personal and constituency, and Cabinet records.

[38] The MRMO Guide reiterates the approved records retention schedule for Departmental and Cabinet records in a Minister's office (RRDS 2002/041), which requires all Departmental and Cabinet records be transferred immediately to the custody of the PAA when a Minister leaves office or changes portfolio.

### **ESRD records management practices**

[39] ESRD officials and staff completing their activities determine what records are created and kept as active records to meet their own business purposes. It is at this point transitory records are supposed to be identified and destroyed.

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<sup>9</sup> Service Alberta. July 2015. 'Managing Records in Ministers' Offices Guideline'. Retrieved on September 22, 2015 from <http://www.im.gov.ab.ca/documents/publications/MinistersRecordsGuide.pdf>

<sup>10</sup> This publication was updated in July 2015. The link in the footnote above directs readers to the updated version. The explanation about the option was retrieved from the December 2011 version of the MRMO Guide.

- [40] ESRD officials must comply with the RM Regulation and the established records scheduling process before information in their custody and control can be destroyed. ESRD generates and keeps paper and digital records covering government and operational functions relating to its mandate. Many of ESRD's inactive records from all areas are stored at the Alberta Records Centre (ARC). Active paper records are stored in its regional offices and records storage repositories such as the Executive File Room in South Petroleum Plaza in Edmonton. Livelink, ECM document management system, ERKS (electronic recordkeeping system), shared drives and SharePoint are available to capture and manage unstructured digital information not kept within a database.
- [41] ESRD employees file paper-based documents and files in active repositories in their offices. Digital information is either printed and filed as paper documents, or kept in digital format. Unstructured digital information should be captured and kept in ERKS, ECM, shared drives and SharePoint. Titles and content descriptions of files and documents are attached to files or digital documents using in-house terminology with varying degrees of consistency.
- [42] The SRO has responsibility for reviewing and signing off on specific proposals for transfer or destruction of all official departmental records, including records originating in the Ministers' office and records in ARTS relating to the department. ESRD employees identify official records for transfer to ARC, to the PAA or for destruction and document the transmittal accordingly in IRIS. Whether the proposed records must be preserved, transferred or destroyed is dependent on which ORS or ARDA entry best matches the content of the records. Accurately identifying the correct records schedule authority for any single record or group of records is an interpretative and sometimes difficult activity. The SRO must approve the decisions made about records' destination, however is often not in a position to analyze content directly.

#### **Destruction of records in the Minister's office**

- [43] ESRD retains many of the inactive records of the Minister in its Executive File Room; however, the Minister's office could hold many immediately current and active records. The SROs<sup>11</sup>, by their own admissions, had little or no direct involvement in the management of records in the Minister's office and had visited that office only once in the year preceding the election. There is, therefore, no direct monitoring or review of paper or digital records generated and kept in the ESRD Minister's office. According to Service Alberta, it is intentional that the SRO does not monitor or review records in the Minister's office, as any direct communication between that office and the departmental SRO could create a perception of interference.
- [44] Since there was no effective departmental control over active ministerial records<sup>12</sup> kept at the Minister's Office itself and managed by the former Minister's staff during this period, we were not able to establish whether records were destroyed at that location, and for that matter, the nature of any destroyed records. For that reason, we cannot make a conclusion about whether any ministerial records were destroyed in contravention of the RM Regulation at this location in the wake of the May 5 election outcome.

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<sup>11</sup> The SRO role at ESRD has been held by three different individuals in the last two years.

<sup>12</sup> This term "ministerial records" refers to departmental and Cabinet records in the Minister's office, and excludes personal and constituency records.

## Destruction of executive records

[45] As noted in paragraph [37] above, ESRD records of the Minister or Deputy Minister were managed by the department. In this scenario, the departmental records in the Minister's office were only copies. The management of executive records was examined, which included information generated and kept by the Minister and Deputy Minister as part of their departmental governance responsibilities. ESRD ADMs were queried about records destroyed between April 27 and May 25, 2015 - the crucial period of anticipation and response to the election. The consistent reply to this question from all ESRD executives was they were not aware of any documents destroyed beyond what would have been routine disposal of documents according to records management policies, including destruction of transitory records. These responses did not sufficiently address the request to confirm and identify which records were destroyed and why. This required a detailed accounting normally recorded in RD documentation. Initially, ESRD provided a "Records Disposition Report" listing all business units of ESRD that destroyed records, when the destruction occurred, and the number of boxes of records destroyed. Table 1 provides information covering the months of April and May of 2015.

*Table 1: Records Disposition Activity at ESRD, April-May, 2015*

| ESRD ORGANIZATIONAL UNIT   | MONTH | FROM LOCATION          | # BOXES DESTROYED |
|--|-------|------------------------|-------------------|
| Executive Office   | April | Direct Disposal        | 32                |
| Executive Office   | May   | Direct Disposal        | 344               |
| Financial Services   | April | Alberta Records Centre | 14                |
| Financial Services   | May   | Direct Disposal        | 1                 |
| Finance and Administration   | April | Direct Disposal        | 2                 |
| Finance and Administration - Information Communications Technology | April | Direct Disposal        | 8                 |
| People Services  | April | Alberta Records Centre | 4                 |
| Regional Office - Edmonton   | April | Direct Disposal        | 2                 |
| Fish & Wildlife - Wetaskiwin - INACTIVE                            | April | Alberta Records Centre | 1                 |
| Fish and Wildlife Division   | April | Direct Disposal        | 2                 |
| Fish and Wildlife Division - Peace and Upper Hay                   | April | Direct Disposal        | 12                |
| Fisheries & Wildlife Mgmt.-INACTIVE                                | May   | Direct Disposal        | 15                |
| Forest Management-ACTIVE   | April | Direct Disposal        | 52                |
| Forestry Division - Forest Industry Development                    | April | Direct Disposal        | 26                |
| Forestry Division - Forest Management                              | May   | Direct Disposal        | 1                 |
| Forestry Division - Forest Protection                              | April | Direct Disposal        | 124               |
| Forestry Division - Smoky (Grande Prairie)                         | April | Direct Disposal        | 17                |
| Lands Division   | May   | Direct Disposal        | 3                 |
| <b>Total:</b>  |       |                        | <b>660</b>        |

- [46] What stands out in this listing is the large volume of boxes (344) destroyed directly by the Executive Office between May 1 and May 13, the latter date being the one at which all destruction of records at ESRD was halted<sup>4</sup>, which alone accounts for over half of the total number of boxes destroyed in all of ESRD in April and May. ESRD was asked to supply all documentation on the disposition, including schedule approval, content inventories, and transfer or destruction activity for the 344 boxes and the ORS or ARDA records schedules authorizing disposition.
- [47] The SRO signed off on a formal transmittal for the destruction of the 344 boxes on April 20, 2015, and destruction was carried out on May 6, 2015 – one day after the Alberta election. All of the boxes contain “executive records”, which in the case of ESRD included records created and received by the offices of the Deputy Minister and Minister of ESRD. Based on the descriptions in the inventories provided, these included working papers, meeting notes, correspondence, day files, and action requests (ARs) relating to litigation, committees, legislation, Cabinet, outside organizations, other governments, committees, and Aboriginal communities. For the purposes of analysis, the records can be divided into three groups.

***Group 1 - Preservation at PAA (71 boxes)***

- [48] The executive records in this group were scheduled in 2007 under “RRDS 1991/103-A2”<sup>13</sup> for preservation by PAA five years after the records become obsolete. According to that schedule, once the records are transferred, the PAA would implement “selective retention”, which entails identifying and destroying routine, duplicate and insignificant documentation, and retaining everything else of enduring value. The RD documentation for these records dates from 2007 and contains memos and authorizations approving the use of this schedule and transfer to PAA, along with extensive inventories of the records content. RRDS 1991/103-A2 expired in 2007 and was replaced by RRDS 2007/020-A001; however, according to the newer schedule, since these records were scheduled before that time, 1991/103-A2 would still apply.
- [49] Our initial review of documentation for the records in Group 1 originally led us to believe ESRD had destroyed these 71 boxes of high-level ministerial and Deputy Minister records contrary to approved schedules. However, when more details were requested from the PAA and ESRD was pressed on this apparent contradiction, we obtained information intended to help understand the sequence of events leading up to the destruction of these records:
1. Despite being scheduled for disposition in 2007, these records remained in storage in one of ESRD’s vaults for over 7 years “due to space shortage at the PAA, lack of (...) archivists manpower and litigation holds”.<sup>14</sup>

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<sup>13</sup> This schedule reference seems to be incorrect as is; the only schedules found in the Service Alberta documentation are 1991/103 and 1991/103-A001, the latter being an amended version of the former. However, “1991/103-A2” was the reference included in the approval letter for these transmittals, and so was reproduced in this report. We interpreted this to mean that either RRDS 1991/103 or 1991/103-A001 was intended to be relied upon at the time.

<sup>14</sup> Officials at ESRD explained that many of their non-administrative records were affected by significant litigation holds related to land claims by First Nations group, which is the reason why these records were not transferred to the PAA sooner.

2. On Feb 27, 2015, ESRD's SRO submitted transmittals for PAA review; a list of transmittals was provided.
3. Upon reviewing these transmittals, the PAA requested a more detailed inventory be provided before it would accept records in these 71 boxes.
4. Around March 20, 2015, ESRD's records management personnel went to update the inventory of records in these transmittals in IRIS, as per the request from the PAA.
5. Once these transmittals were made editable again (for the purpose of adding inventory information), IRIS did not allow these records to be scheduled under RRDS 1991/103 anymore, since it had expired in 2007.
6. As an alternative, Service Alberta advised ESRD employees to use RRDS 2007/020-A001 instead.
7. On April 20, 2015, the SRO approved the new transmittals for these 71 boxes of records.
8. Consequently, these records were destroyed, according to the disposition provisions of RRDS 2007/020-A001.

[50] The additional details provide an explanation for the change in the RRDS used for these records. However, no explanation was received regarding Service Alberta's recommendation to apply a different RRDS to these records, other than ESRD's inability to enter these transmittals in IRIS under the RRDS used previously, and for which approval was given. This explanation raised the new question as to why these records, despite being identified as master records in 2007, were eventually scheduled under a RRDS reserved for copy sets. ESRD officials were not able to answer this question with certainty, advising:

1. In 2007, Service Alberta staff working at ESRD looked after disposition of records for ESRD and determined these records to be master records "for reasons unknown", and
2. These records were actually copy sets. When asked about the location of master records, officials explained it would be necessary to go to every business unit that ESRD executives had dealt with to find all the records.

***Group 2 - Destruction as copy sets, inventoried (136 boxes)***

[51] The executive records in this group were scheduled using RRDS 2007/020-A001 under the title of "Executive records – Copy Sets." "Copy sets" are defined in ARDA as "secondary versions of a records series in a department," however, are identified as distinct from transitory records. Copy sets may include day files or reference or convenience copies allowing quick access to records kept at another location. In contrast with RRDS 1991/103, executive records scheduled under RRDS 2007/020-A001 are authorized for destruction five years after obsolescence. An important condition on the use of this schedule is it "should only be used for copy sets of executive records. The master set of these records should be filed in the appropriate business unit's records system."

[52] The RD documentation associated with these records dates from between 2007 and 2010. The documentation does not contain memos authorizing the use and implementation of

RRDS 2007/020-A001, however, does provide extensive inventories of the records' content and dates. These inventories clearly identify all of these records as master records, not copies, and recommend retention at PAA, despite the records schedule policy.

**Group 3 - Destruction as copy sets, no inventories (137 boxes)**

- [53] Similar to the previous group, ESRD applied RRDS 2007/020-A001 to these records, but no scheduling authorizations or useful inventories of the content of the records were associated with them. The scheduling for these records was completed in 2006 and 2015.
- [54] Table 2 (attached to this report as Appendix A) provides a summarized analysis of the RD documentation for all 344 boxes of records destroyed.
- [55] In summary, we conclude the destruction of these executive records was not in compliance with rules relating to the destruction of records. The destruction of the 71 boxes in Group 1 lacked proper approvals to schedule these records under a new RRDS. It is not clear why records considered for selective retention by the PAA in 2007 – meaning that some would have been permanently retained there – were eventually considered for, and sent to destruction in 2015. Changes made to an RRDS should not affect the enduring value of records documenting actions or decisions at a department's executive level. For 136 boxes of executive records (Group 2) identified as master records, ESRD used a records schedule intended for copy sets. For the remaining 137 boxes of executive records (Group 3), the inventories were incomplete and the RD documentation did not contain any authorizations for the use and implementation of the schedule used.
- [56] The change in RRDS applied, and timing of the destruction of the 344 boxes of executive records one day following the election raises questions about the destruction of these records. While there is no evidence records were destroyed to keep them from the incoming government, there is also no evidence to support the change in the RRDS applied to these records, which resulted in their destruction. The lacking and sometimes contradictory authorities and documentation attached to the destruction does not provide confidence in ESRD's ability to manage some of the arguably most important records to support a professional and accountable public service.

**Transfer of executive records to the PAA**

- [57] Given the uncertainty about which records may have been in the Minister's office, and from there, which may have been destroyed and why, officials were asked to produce evidence that records documenting the activities and decisions of the office at ESRD had been identified and preserved.
- [58] Requests for documentation about these records were initially directed to the SRO, who indicated finding only one box of records from the Minister's office in IRIS, scheduled under RRDS 2002/041 in April 2012. The IRIS inventory for this box indicated the records spanned the period from September 1, 2009 to April 21, 2011 and the records were stored in the ARC. Department officials were not able to explain why this box of records is kept at the ARC and not the PAA, as required under RRDS 2002/041.

- [59] To ensure the completeness of information, a similar request was forwarded to PAA officials. RRDS 2002/041 prescribes a transfer to the PAA as the final disposition action for these records, as described in paragraph [38] above. In response, the PAA indicated nothing was transferred to it from ESRD under this schedule in 2015.
- [60] We received confirmation from an ADM in ESRD that the Minister's departmental records were preserved, however were not transferred to the PAA as required, according to the final disposition action outlined in the schedule applicable to these records. One of the reasons given was the ban on destruction of records imposed on ESRD by Executive Council prevented the disposition of records, although that does not explain why some executive records scheduled in 2012 had not yet been forwarded to the PAA. Another reason posited was that these records could be related to ongoing litigation.
- [61] Although these executive records were not destroyed, we conclude they were not managed in accordance with the prescribed rules, as they were not transferred to the PAA as required. None of the officials consulted could tell us conclusively why that was the case.

### Records scheduling

- [62] Inconsistencies in the application of prescribed rules for records disposition generated two questions:
1. Were the records scheduling authorities sufficiently clear to ensure appropriate use within ESRD?
  2. Was the interpretation and application of records scheduling authorities sound and appropriate?
- [63] In respect of ministerial and executive records at ESRD records creators and managers need to consider up to 11 schedules to determine retention policy:
1. Departmental and Cabinet Records in a Minister's office RRDS 2002/041, which requires all Departmental and Cabinet records be transferred immediately to the custody of the PAA when a Minister leaves office or changes portfolio.
  2. Executive Office Records RRDS 2007/020-A001, which authorizes destruction of Deputy Minister and ADM records five years after they are closed, but only applies to "secondary copies" of master executive records.
  3. Executive records - RRDS 1991/103, superseded by RRDS 2007/02-A001 in 2007, which authorizes destruction of Deputy Minister and ADM records five years after they are closed, with similar provisos about applying only to secondary copies.
  4. Ministerial Action Requests RRDS 1992/129, identified in the 2004 manual Developing Records Retention and Disposition Schedules, which applies to copies of ARs and authorizes destruction after three years.
  5. Administrative Retention and Disposition Authority (ARDA) RRDS 1986/050 (including and up to its most recent amendment), which is a regularly updated, comprehensive



listing of over 300 common administrative records subjects, functions, and types all authorized for destruction after a specified period of inactivity.

6. Transitory Records (TRS) RRDS 1995/007-A001, used to authorize immediate destruction of duplicate and short-term documents.
7. Deputy Minister's Office - RRDS 1978/009: This schedule has one item entitled department service files with a final disposition of selective retention: contains copies and originals of correspondence between Deputy Minister, Assistant Deputy Minister, division Directors and branch staff concerning service, division or branch operations and problems identified within the scope of these areas.
8. Deputy Minister - RRDS 1978/010: This schedule has one item entitled agencies boards and commissions with a final disposition of selective retention: contains copies and originals of correspondence between agencies, boards and commissions staff, Deputy Minister and department staff concerning the organization of these groups, their impact on the department and studies or projects undertaken series also includes study findings and minutes of relevant meetings.
9. Deputy Minister - RRDS 1978/011: This schedule has one item entitled committee files with a final disposition of archives: contains copies and originals of correspondence between department staff and member of provincial, inter-provincial, federal, federal-provincial and private sector committees concerning committee structure, membership, objectives and activities.
10. Deputy Minister - RRDS 1978/014: This schedule has one item entitled government departments with a final disposition of selective retention: contains copies and originals of correspondence between Deputy Minister, department staff, other Alberta government departments, other provincial governments and the Federal government concerning environmental issues and the participation of the department in Alberta, Inter-provincial and federal programs.
11. The Corporate and Strategic Management Division - RRDS 1993/035: This schedule has one related item, the Canadian Council of Ministers of Environment (02.1), which has a final disposition of PAA.

[64] The coverage within this maze of retention authorities for ministerial and Deputy Minister records overlaps extensively - at points an SRO would need to reconcile conflicting policies prescribing either early destruction or immediate long-term preservation for similar types of records. There may be logic to this policy regime; however, for most departmental records managers and SROs, the content would be confusing and the application daunting. ESRD officials were, at times, unable to explain adequately how and why these authorities were used.

[65] It would be a reasonable policy to destroy duplicate and short-term information as quickly as possible. The TRS is intended to facilitate this, however, it is evident the types of records listed are difficult to identify accurately. Draft documents and working materials are listed as potentially transitory, yet as indicated in the schedule, depending on the end product the document is a draft of, and the working habits of the drafter, draft material can provide a

vital insight into how a report, piece of legislation, or final decision is made. As for direct duplicates, merely stating duplicate material can be destroyed immediately with a few examples, as the TRS does, is essentially unhelpful. It only adds to the confusion both ARDA and many operational schedules have policies for “copy sets” that are somehow different than duplicate records covered in the TRS.

[66] When records scheduling authorities do not clearly identify the retention policy for specific records, the risk of unauthorized destruction increases significantly. At best, many officials will apply authorities to destroy records inconsistently, incorrectly, and arbitrarily; at worst, other officials could manipulate authorities to avoid accountability for actions.

[67] In summary, many of the records destruction schedules examined are overlapping, confusing, and difficult to interpret and apply to records generated by or for a Minister or Deputy Minister. We conclude they are inadequate as authorities and do not adequately support implementation of the RM Regulation.

## Issue 2: Were records in ARTS destroyed in compliance with rules relating to the destruction of records?

[68] A key focus of this investigation was the Action Request Tracking System (ARTS). The Public Interest Commissioner received a disclosure alleging wrongdoing related to the system. The disclosure alleged that at a branch meeting, department staff members were instructed to move all briefing material into the ARTS, and all records within the ARTS would be deleted.

[69] ESRD creates and uses action requests (ARs) within ARTS, a government-wide tool introduced in 1999/2000, subsequently redeveloped in 2011/2012, and used for:

1. registering public or internal requests for action,
2. directing the request to the appropriate departmental official(s) for research and response,
3. supporting collaboration across departments in the response,
4. setting and tracking response times and status, and
5. keeping documentation of the response in the system for future reference.

[70] Many of these responses served as briefings to the ESRD Minister on issues or topics presented to him or her. Once an AR is completed, the related records are taken off-line, where they can be accessed but not reactivated. ARTS records are printed and filed, although officials we interviewed stated it is not clear how complete and extensive the printed download is in each case. When this is completed, the paper records are stored in the Executive File Room.

[71] Two main areas of inquiry were examined in respect of the allegation:

1. *ESRD Records Management Directives and Government Transition*

What directions were given from the Executive Council, Service Alberta, and

departmental leadership about managing or destroying departmental ARTS records in preparation for a possible transfer of government?

2. *ESRD Records Management Practices for ARTS Records*

What were the authorities and measures for managing retention and destruction of both paper and digital records at ESRD, including records in ARTS?

**ESRD records management directives and government transition**

- [72] ESRD officials were requested to provide copies of instructions received or given at various leadership levels (DM and ADM). ESRD provided various emails.
- [73] The Executive Team consisting of departmental ADMs met with the Deputy Minister on May 4, 2015, one day before the election, to discuss the possibilities of a change of government and the implications for ESRD. One item of discussion was a paper, marked “strictly confidential” by the Deputy Minister, produced and distributed by Service Alberta outlining its understanding of the “Westminster Convention” (Convention) restricting access by ministers of an incoming government to the Cabinet records of an outgoing government. According to this document, the Convention is not recognized in any law or policy applying to the Alberta government, and “the strength of this convention, in the Alberta context, is not clear.” At the same time, the paper advised “steps must also be taken to protect any documents which might disclose the confidential advice to ministers [sic] and the advice, options, discussions and deliberations of an Executive Council or Treasury Board”, including such documents in digital format available on servers, devices and networks throughout the government. The Deputy Secretary to the Cabinet would be responsible for ensuring compliance with the Convention. The Executive Team issued no clear directives to deal with this possibility.
- [74] Discussions concerning the application of principles in the Convention took place; however, ESRD says that no action was expected to be taken in the department. It appears there is no documented decision about the management of records at ESRD during the transition, other than for records in ARTS, for which the Executive Team concluded “ARTS records will be restricted if there is a government change as the content is for the former government”.
- [75] On May 6, 2015, the day after the election, the ADM of Corporate Services sent an email to the Chief Information Officer, copied to the SRO and others responsible for records management at ESRD, stating Cabinet information in departmental records would need to be managed using the attached MRMO Guide. The ADM interpreted the directive to apply to some Cabinet briefing documents maintained in departmental units, including such records as “C2D2 [Confidential Cabinet Decision Document] documents.” The directive would mean “they are no longer able to be provided to the incoming cabinet.”
- [76] The importance of the MRMO Guide as a key records management policy was reiterated in a May 6, 2015 email from the Deputy Secretary to the Cabinet, and distributed to ESRD executives on May 7, 2015, which placed the responsibility for managing government records in Ministers’ offices in compliance with the Guide squarely in the hands of the Deputy Ministers. The Deputy Secretary also advised they would “determine what, if any, confidentiality parameters [would] be applied to the prior government’s Cabinet, Treasury

Board and Ministerial Records in relation to the incoming administration. I will provide you with updated information on that issue as soon as it is available.” There were no additional updates or directives from the Deputy Secretary after this date.

- [77] Between May 7 and 12, 2015, ESRD held meetings with regional departmental officials on management and use of ARTS in light of the change in government. Two departmental sources who contacted the Public Interest Commissioner said they were told at these meetings that ARs and other records in ARTS were considered Cabinet documents that would be destroyed to avoid access by new government Ministers.
- [78] On May 13, 2015, in response to the launch of this investigation, the Deputy Minister of ESRD distributed a direction from the Deputy Minister of Service Alberta to “temporarily halt shredding of paper documents until further notice.” This direction to halt destruction of records did not extend to digital information. The next day, Service Alberta clarified that it applied to electronic documents as well.
- [79] On May 28, 2015, Service Alberta announced that ARs closed or cancelled before May 1, 2015 would be moved offline between May 29, 2015 and May 31, 2015. After this migration, users would not be able to change or delete information related to these ARs.
- [80] In summary, there were no explicit directives from ESRD leadership, Service Alberta, or from the Executive Council to destroy ESRD records outside of the established records scheduling process within the period immediately before or after the election. The Convention to restrict access to outgoing government information – a major concern of the ESRD leadership the day before the election – prescribes that Cabinet confidences be kept confidential, not necessarily destroyed. This reflects the decision discussed above, where access to records on ARTS would be restricted, instead of records being deleted.

#### **ESRD records management practices for ARTS records**

- [81] Ministerial ARs, as mentioned above, are tracked in ARTS, printed out and filed as part of the executive records. Because they are not covered by the records retention schedule for Departmental and Cabinet Records in a Minister’s office (RRDS 2002/041), another approved records schedule must be used to authorize disposition.
- [82] Based on interviews conducted, and materials gathered during the investigation, there is inconsistency and often, confusion, about the status of records in ARTS at ESRD and the policy or authority for their retention. The original function of ARTS as simply a tracking system for ARs meant that supporting documentation and the final response were printed and stored in the Executive File Room. As long as this approach was followed consistently and accurately, records in ARTS could be considered transitory since the duplicate documentation was printed and filed. However, we heard reports within ESRD, and from Service Alberta, that the function and content of ARTS across government has been expanded by some users into an electronic repository of messages and attachments associated with an AR or other projects, and records therefore may not have been printed consistently, rather kept in ARTS by responsible departments. Service Alberta officials have identified the issue as a major concern and have initiated a project to inventory the content of ARTS to determine the nature and status of records kept within the system. The current state of ARTS records has been described by some officials as “a dog’s breakfast” and

records management governance of the system, “a huge hole”. Given the uncertainty and inconsistency of information in ARTS, it would follow that at least some of the information in ARTS would have required authority under an ORS and transmittal documentation before it was made inaccessible. The effect of this practice on access to information rights is further discussed in paragraph [100] below.

[83] Log files obtained from ESRD show officials deleted 88 responses and 66 associated attachments from ARTS between April 27, 2015 and May 12, 2015. Based on answers to our inquiries made to both ESRD and SA officials, these deletions appear to be based on the assumption that, since all of the material is printed out and kept as part of the master executive records repository, the records in ARTS are transitory and therefore can be destroyed as transitory records under the TRS. There are three concerns about this assumption and the use of the TRS to authorize deletion from the system:

1. Most of the individuals we interviewed stated ARTS is used as a repository for some significant documentation relating to specific ARs. As with e-mail systems in the Alberta government, no one can say with confidence all significant digital information stored in this tracking and communication system is kept elsewhere, either in paper or digital form;
2. According to records management documentation provided by ESRD, the printed master records of ARs appear to have been slated for destruction after five years using RRDS 2007/020-A001, which would indicate ministerial ARs are not preserved at the PAA in any form;
3. An additional records schedule identified in the 2004 manual Developing Records Retention and Disposition Schedules as Ministerial Action Requests RRDS 1992/129, applies “only to copies of the Ministerial Action Request that are used for control processing” so long as these records are kept as masters elsewhere. This schedule authorizes destruction after three years. This would likely apply to ARTS; however, there is no mention of this authority in any of the RD documentation or by records management staff at ESRD.

[84] Overall, with respect to records maintained in ARTS, there appears to be confusion in day-to-day activities, and uncertainty among officials responsible for overseeing records management and providing guidance to Government of Alberta departments and employees. As a result, ARs at ESRD may be deleted based on the assertion that they are copies of masters. The masters may themselves be destroyed on a routine basis based on the assertion they are “secondary” copies.

### **Controls in place to prevent destruction of records in ARTS**

[85] Given the confusion as to the content of ARTS records described above, and the restriction put in place to access these records, a probe was conducted to determine which security arrangements were in place to protect records in ARTS from unauthorized destruction, in light of section 38 of the FOIP Act which reads:

The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.

- [86] The protection of personal information specifically was not central to this investigation, at least not based on the allegation of wrongdoing regarding records in ARTS. However, no ESRD official could advise with certainty whether any given ARTS record contained personal information or not. Records may also contain other confidential information that is not directly related to, or about identifiable individuals.
- [87] To address this, the Government of Alberta Information Management Advisory Committee developed an *Information Security Classification* guideline document<sup>15</sup> to “assist ministries in establishing effective security classification practices”. This guideline presents four classification levels (Unrestricted, Protected, Confidential and Restricted), of which three (Protected, Confidential and Restricted) apply to broad categories of records that either contain individually identifying information, other government confidential information, or both. These classification levels are to be applied to records, without a distinction being made between the two types of sensitive information, i.e. personal information or otherwise confidential information.
- [88] In March 2003, Alberta Government Services, the predecessor of Service Alberta, submitted a privacy impact assessment (PIA) about ARTS for review by the Office of the Information and Privacy Commissioner. A PIA is a due diligence exercise, in which the organization identifies and addresses potential privacy risks that may occur in the course of its operations. However, given the time elapsed since this PIA was prepared and reviewed, and redevelopment of the system in 2011/2012, the information included in the PIA is not current for this investigation’s purposes.
- [89] For the purpose of this investigation, the assessment of security arrangements was limited to observation and interviews. We observed strict physical safeguards in place at ESRD locations visited, and technical and administrative safeguards within ESRD by virtue of the use of Government-wide systems, such as ARTS, ERKS, IRIS or the Government of Alberta information technology infrastructure generally, including the email system, SharePoint or shared network drives.
- [90] Service Alberta officials responsible for managing ARTS were interviewed. They provided details about the system and its functionalities:
1. While there are rules in place that guide users as to what the system can and should be used for, there are no technical controls in place to restrict what content users enter into ARTS, or what each AR is about. For those reasons, some ARTS users may be using the system for purposes other than the intended ones.
  2. When information in ARTS is deleted, it goes to a “recycle bin” where it is held for another 90 days. Effectively, the system does not delete information immediately, but

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<sup>15</sup> Service Alberta. February 2005. ‘Information Security Classification’. Retrieved on September 9, 2015 from <http://www.im.gov.ab.ca/documents/publications/InfoSecurityClassification.pdf>

merely hides it from view as it is then only accessible to system administrators at Service Alberta.

3. If instructions (following a FOIP request or otherwise) were given to ARTS system administrators at Service Alberta to retrieve information in the “recycle bin”, this could be done.
4. In the summer of 2014, an initiative took place to review the subject lines of ARs, based on the notion only subject line content could be disclosed under the FOIP Act.
5. A “locking mechanism” was developed for ARTS in the past few years, validated just before the May 2015 election, and activated immediately thereafter. Once activated, this feature hid information in ARTS from the view of all ARTS users at the Minister and ministerial staff levels across all Government of Alberta departments, while leaving it accessible to all other system users. Interviewees indicated that in the future, this feature would be activated as soon as an election is called.
6. There is limited logging of actions taken by system users; in particular, the system does not create a log of information viewed by users, although logs of deleted ARs and attachment names can be generated.

[91] Based on the information gathered, we found that ARTS as an information technology system has reasonable technical safeguards in place to prevent the unauthorized destruction of records, accidental or not, since any such deleted records can be retrieved within 90 days of their deletion. However, the effectiveness of this mitigation measure is limited in time, and so the safeguards in place to protect ARTS records from unauthorized destruction throughout their lifecycle are far from adequate. As outlined above, records in the system may be deleted without consideration of whether actions were taken to meet retention requirements. Since ESRD has not taken adequate measures to monitor the manner in which ministry employees use the system, and in particular under which conditions information in ARTS is destroyed, it may take considerably more than 90 days for someone to notice that a certain record was not preserved before its deletion in ARTS. Given the lack of monitoring of the system’s uses, and uncertain preservation of records, we conclude that personal information in ARTS records is at risk of unauthorized destruction.

[92] In summary, the security arrangements made by ESRD to protect against unauthorized destruction of records in ARTS are not reasonable. Although some administrative controls (policies) are in place to restrict content entered into ARTS, these controls have not been effective as users do not strictly limit their use of ARTS to its intended function. There is little system administrators have been able to do over the years to control this scope creep. The technical safeguards in place are not enough to adequately mitigate the risks created by inconsistently applied and improperly documented information management practices. A PIA for the system was submitted to the Office of the Information and Privacy Commissioner for review some years ago, however, has not been updated.

[93] No information was found to support the allegation ESRD records were transferred to ARTS and then destroyed. It is possible there may have been a misunderstanding between instructions given, and how these were passed down to subordinates. Regardless of the election, the investigation revealed a general confusion surrounding ARTS records which in

our opinion directly contributed to employee concern that records may be inappropriately destroyed.

**Issue 3: Did any person wilfully alter, falsify or conceal any record, destroy any records subject to the FOIP Act, or direct another person to do so, with the intent to evade a request for access to the record in contravention of the FOIP Act?**

[94] The remaining issue considered stemmed from opposition party representatives publicly announcing having made FOIP requests to Government of Alberta departments<sup>16</sup>.

[95] Section 92 of the FOIP Act outlines the following offences relevant to this investigation, and reads:

**Offences and penalties**

92 (1) A person must not wilfully

(e) alter, falsify or conceal any record, or direct another person to do so, with the intent to evade a request for access to the record,

(g) destroy any records subject to this Act, or direct another person to do so, with the intent to evade a request for access to the records.

[96] In order to establish whether ESRD complied with these provisions of the FOIP Act, the following actions were undertaken:

1. A review of requests for access made to ESRD under the FOIP Act;
2. A review of the steps taken to respond to the requests relevant to this investigation, for the period preceding and following the May 5, 2015 election.

[97] All requests for access to information made under the FOIP Act between April 27, 2015 and May 15, 2015 were provided by ESRD. Some were received just before or just after the election. This included requests from opposition parties who had publicly announced making such requests<sup>16</sup>. The large majority of requests received by ESRD were not affected by the allegations of unauthorized destruction of records, as they related to environmental site assessment information<sup>17</sup>.

[98] Documentation evidencing the actions taken in response to those requests was reviewed. This revealed normal procedures were followed in the processing of all requests for access to information made to ESRD between April 27, 2015 and May 15, 2015, including those made by opposition parties.

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<sup>16</sup> (2015, May 8) 'Clark to make FOIP requests to stop shredding, will notify Privacy Commissioner'. Alberta Party website. Retrieved on September 8, 2015 from [http://www.albertaparty.ca/release\\_clark\\_to\\_make\\_foip\\_requests](http://www.albertaparty.ca/release_clark_to_make_foip_requests)

<sup>17</sup> This reflects the fact that ESRD has for years been receiving large numbers of FOIP requests on this topic; this is outlined in the FOIP Annual Reports produced by Service Alberta on an annual basis, as required under the FOIP Act. A list of annual reports is available at <http://www.servicealberta.ca/foip/resources/annual-reports.cfm>



[99] An official of ESRD’s Freedom of Information and Protection of Privacy Office was interviewed, and described some of the approval processes in place within ESRD, directions received from the Deputy Minister during the government transition, efforts taken to convey obligations under the FOIP Act to all employees in ESRD in general, and ARTS. This official echoed the understanding of other ESRD officials interviewed by stating she had minimal involvement with ARTS, and did not consider it to be a document repository as it is only a tracking tool. This last point does of course contradict information given by Service Alberta officials who acknowledged that ARTS may contain a variety of information, including some that could be responsive to a request for information made under the FOIP Act.

[100] Two main issues with ARTS concerning access are noted:

1. more than once, Service Alberta officials stated only subject lines of ARs are subject to the FOIP Act, which is a serious misconception of the application of the FOIP Act to the information held in the system. All records and attachments in ARTS are subject to the FOIP Act in their entirety, with some information in those records exempted from disclosure if it meets certain criteria;
2. as noted in paragraph [90] above, information in ARTS is not “destroyed” per se – only made unavailable to ARTS users. As a result, it may be improperly shielded from the reach of requests for information made under the FOIP Act.

[101] In summary, nothing in our documentation review or interviews indicated anyone in ESRD took any actions in contravention of sections 92(1)(e) or 92(1)(g) of the FOIP Act. The direction given by ESRD Executives to restrict access to ARTS records predated the FOIP request from the opposition. There are serious concerns related to misconceptions about the application of the FOIP Act to records in ARTS, and whether these misconceptions have affected compliance with the FOIP Act in responding to past requests for access.

## Observations Regarding Program Integrity and Support

[102] Records management and destruction control at ESRD are critical measures to ensure the integrity of information, including personal information. The core mandate of records management is to ensure the records created and kept by the department provide complete, accurate, reliable, and usable evidence of the actions and decisions of their officials working on behalf of the citizens of Alberta. Without records management programs, citizens’ right of access to government information, including their own personal information, is severely compromised.

[103] The RM Regulation establishes a records scheduling system to govern the destruction of information at the Government of Alberta - no information should be destroyed without authority of an approved records schedule. Information in paper records and especially in digital format can be destroyed easily and *en masse*, whether scheduled or not. To have integrity and accountability as a destruction control system, the RM Regulation is dependent on a number of major activities completed effectively and comprehensively:

1. Information created and received as part of the business functions of a government agency are captured into a standardized registry system that identifies the content and context of the records, and their relationships to other records. Records can be captured when they are assigned a records “classification” or placed in an electronic document management system. If information is not captured to this standard, the governance of a RM Regulation is rendered ineffective or, depending on the intention of the records creators, avoided completely.
2. Records schedules are policy documents that need to be interpreted whenever they are applied to specific records. The quality of this interpretation relies on the clarity of the records schedules and the analysis of records creators and officials applying the records schedules in their departments.
3. Departments require a large measure of support, and must be monitored and held accountable for how they capture and schedule records. Information at the Government of Alberta is massive in volume, complex in content and form, and intimately tied to the day-to-day activities of the officials who create and keep them. In this environment, established records capture and scheduling processes can easily be regarded as too difficult and an imposition on activities of higher priority.

[104] The Departments and their SROs develop and implement records schedules and departmental policies and procedures. Service Alberta and ARMC develop strategic level standards, policies, guidelines and system tools, and operate the Alberta Records Centre. Program support and monitoring represent the clear gap between these two activities in the records management program that is not being filled. Not only does this increase the risk of unauthorized destruction of records, it also allows poor quality records management implementation to go undetected, with little to no accountability.

[105] Beyond policy, training, and the inactive records storage service, records management officials at Service Alberta do not participate in or monitor the day-to-day implementation of records scheduling at a department such as ESRD. There are few measurable service-level standards and no statistics or assessments of implementation at the department level. Alberta Government Services (the predecessor of Service Alberta) produced a guide entitled *Benchmarking Information Management Practices: An Assessment Tool*. This guide does address “life-cycle management”; however, this is at a high level with no reference to the scheduling process. This guide dates from 2003 and there is no indication such assessments have ever been completed.

[106] Departmental inaccuracies and inconsistencies in the way records destruction authorities were applied to executive records at ESRD, and the issues with the documentation supporting the destruction of some of these records have been described. Much of the RD documentation provided little to no indication of the reasoning or justification for applying certain schedules or approving destruction activity. In the instances where rationale for retention policy was clearly articulated, the subsequent action to destroy the records completely contradicted this reasoning. There is a demonstrated need for better documentation clearly indicating records schedule implementation is meeting core standards, and decision-making is sound and consistent.

- [107] The SRO at ESRD has had little to no effective oversight of the Minister's office and whether or how active records are being captured, scheduled, and destroyed. This situation exists despite the clear responsibility of the ESRD Deputy Minister to ensure records schedules are used to authorize destruction of all Minister's office records. There appears to be an assumption the Minister's office contains only personal and constituency records, and Cabinet and departmental records are all kept with the executive records of the Deputy Minister; however, no one is monitoring whether this is actually the case. Records management officials advise although they were in theory responsible to assist the Minister's office with management of their records, it was not the case in practice.
- [108] The difficulties in getting officials to manage how they keep and, by extension, destroy records in compliance with organizational policies are well known. In the course of our investigation, publicly accessible minutes of meetings of government SROs were reviewed. The following is from a discussion between Government of Alberta SROs and Service Alberta representatives<sup>18</sup> :
- SROs can hardly make things happen, unless there is a specific issue, or something blows up. No budget. No mandate. Held responsible, yet nothing is specific. They have no contacts with others in the ministry they represent. In contrast, SFOs have all these and actually have a seat at the executive table.
- (...)
- ADMs don't want to talk about records anymore; not on their list of priorities.
- [109] This makes it clear that within a department, SROs feel they have little effective influence on recordkeeping practices, are given minimal resources, however, they are considered responsible for outcomes. Similarly, they feel leadership generally considers records management as bearing little relationship to their core functions and as such consider it a low priority. In such an environment, ensuring the quality of records management meets acceptable standards is a constant struggle. If implementation of records schedules is not monitored and supported adequately, records destruction scheduling and control practices will quickly degrade to a low standard.
- [110] Even if some level of acceptable monitoring were in place, there are no sanctions within the RM Regulation for officials or departments found to have destroyed or handled records in contravention of the Regulation. There is no Service Alberta policy that outlines consequences and sanctions for destroying records without records scheduling authorization, or for applying records schedules inappropriately.
- [111] Operational records schedules are not easily available to anyone outside of government. As such, records scheduling and destruction, and the policy rationale behind, remains largely a hidden and internal process. Concepts and references used within the records schedules are often obscure and rely on other internal information that is also difficult to access. This fosters a "culture of obscurity" concerning the records scheduling and destruction that further complicates effective monitoring and accountability.

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<sup>18</sup> Senior Records Officers Committee, Feb 19, 2014 Meeting Notes. Retrieved September 4, 2015 from <https://www.im.gov.ab.ca/3154.cfm>

[112] In summary, we conclude program support, monitoring and accountability for the records destruction process at ESRD is inadequate and presents an unreasonable level of risk that records may be destroyed in contravention of the RM Regulation.

## Summary of Conclusions

### Destruction of records in the Minister's office

[113] Since there was no effective departmental control over active ministerial records kept at the Minister's Office itself and managed by the former Minister's staff during this period, we were not able to establish whether records were destroyed at that location, and for that matter, the nature of any destroyed records. For that reason, we cannot make a conclusion about whether any ministerial records were destroyed in contravention of the RM Regulation at this location in the wake of the May 5 election outcome.

### Destruction of executive records

[114] While ESRD officials acknowledge records under their custody and control, including records of the ESRD Minister, were destroyed immediately before and after the election, they reported that routine and authorized protocols were followed. Our examination of the destruction of 344 boxes of executive records, however, found the destruction was not in compliance with rules relating to the destruction of records:

1. The destruction of the seventy-one (71) boxes in Group 1 lacked proper approvals to schedule these records under a new RRDS. It is not clear why records considered for selective retention by the PAA in 2007 – meaning that some would have been permanently retained there – were eventually considered for, and sent to destruction in 2015. Changes made to an RRDS should not affect the enduring value of records documenting actions or decisions at a department's executive level.
2. One hundred and thirty-six (136) boxes of executive records identified as master records, were destroyed using a records schedule intended for copy sets.
3. One hundred and thirty-seven (137) boxes of executive records were destroyed. The inventories for these records were incomplete and the RD documentation did not contain any authorizations for the use and implementation of the RRDS that was applied.

[115] The change in RRDS applied, and timing of the destruction of the 344 boxes of executive records one day following the election raises questions about the destruction of these records. While there is no evidence records were destroyed to keep them from the incoming government, there is also no evidence to support the change in the RRDS applied to these records, which resulted in their destruction. The lacking and sometimes contradictory authorities and documentation attached to the destruction does not provide confidence in ESRD's ability to manage some of the arguably most important records to support a professional and accountable public service.

### Transfer of executive records to the PAA

- [116] Executive records previously scheduled in 2012 were not managed in accordance with the prescribed rules, as they were not transferred to the PAA as required.

### Records scheduling

- [117] Many of the records destruction schedules examined are overlapping and confusing, difficult to interpret and apply to records generated by or for a Minister or Deputy Minister. We conclude they are inadequate as authorities and do not adequately support implementation of the RM Regulation.

### ESRD records management directives and government transition

- [118] There were no explicit directives from ESRD leadership, Service Alberta, or from the Executive Council to destroy ESRD records outside of the established records scheduling process within the period immediately before or after the election.
- [119] The ESRD Executive Team did apply the Westminster Convention to restrict the incoming government's access to outgoing government information. However, there is no evidence the decision to apply the Convention translated into a decision to destroy records.
- [120] The Convention is not recognized in any law or policy applying to the Alberta government, and its application in the Alberta context is not clear. No documentation was provided confirming when or how the decision to apply the Convention was made, or by whom or with what authority or rationale. In particular, it is not clear how the Convention is being applied with respect to records in the custody or control of public bodies and subject to the FOIP Act, which may be responsive to requests for access to information.
- [121] In times of uncertainty, such as during a major transition of government, simply directing employees to follow the normal course of operations for the destruction of records is not sufficient. The confusion and uncertainty that preceded the election served to compound the risks of non-compliance with rules related to records management and destruction.
- [122] It is also worth noting that while there were no directives to destroy ESRD records outside of the established records scheduling process, there were likewise no directives explicitly warning against unauthorized destruction of such records during the transition period, before the problem was formally identified on May 13, 2015.

### ESRD records management practices for ARTS records

- [123] Overall, with respect to records maintained in ARTS, there appears to be confusion in day-to-day activities, and uncertainty among officials responsible for overseeing records management and providing guidance to Government of Alberta departments and employees. As a result, ARs at ESRD may be deleted based on the assertion that they are copies of masters. The masters may themselves be destroyed on a routine basis based on the assertion they are "secondary" copies.

### Controls in place to prevent destruction of records in ARTS

- [124] The security arrangements made by ESRD to protect against unauthorized destruction of records in ARTS are not reasonable. Although some administrative and technical safeguards are in place, they do not adequately mitigate the risks created by inconsistently applied and improperly documented information management practices.
- [125] No information was found to support the allegation ESRD records were transferred to ARTS and then destroyed. It is possible there may have been a misunderstanding between instructions given, and how these were passed down to subordinates. Regardless of the election, the investigation revealed a general confusion surrounding ARTS records which in our opinion directly contributed to employee concern that records may be inappropriately destroyed.

### Wilful destruction of records to evade a request for access

- [126] There is no evidence that anyone in ESRD took any actions in contravention of sections 92(1)(e) or 92(1)(g) of the FOIP Act. The direction given by ESRD Executives to restrict access to ARTS records predated the FOIP request from the opposition.
- [127] We nonetheless have significant concerns with what investigators were told during this investigation about the operation and understanding of the ARTS generally.
- [128] Investigators were advised by Service Alberta officials “only subject lines are FOIPable [sic]”, meaning the FOIP Act only applied to the subject lines of ARs. This is a serious misunderstanding of the application of the FOIP Act to the information held in ARTS. All records and attachments in ARTS are subject to the FOIP Act in their entirety, with some information in those records exempted from disclosure if it meets certain criteria. This assertion, which was repeated a number of times, raises questions regarding the processing of past FOIP requests for access, the completeness of searches done to locate responsive records, or public bodies acting on advice or an assumption that the FOIP Act did not apply to records in ARTS.

### Program integrity and support

- [129] Program support, monitoring and accountability for the records destruction process at ESRD is inadequate and presents an unreasonable level of risk that records may be destroyed in contravention of the RM Regulation.

## Findings

### *Freedom of Information and Protection of Privacy Act*

#### **Did ESRD destroy records in compliance with rules relating to the destruction of records?**

- [130] The destruction of 344 boxes of executive records was not in compliance with rules relating to the destruction of records as established by the *Government Organization Act* and *Records Management Regulation*.

[131] As there was no effective departmental control over active ministerial records kept at the Minister's Office itself and managed by the former Minister's staff during this period, we were not able to establish whether records were destroyed at that location, and for that matter, the nature of any destroyed records. For that reason, we cannot make a conclusion about whether any ministerial records were destroyed in contravention of the RM Regulation at this location in the wake of the May 5 election outcome.

**Did any person wilfully alter, falsify or conceal any record, or direct another person to do so, with the intent to evade a request for access to the record in contravention of section 92(1)(e) of the *Freedom of Information and Protection of Privacy Act*?**

[132] With regard to FOIP requests received by ESRD in April and May of 2015, we found no evidence anyone in ESRD took any actions in contravention of sections 92(1)(e) or 92(1)(g) of the FOIP Act.

**Did ESRD make reasonable security arrangements to protect against unauthorized destruction of personal information in compliance with section 38 of the *Freedom of Information and Protection of Privacy Act*?**

[133] The security arrangements made by ESRD to protect against unauthorized destruction of records are not reasonable. There are safeguards in place, but they are not sufficient to mitigate the risk of unauthorized destruction of records generated through ARTS.

***Public Interest Disclosure (Whistleblower Protection) Act***

**Did any government employee contravene rules surrounding the disposal or removal of documents during or following the current transition of government in contravention of section 3(1) of PIDA?**

[134] With regard to the specific allegation brought forward to the Public Interest Commissioner concerning the destruction of records in ARTS, the investigation found no evidence records in ARTS were destroyed. The investigation did reveal general confusion and a lack of understanding concerning the management of records in ARTS however this does not constitute wrongdoing, as defined in the *Public Interest Disclosure (Whistleblower Protection) Act*. Therefore our finding relative to this allegation is that no wrongdoing occurred.

## **Recommendations**

[135] Based on our findings and conclusions, we recommend the following to ESRD, and by extension to the Government of Alberta departments responsible:

1. Develop program standards, processes and tools to ensure the capture, integrity, and continuity of digital records within the information management framework.
2. Enhance the authority and resources of the Senior Records Officer role within a department to support higher quality of, and consistency in, records management. There may be opportunities to explore how this role could complement the FOIP officer role, as the two functions are closely related, to ensure optimal compliance with the FOIP Act.

3. Review and rationalize all operational records schedules (ORS) to reduce complexity, inconsistency and redundancy, and better document rationale for policy.
4. Consider revising, or replacing ARDA with a new schedule that addresses the challenges we identified in scheduling records appropriately.
5. Conduct a full review of records schedules and their implementation for executive records across government.
6. Review and revise the transitory records schedule to more clearly restrict its use to duplicate and short-term information, and reconcile the goals of this policy with the concept of “copy sets”.
7. Ensure records schedules provide direction and guidance to officials as they are making decisions about creating and keeping documents as active records, not restricted to gaining approval for records they are proposing for transfer or destruction.
8. Develop precise service-level standards measuring the quality of records scheduling at the department level.
9. Establish Service Alberta and the Provincial Archives of Alberta as monitors of departmental implementation, with reporting requirements.
10. Identify gaps, and clarify policies, procedures and responsibilities to ensure records are identified, preserved and appropriately restricted at all times, and especially during a period of government transition.
11. Identify and address gaps in the monitoring of records management activities in the Minister’s office.
12. Complete the review of ARTS and AR documentation already underway, to ensure full record sets are appropriately preserved for this system.
13. Update the privacy impact assessment prepared for ARTS in 2003 to address changes to the system, and submit it to the Office of the Information and Privacy Commissioner for review.
14. Increase awareness of, and continue to train, Government of Alberta employees and staff members in Minister’s offices, with regards to the crucial importance to adhere to information management rules.
15. Make all operational records schedules available for public review online, which would promote clarity, consistency and full accountability about decision-making for assigning retention policy to government records.
16. Ensure there are appropriate sanctions for officials or departments found to have destroyed or handled records in contravention of the RM Regulation, such as destroying records without authorization, applying records schedules inappropriately, or failing to create and maintain records that support business operations and evidence-based decision-making.



[136] Upon acceptance and implementation of these recommendations, the quality and consistency of information management within the Government of Alberta will improve. This will contribute to reinforce Albertans' trust their public service is and remains professional and accountable.

Chris Stinner  
Senior Information and Privacy Manager  
Office of the Information and Privacy Commissioner

Ted Miles  
Director  
Public Interest Commissioner

## Appendix A

Analysis of ESRD executive records Destruction on May 6, 2015 (all dates formatted mm/dd/yy)

| PROJECT #   | CONTENT           | DATES         | # BOXES | RECORDS SCHEDULING             |   | DISPOSITION ACTIVITY |          |               |                           | COMMENTS   |
|---|-------------------|---------------|---------|--------------------------------|---|----------------------|----------|---------------|---------------------------|--|
|   |                   |               |         | RRDS #                         | Retention Policy  | Outcome              | Date     | Transmittal # | Transmittal Approval Date |  |
| <b>GROUP 1 – Approved for Preservation at PAA, subsequently destroyed</b> |                   |               |         |                                |   |                      |          |               |                           |  |
| 2006-23957  | executive records | 1981-2002     | 22      | 1991/103-A2 then 2007/020-A001 | Transfer to PAA for permanent preservation. Approved April 11, 2007; changed to destroy as Copy Sets. No approval memo. | Destroyed            | 5/6/2015 | 341383        | 4/20/2015                 | Use of an RS reserved for copy sets only but inventories clearly mark them as Masters  |
| 2006-23958  | executive records | 1990-2002     | 23      | 1991/103-A2 then 2007/020-A001 | Transfer to PAA for permanent preservation. Approved June 5, 2007; changed to destroy as Copy Sets. No approval memo.   | Destroyed            | 5/6/2015 | 341380        | 4/20/2015                 | Use of an RS reserved for copy sets only but inventories clearly mark them as Masters  |
| 2006-23960  | executive records | 1993-2002     | 26      | 1991/103-A2 then 2007/020-A001 | Transfer to PAA for permanent preservation. Approved April 30, 2008; changed to destroy as Copy Sets. No approval memo. | Destroyed            | 5/6/2015 | 341471        | 4/20/2015                 | Use of an RS reserved for copy sets only but inventories clearly mark them as Masters  |
| <b>GROUP 2 – Destruction as copy sets -- inventoried</b>                  |                   |               |         |                                |   |                      |          |               |                           |  |
| 2007-33252  | executive records | 1995-2006     | 40      | 2007/020-A001                  | Destroy as Copy Sets after 5 years as inactive. No approval memo.   | Destroyed            | 5/6/2015 | 340440        | 4/20/2015                 | Use of an RS reserved for copy sets only but inventories clearly mark them as Masters  |
| 2008-36666  | executive records | 2001-2007     | 41      | 2007/020-A001                  | Destroy as Copy Sets after 5 years as inactive. No approval memo.   | Destroyed            | 5/6/2015 | 341183        | 4/20/2015                 | Use of an RS reserved for copy sets only but inventories clearly mark them as Masters  |
| 2009-44214  | executive records | 1993-2008     | 30      | 2007/020-A001                  | Destroy as Copy Sets after 5 years as inactive. No approval memo.   | Destroyed            | 5/6/2015 | 341370        | 4/20/2015                 | Use of an RS reserved for copy sets only but inventories clearly mark them as Masters  |
| 2010-52422  | executive records | 1994-2009     | 25      | 2007/020-A001                  | Destroy as Copy Sets after 5 years as inactive. No approval memo  | Destroyed            | 5/6/2015 | 341381        | 4/20/2015                 | Use of an RS reserved for copy sets only but inventories clearly mark them as Masters  |
| <b>GROUP 3 -- Destruction as copy sets – no inventories</b>               |                   |               |         |                                |   |                      |          |               |                           |  |
| 2006-23956  | executive records | not available | 17      | 2007/020-A001                  | Destroy as Copy Sets after 5 years as inactive. No approval memo.   | Destroyed            | 5/6/2015 | 341390        | 4/20/2015                 | Use of an RS reserved for copy sets only -- no scheduling documentation or inventories |
| 2015-78856  | executive records | not available | 102     | 2007/020-A001                  | Destroy as Copy Sets after 5 years as inactive. No approval memo.   | Destroyed            | 5/6/2015 | 341571        | 4/20/2015                 | Use of an RS reserved for copy sets only -- no scheduling documentation or inventories |
| 2015-78731  | executive records | 1994-2001     | 18      | 2007/020-A001                  | Destroy as Copy Sets after 5 years as inactive. No approval memo.   | Destroyed            | 5/6/2015 | 341528        | 4/20/2015                 | Use of an RS reserved for copy sets only -- no scheduling documentation or inventories |

## Appendix B: Glossary

|          |   |
|----------|---|
| ADM      | Assistant Deputy Minister                                   |
| AEP      | Alberta Environment and Parks                               |
| AR       | Action request  |
| ARC      | Alberta Records Centre                                      |
| ARDA     | Administrative Records Disposition Authority                |
| ARMC     | Alberta Records Management Committee                        |
| ARTS     | Action Requests Tracking System                             |
| DM       | Deputy Minister   |
| ECM      | Electronic Content Management                               |
| ERKS     | Electronic Recordkeeping System                             |
| ESRD     | Environment and Sustainable Resource Development            |
| FOIP Act | <i>Freedom of Information and Protection of Privacy Act</i> |
| IRIS     | Inactive Records Information System                         |

|      |  |
|------|--|
| MLA  | Member of the Legislative Assembly                               |
| OIPC | Office of the Information and Privacy Commissioner               |
| ORS  | Operational Records Schedule                                     |
| PAA  | Provincial Archives of Alberta                                   |
| PIC  | Public Interest Commissioner                                     |
| PIDA | <i>Public Interest Disclosure (Whistleblower Protection) Act</i> |
| RD   | Records Disposition  |
| RM   | Records Management   |
| RRDS | Records Retention and Disposition Schedule                       |
| RS   | Records Schedule   |
| SA   | Service Alberta  |
| SRO  | Senior Records Officer   |
| TRS  | Transitory Records Schedule                                      |