

Corporate Data Retention

(City Council on November 23, 24 and 25, 1999, adopted this Clause, without amendment.)

The Administration Committee recommends the adoption of the following joint report (October 19, 1999) from the Acting Commissioner of Corporate Services and the City Clerk:

Purpose:

To establish an appropriate action plan to ensure the authorized retention and disposition of data from City computer systems, and to request Council approval to present a by-law authorizing the destruction of certain computer data that is no longer required for the City's purposes.

Financial Implications and Impact Statement:

The costs of implementing the recommendations in this report are already included in existing operating and capital budgets. Implementation of this strategy will avoid the expenditure of an estimated \$15 million that would otherwise be required to develop systems to retain unreadable or unreliable computer data, as estimated by the Year 2000 Project Director. This estimate of cost avoidance is based on a preliminary assessment, and may be subject to change once the final assessment is completed.

Recommendations:

It is recommended that:

- (1) the attached draft by-law, to define, establish criteria and enable the destruction of computer data that is no longer required for the City's purposes or to meet legal requirements, be approved; and
- (2) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

At its meeting of July 27, 1999, City Council approved a report from the Chief Administrative Officer and the City Clerk establishing the mandate of the City's Corporate Records Management Program, to ensure the cost-effective and co-ordinated management of the records of the City of Toronto throughout their full life cycle. Section 4(h) of Appendix 1 to that report stated that it is the City's policy to ensure that "as required by the *Municipal Act*, only records that have been authorized for destruction by an approved Records Retention By-law of the City of Toronto, or of one of its predecessor municipalities, may be destroyed." The recommendations in this report are consistent with City Council's direction in the mandate, and are required to meet the provisions of the *Municipal Act*.

In responding to the Year 2000 problem, it has been recognized by the National Archives of Canada, in its *Guidelines for the Safeguarding of Electronic Records in Non-Y2K Compliant*

Systems in Accordance with the National Archives of Canada Act, that a number of information systems of lesser importance to government institutions will be retired, rather than converted. The advice of the National Archivist to Federal institutions has been to identify a number of practical, alternative technological approaches to ensure post-Year 2000 access to data in non-compliant databases, where the hardware or software is expected to malfunction. These approaches are being taken into consideration as part of the City's strategy and contingency planning for addressing these issues.

The City's Information and Technology Division, with the involvement of Corporate Records and Archives and City Audit, has established a Data Retention Project, which is related to but not part of the Year 2000 Project, to address all historical computer data that is currently on any City of Toronto mainframe or client/server platform. For the purposes of this project, data is considered historical if it will not be updated after December 31, 1999. The overall objective of the project is to ensure that all identified historical electronic data is retained in accordance with retention requirements identified by Corporate Records and Archives and by each Department, with integrity, and is accessible using appropriate tools.

The Data Retention Project consists of three phases: identification, assessment and implementation. The identification phase will inventory the City's computer systems, and the data associated with those systems. The assessment phase will identify the City's business functions and the types of data required to support and document those functions, research and determine retention requirements, and recommend a suitable retention schedule. The implementation phase will include approval of retention schedules in the form of a Records Retention By-law by City Council, followed by implementation of the retention schedules. This will involve either the deletion of obsolete computer data or the retention of data that is necessary to meet operational, legal and historical requirements.

The identification and assessment phases are to be completed by December 31, 1999. Implementation of the plan will commence in 1999, to take the steps necessary to ensure access to active data required for reasons of business continuity in January, 2000, and this phase will be completed in 2000.

The main focus of the project will be to develop appropriate retention schedules and technological solutions to preserve the City's business data. As part of this project, the Information and Technology Division, in its initial assessment, has identified that there is a significant amount of orphan data in existence from older computer systems. The orphan data is no longer useable computer data for a number of reasons, including: (a) the data is unreadable; (b) the integrity of the data is questionable as to the purpose of the data; or (c) sufficient knowledge of the contents or purpose of the data is no longer available. This data is resident in systems that are being decommissioned to meet the City's Year 2000 objectives. These systems are no longer required for the City's immediate business needs because replacement systems have been developed, and have therefore not been made Year 2000 compliant.

Comments:

The *Municipal Act* requires that, before any records can be legally destroyed, the retention period for those records must be defined in a Records Retention By-law approved by City Council and the City Auditor. The City's Corporate Records Management Mandate, as approved by Council, defines records to include records recorded "by electronic means", in order to be consistent with the definition in the *Municipal Freedom of Information and Protection of Privacy Act* and the draft revised *Municipal Act*. Accordingly, computer data falls within the scope of these legal requirements. While the former municipalities enacted Records Retention By-laws, these by-laws did not address the retention of electronic data, and so a new by-law must be developed.

Bill C-28, the *Income Tax Amendments Act, 1997* was given Royal Assent on June 28, 1998. Among the amendments enacted in this Bill were changes to the *Income Tax Act*, the *Excise Tax Act*, the *Employment Insurance Act*, and the *Canada Pension Plan*, to require corporations who keep records electronically, to retain them in an electronically readable format for six years after the fiscal year to which they relate, and to enable the Minister to exempt corporations from this requirement on terms and conditions acceptable to the Minister.

In October, 1998, Revenue Canada revised its *Information Circular IC78-10R3 - Books and Records Retention/Destruction*, which provides information and guidance on record-keeping requirements. Previously, this Circular required the retention of financial records in paper format only. The revised version states that "a person who uses computer systems to generate records and/or books of account must keep the electronic records, even when a hard copy is kept." Requirements have also been included with respect to ensuring proper back-up records, system documentation, audit trails, and appropriate storage media. Where electronic records are converted to new systems, the converted records must be trustworthy and reliable, and the conversion must not result in loss, destruction or alteration of relevant information.

Failure to comply with Revenue Canada's requirements are subject to penalties and fines. In addition, the *Criminal Code of Canada*, section 430, has created an offence of mischief for the deliberate destruction of computer data without authorization, which is subject to imprisonment.

The action plan for the Data Retention Project is to ensure that the readable and reliable data from the City's computer systems will be maintained in an accessible format and retained into the year 2000, when retention policy decisions can be properly established by the Director, Corporate Records Systems and City Archivist, and approved by City Council and the City Auditor.

The orphan data is data that currently exists with no identifiable computer application to retrieve the data. As the computer systems in which the data resides are not Year 2000 ready, the systems may fail or modify the data incorrectly once the system is launched, further compromising data integrity. Accordingly, this data is no longer retrievable, it is no longer of use for any purpose, and it does not make business sense to retain the orphan data. The estimated cost if the City were to retain the orphan data is \$15 million, based on an initial assessment, that will be subject to change once the assessment phase is completed. It would not be cost-effective to retain computer data that is not in useable condition for the City's purposes. There is an immediate need to dispose of the orphan data before December 31, 1999 in order to meet the Year 2000 deadline. This is a reasonable approach in the circumstances.

Since some of the orphan data may relate to the City's record-keeping obligations under the *Income Tax Act* and related legislation, formal advice from Revenue Canada to meet its required terms and

conditions will be obtained before any financial data is destroyed. As the past practice of the City and the former municipalities has been to rely on hard-copy records as their official records, it is expected that sufficient, relevant information is available to meet Revenue Canada's requirements. New policies and practices will need to be developed to ensure future compliance with Revenue Canada's additional requirements for electronic records. Approval of the affected business units within the City at the Department Head level will also be obtained prior to the destruction of any business data.

As previously noted, the disposition of the orphan data is required to meet Year 2000 Project requirements. The draft by-law to authorize disposition of the orphan data is attached to this report as Appendix 1. This by-law is necessary both to meet the requirements of the *Municipal Act* and to avoid substantial costs to retain data that is not useable because of its current condition. This report also outlines for Council the process envisioned for the Data Retention Project, to follow the appropriate protocols for research, documentation and approval of records retention schedules for the City's essential business data. This process is already underway and will be completed during 2000.

Conclusions:

It is critical for the City to meet its Year 2000 objectives, comply with all applicable legislation, and minimize avoidable expenditures. Accordingly, Legal Division, Audit Services, Finance Department, Information and Technology Division, and the Year 2000 Office have been consulted in determining the strategy outlined in this report. This strategy serves all of the necessary objectives by outlining a prudent approach to determining retention periods and technological solutions for the City's vital business data, and by obtaining the appropriate authorizations to dispose of computer data that is no longer readable or reliable.

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List of Attachments:

Appendix 1 - City of Toronto Draft By-law, To authorize the destruction of certain computer data in the custody or control of the City of Toronto.

Appendix 1
City of Toronto
Draft By-Law

To authorize the destruction of certain computer data in the custody or control of the City of Toronto.

WHEREAS subsection 116(1) of the Municipal Act provides that a municipality shall not destroy any of its records or documents except with the approval of the Ministry of Municipal Affairs and Housing or in accordance with a by-law passed by the municipality and approved by the auditor of the municipality establishing retention periods for such records and documents; and

WHEREAS Council, at its meeting of November 23, 1999, requested the introduction of a by-law to define, establish criteria and enable the destruction of computer data that is no longer required for the City's purposes or to meet legal requirements;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. In this by-law,

“computer system” means a device that, or a group of interconnected or related devices one or more of which,

- (a) contains computer programs or other data; and
- (b) pursuant to computer programs, performs logic and control, and may perform any other function;

“content, context or structure” means,

- (a) that which conveys information, including text, data, symbols, numerals, images and sound;
- (b) appearance and arrangement of the content, including relationships between fields, entities, language, style, fonts, page and paragraph breaks, links and other editorial devices;
- (c) background information that enhances understanding of technical and business environments to which the data relates, such as metadata, application software, logical business models, and the origin, such as address, title, link to function or activity, agency, program or section;

“data” means representations of information or of concepts, in any form, that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device, including a display of that data;

“orphan data” means data that:

- (a) is not machine readable by any identifiable computer system on the date this by-law is enacted; or

(b) is machine readable but does not have sufficient content, context or structure to render it understandable by an experienced employee of the City of Toronto who is knowledgeable about the business function or functions to which the data relates.

2. Subject to section 3 of this By-law, orphan data in the custody or control of the City of Toronto may be destroyed on or after the date this by-law is enacted.

3. Prior to the destruction of any orphan data:

(a) a written description of the data shall be prepared, containing, to the extent that such information is obtainable:

(i) the title of the system,

(ii) the identification of the business unit that is responsible for the creation or use of the data,

(iii) a brief description of the system's purpose,

(iv) a brief description of any sub-systems, their purpose and relationship to the main system or other sub-systems, and

(v) the name of the technical contact person who is responsible for documenting the system;

(b) the written approval of the Department Head or designate who is responsible for the business function to which the data relates shall be obtained; and

(c) where applicable to satisfy the provisions of the Income Tax Act (Canada), the Excise Tax Act (Canada), the Employment Insurance Act (Canada) or the Canada Pension Plan, an exemption from the requirement to keep records in an electronically readable format shall be obtained from the Minister of National Revenue, on such terms and conditions as are acceptable to the Minister.

4. The documents described in clauses 3(a) and (b) shall be submitted to, and kept by, the Director, Corporate Records Systems and City Archivist.

ENACTED AND PASSED this 23rd day of November, A.D. 1999.