

## **Disposition of Transitory and Duplicate Records**

*(City Council on July 4, 5 and 6, 2000, adopted this Clause, without amendment.)*

**The Administration Committee recommends the adoption of the following report (May 30, 2000) from the City Clerk:**

### Purpose:

The purpose of this report is to seek Council approval for the destruction of transitory and duplicate records in accordance with federal and provincial statutory requirements.

### Financial Implications and Impact Statement:

There are no financial implications for the implementation of this report.

### Recommendations:

It is recommended that:

- (1) the attached draft by-law, to define, establish criteria, and enable the destruction of transitory and duplicate records, regardless of media, no longer required for the City's purposes or to meet legal requirements, be approved;
- (2) the City Solicitor be authorized to introduce a bill into Council substantially in the form of the draft by-law attached; and
- (3) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

### Background:

Under Section 116 of the Municipal Act, a retention schedule for records must be approved by City Council and the City Auditor before any records may be destroyed. This section provides that where a retention by-law has been passed by a municipality, copies of its records may be destroyed at any time if the original is subject to a retention period within one of the schedules established by the by-law. The responsibility for preparing retention schedules was delegated to the City Clerk by City Council in Clause No. 5 of Report No. 2 of The Administration Committee at its meeting of July 27, 28, 29 and 30, 1999, which set out the Corporate Records Management Program for the City of Toronto. In addition, Regulation 823 (R.R.O. 1990) enacted under the Municipal Freedom of Information and Protection of Privacy Act requires the head of an institution to define, document, and put in place measures that protect records from inadvertent destruction or damage. City Council delegated to the City Clerk certain powers and duties as the head of the institution through By-law No. 3-1998 that was adopted on January 6, 1998.

Section 116 of the Municipal Act also legislates that a by-law may provide for a photographic copy (including microfilm) to be deemed the original for the purposes of the by-law if the

original has been destroyed in accordance with the by-law. Under the Ontario Evidence Act, Section 34, where a record is microfilmed in the course of an established practice to keep a permanent record and then destroyed, delivered to another person or lost, a print from the microfilm is admissible in evidence in all cases for which the original record would have been admissible. Canada Customs and Revenue Agency has formally recognized the Canadian General Standards Board's National Standard for Microfilm and Electronic Images as Documentary Evidence for the purposes of books and records of account.

The Ontario Evidence Act was amended by Bill 11 (Red Tape Reduction Act, 1999, S.O. 1999, Chapter 12) on December 22, 1999, to authorize the admission of electronic records as evidence, thereby enabling municipal records to be retained using document imaging technology, subject to certain conditions. Parallel amendments to the Canada Evidence Act were made by Bill C-6 (Personal Information Protection and Electronic Documents Act, S.C. 2000, Chapter 5) on April 13, 2000. Neither of these amendments has been proclaimed in force, and a report regarding the retention of imaged records will be brought forward at a later date.

#### Comments:

Not all records created by the City must be retained on a long-term basis to document its business functions. It is in the best interests of the City to address the effective management of recorded information, regardless of media, in order to minimize its cost to the municipality, and in particular the strain upon the resources of the City's records centres and computer systems.

Written electronic messages (e-mail) have increased in importance as an accepted means for communicating recommendations, business decisions and information. Significant numbers of messages are sent and received by employees while performing their municipal responsibilities, which has resulted in the creation of a large quantity of electronic and paper-based working files for reference purposes. Back-up tapes for electronic records are also maintained for emergency situations or to restore deleted files, and the voice messaging system accumulates recordings that are not intended to be maintained as corporate records. The demand for storage space becomes a major burden upon office space, records centres, computer and voice mail systems, and tape vaults.

Records of a transitory nature, such as notifications of meetings or widely distributed corporate messages, possess very limited operational value and should not be retained longer than necessary for immediate reference. Transitory records are documents created for convenience of reference, and they play little or no role in documenting corporate business transactions. Attachment No. 1 provides a definition of transitory records as part of a draft by-law to authorize the destruction or deletion of transitory records. In the draft by-law, certain electronic and paper-based records, and all voice mail messages, are defined as transitory. These definitions are consistent with the Archives of Ontario's Guidelines for the Retention and Disposal of Recorded Information. Transitory records in an electronic format should be deleted to reduce the burden on the City's computer systems, and paper-based documents should be destroyed to reduce storage space requirements.

It will be the responsibility of the individual employee to determine if a record is transitory in nature, or if it needs to be retained to support business operations in accordance with the City's

records retention schedules. The City Clerk's Division will prepare and distribute information to assist staff in making this determination, and it will provide training sessions for employees to ensure that this decision-making process is clearly understood. The Information and Technology Division, in consultation with the City Clerk's Division, is also developing policies and procedures for the City's e-mail system, which will include information on the retention and disposal of electronic messages. These guidelines are being prepared in connection with the City's 90-Day E-mail Expiry Policy, which came into effect on May 21, 2000. Messages lacking business value will be considered transitory records, and will be governed by the retention period set out in this report.

City departments routinely distribute and maintain duplicate copies of original records for immediate reference purposes. Duplicate records are usually extra photocopies or printed copies of letters, memoranda, and reports. The former municipalities' retention by-laws provided inconsistent retention periods for duplicate records, which has imposed a significant storage burden upon City offices and records centres. As copies continue to be distributed and filed in the offices of City departments, this burden will increase.

Provisions in the existing Municipal Act and Evidence Act clearly provide the authority to destroy paper records where a microfilm copy exists. The microfilm copy is deemed to be the original for court purposes. The Canadian General Standards Board's National Standard for Microfilm and Electronic Images as Documentary Evidence states that the photographic document provisions in the Evidence Act require affidavit proof that the source record was disposed of before a microfilm copy will be accepted as evidence in court.

Records such as building permit applications and architectural drawings were microfilmed by the former municipalities as part of an established records management practice, but there has been an inconsistent approach to the destruction of the paper-based records. The retention of these records in some of the City's records centres has resulted in space shortages, which could be reduced if the original paper records were destroyed. In 1992, the former City of Toronto enacted By-law 286-92, amending the City's Records Retention By-law so that the microfilm copy of construction and demolition permit application files, including accompanying application plans, replaced the paper copy as the City's corporate record, subject to archival appraisal. The attached draft by-law will allow the City to extend this approach to similar records in other records centres, thereby reducing the burden upon space.

Prior to destruction, these paper-based records will be reviewed by the City's Archival Services program to make a selection to be retained as evidence of evolving record-keeping processes, and for possible use in archival exhibits. The selected records would be transferred to the City of Toronto Archives under the authority of Clause No. 4 of Report No. 2 of The Administration Committee adopted by Council at its meeting of July 27, 28, 29 and 30, 1999 (Acquisition Policy for City Archives). The remainder of the original records would be destroyed, in accordance with the draft by-law attached to this report.

### Conclusions:

City employees are creating significant numbers of paper-based and electronic working files, back-up tapes and duplicate records for conducting corporate business. It is necessary to put in

place a by-law establishing authorization to dispose of transitory and duplicate records to minimize the burden on the City's storage space and computer systems. In order to achieve this result, the report recommends adoption of the attached by-law. Staff with the City's Audit Services, Information and Technology Division, and Legal Division were consulted during the preparation of this report, and they concur with its recommendations.

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List of Attachments:

Attachment No. 1 – Draft By-law to amend By-law No. 780-1999, respecting the destruction of certain computer data records, to establish records retention periods for transitory and duplicate records.

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Attachment No. 1  
City of Toronto By-law  
Draft By-law

To amend By-law No. 780-1999, respecting the destruction of certain computer data records, to establish records retention periods for transitory and duplicate records.

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 July 4, 5 and 6, 2000 requested the introduction of a by-law to amend By-law No. 780-1999, in order to define, establish criteria and enable the destruction of transitory and duplicate records created or received by employees of the City of Toronto;

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

1. The title of By-law No. 780-1999 is repealed and the following substituted:

“To establish records retention periods for transitory and duplicate records, and to authorize the destruction of certain computer data despite the former municipalities' records retention by-laws.”

2. Section 1 of the By-law No. 780-1999 is amended as follows:

- (a) by adding the following definitions in alphabetical order:

“archival review period” means the period of time during which a qualified Archivist working under the direction of the Manager, Archival Services conducts a systematic appraisal of records having potential archival value.

“archival value” means the evidential and informational value of records which are determined during appraisal, and justify their preservation as archives.

“City” means the City of Toronto.

“former municipalities’ by-laws” means records retention by-laws of the former municipalities:

- (1) former Borough of East York By-law No. 26-91, being a by-law “To establish schedules of retention periods for Municipal Records,” as amended;
- (2) former City of Etobicoke Municipal Code Chapter 28, Document Retention;
- (3) former Municipality of Metropolitan Toronto By-law No. 2561, being a by-law “To establish schedules of retention periods for records of the Municipality of Metropolitan Toronto,” as amended;
- (4) former Municipality of Metropolitan Toronto By-law 2696, being a by-law “To establish schedules of retention for local boards of The Municipality of Metropolitan Toronto”;
- (5) former City of North York By-law No. 27502, being a by-law “To establish a schedule of retention periods for records in the possession of the City of North York and the Hydro-Electric Commission of the City of North York”;
- (6) former City of Scarborough By-law No. 24987, being a by-law “To establish a schedule of retention periods for records in the possession of the City of Scarborough”;
- (7) former City of Toronto Municipal Code, Chapter 97, Records Retention; and
- (8) former City of York By-law No. 2371-76, being a by-law “To establish schedules of retention periods for municipal records,” as amended.

“record” means any unit of information, however recorded, whether in printed form, on film, by electronic means or otherwise, and includes correspondence, memoranda, plans, maps, drawings, graphic works, photographs, film, microfilm, sound recordings, videotapes, machine readable records, and any other

documentary material, regardless of physical form or characteristics, made or received in the course of the conduct of the affairs of the City, and retained by the City for the purposes of future reference.

“transitory record” means a record that is:

- (a) retained solely for convenience of reference;
- (b) required solely for the completion of a routine action, or the preparation of another record;
- (c) of insignificant or no value in documenting City business transactions;
- (d) not an integral part of a City record;
- (e) not filed regularly with records or filing systems;
- (f) not required to meet statutory obligations or to sustain administrative or operational functions;
- (g) about social events that are not special City events;
- (h) not related to City business; or
- (i) a voice mail message.

(b) by amending clause (b) of the definition of “orphan data” as follows:

- (i) by deleting “employee of the City of Toronto” and substituting “City employee”; and

(2) by deleting the period after “relates” and substituting a semicolon.

3. Section 2 of By-law No. 780-1999 is amended by deleting “of Toronto”.

4. By-law No. 780-1999 is amended by adding the following sections:

4.1. (1) Despite the former municipalities’ by-laws and subject to the Municipal Freedom of Information and Protection of Privacy Act, this section applies to the retention of all transitory and duplicate records created or received by City employees.

(2) A transitory record may be deleted or otherwise destroyed on the same day that the record was created or received.

(3) A copy of a record may be destroyed at any time if the original is subject to a retention period established by one of the former municipalities’ by-laws.

(4) A micrographic copy of a record shall be deemed to be the original for the purposes of the former municipalities' by-laws, and the records that have been microfilmed may be destroyed at any time, subject to section 4.2.

(5) If a record is not a transitory record or a copy of a record, the record shall be retained or caused to be retained by the City employee for the applicable retention period for that type of record, as prescribed by one of the former municipalities' by-laws.

4.2 (1) At the end of the archival review period, an original record that has been microfilmed:

(a) shall be retained by the City Archives if it possesses archival value; or

(b) shall be destroyed if it does not possess archival value, and if there is no further business or legal requirement to retain the record.

(2) The archival review period shall be deemed to end on the date that the Director, Corporate Records Systems and City Archivist certifies that the archival review is complete and the record has no archival value.

5. In the case of a conflict between this by-law and the records retention provisions of any by-law, listed in the definition of "former municipalities' by-laws" in section 1, this by-law prevails.
6. This by-law comes into force upon approval by the City Auditor.

ENACTED AND PASSED this 6<sup>th</sup> of July, A.D. 2000.