

Amendments to Municipal Code Chapter 217, Records, City (Corporate)

Date: March 8, 2022

To: General Government and Licensing Committee

From: City Clerk

Wards: All

SUMMARY

The purpose of this report is to amend the City's records retention by-law support of the City's transition to digital recordkeeping by establishing a new records retention schedule specifically for email, which would prevail over any other retention schedule

RECOMMENDATIONS

The City Clerk recommends that:

1. City Council amend Municipal Code Chapter 217, Records, Corporate (City) by establishing a new records retention schedule for email set out in Attachment 1.

FINANCIAL IMPACT

There are no financial implications resulting from the adoption of the recommendation in this report.

DECISION HISTORY

Not applicable.

COMMENTS

We have an obligation to manage City records and information.

City records and information must be appropriately safeguarded, managed, maintained, disclosed (with minimal exceptions), and kept for as long as required. The City of Toronto Act, the Municipal Freedom of Information and Protection of Privacy Act, the Municipal Code, as well as City standards and policies, establish these requirements and guiding principles.

The length of time a City record is required to be kept is known as the "retention period". The retention period is set out under the City's Records Retention Schedule, which forms Schedule A to Municipal Code Chapter 217. Under Section 201 of the City of Toronto Act, 2006, a record of the City may be destroyed if a retention period has been established and the retention period has expired or the record is a copy of the original record. Chapter 217, Records, Corporate (City), provides the legislative basis on which the retention periods for City records are authorized and Schedule A indicates the retention period for each records class.

We need to establish a records retention schedule for email.

The City's email systems are not intended to be used as a repository for records. City Officials remain responsible for regularly exporting and filing any emails that constitute a City record used for business purposes (including attachments) so they are retained in accordance with the appropriate retention schedule. This means when an email is deleted from the email system, the record is still available for the duration of its retention period. The recommended email retention schedule is supported by policies and guidance for staff in how to save, file and protect email.

We have records retention schedules in place that cover business records that may be in email format; however, there is currently no retention schedule that addresses email specifically. The retention and destruction of any email, like all other City records, needs to be managed.

We reviewed practices in other jurisdictions, and consulted with Legal Services, Technology Services Division and the Office of the Chief Information Security Officer, in developing an appropriate retention period for email.

The proposed amendment provides for the retention of email (including received, sent, archived and user-deleted messages) as follows:

- City Officials at the level of Manager and below: 7 years
- City Officials above the level of Manager: 10 years after the employee has left their appointed role.

The longer timelines for senior officials ensures that emails can be available for Freedom of Information requests, audits or investigations that may occur several years after an event.

If the proposed retention schedule is adopted, the Technology Services Division would delete all sent, received, archived, and user-deleted email after the prescribed amount

of time. Business records will be retained in a separate repository. This process enables management of email volume and service levels, while decreasing the risks associated with keeping information for longer than required.

The proposed schedule was reviewed and approved by the Corporate Records Retention Committee, in accordance with Municipal Code, Chapter 217, at its meeting on March 3, 2022. Based on statutory requirements, the amendments must be approved by City Council.

The proposed retention period balances accountability, transparency and access to information, with records management requirements.

This retention period balances principles of accountability, transparency and access to information by the public or for investigation, as well as legal requirements governing how long information must be kept, while keeping in mind storage, service, and privacy and security of information.

The proposed retention schedule and approach to managing email will continue to be monitored and evaluated by the City Clerk to ensure they meet organizational needs.

The current practice of keeping all emails indefinitely presents risks.

When the City migrated from its prior email system (GroupWise) to Outlook in 2015, a decision was made to temporarily retain all Outlook emails moving forward – including those deleted by users – until a retention and deletion process was in place. The development of this process was delayed and keeping email indefinitely going forward is not viable due to risks, including:

- Potential legal liability and/or adverse findings arising from the inconsistent treatment of retention schedules (e.g. business records contained in emails are retained past specified retention periods, while business records found outside of email are not);
- Unreliable record holdings (emails are retained longer than most other documents of the City, although emails are rarely the official copy of record);
- Risk of intentional or unintentional breach or disclosure of e-mails that contain confidential, personal information or personal health information;
- Impacts to service continuity (e.g. slowed performance, service interruptions, etc.).

There is no change to the treatment of Council Members' records

The current approach to the management of Members of Council (and their staff) emails remains in place. Emails that form constituency and political records, like other information created or collected in Members of Council offices concerning personal or constituency matters, would remain the property of their office and not a record keeping obligation of the City.

In keeping with the existing policy and contractual arrangements, such emails would be automatically archived after 180 days and accessed by Members of Council if needed and would continue to be available at the end of their term if requested. Emails relating

to their specific role as a legislative officer as established by legislation
(Councillor_lastname@toronto.ca) would continue to be the responsibility of the City.

Accountability Officers would retain authority to manage their own e-mails independently.

The new retention schedule for City Officials email does not apply to Accountability Officers (or members off their offices), and Accountability Officers retain authority to manage their email independently.

CONTACT

Kristie Pratt, Deputy City Clerk, Corporate Information Management Services, 416-392-9683, Kristie.Pratt@toronto.ca

SIGNATURE

City Clerk

ATTACHMENTS

Attachment 1 - Proposed Amendment to Toronto Municipal Chapter 217, Records, Corporate (City), Schedule A – Records Retention Schedule