

ARMC Circular #: 2016-001

Topic: Documenting Concurrence Conditions

(This Circular rescinds Circular 2010-002)

Background

As outlined in [Developing Records Retention and Disposition Schedules](#), concurrence conditions must be considered when determining the disposition of records. A concurrence condition is a condition that must be checked before the records series can go for final disposition. This is a check to ensure that the records are no longer needed (for example, ensuring that the records are not legally required for litigation or Freedom of Information and Protection of Privacy (FOIP) purposes) and in some cases it may provide instructions on how the final disposition should be handled (for example, specific instructions for how to dispose of electronic media).

Issue

The *Sedona Canada Principles Addressing Electronic Discovery*¹ provides principles that address the disclosure and discovery of electronically stored information in Canada. One of the principles states “as soon as litigation is reasonably anticipated, parties must consider their obligation to take reasonable and good faith steps to preserve potentially relevant electronically stored information”.

The current standard for concurrence conditions for records series that are at high risk for litigation is “Providing no outstanding litigation”. This suggests that ministries do not need to preserve potentially relevant records until the litigation has been formally served. Based on the Sedona principles, as soon as litigation is reasonably anticipated, ministries must consider their obligation to take reasonable steps to preserve potentially relevant records.

FOIP requests must also be considered. As outlined in the *Freedom of Information and Privacy Act*, records must be kept if they are responsive to an active FOIP request.

ARMC Direction

All records series on new schedules will have the following concurrence condition:

¹ See: <http://www.thesedonaconference.org/publications.html>

- Final Disposition = Destroy “Providing no outstanding litigation or litigation that is reasonably anticipated and providing no outstanding FOIP requests.”
- Final Disposition = Archives “Providing no outstanding FOIP requests.”

This must also be applied to items when approved schedules are being amended.

For schedules already approved, this concurrence condition will be assumed for each item.

Further Information

For further details or clarification of the contents of this circular, please contact the ARMC Secretary at sa.informationmanagement@gov.ab.ca or (780) 427-3884.

Original Signed by:

Cathryn Landreth

Chair

April 20, 2016

Date