

Investigation into Records Management Practices at T02015



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

BACKGROUND

2015 Pan American and Parapan American Games

The Pan American and Parapan American Games (the Games) are the world's third largest international multi-sport games. Toronto was selected as the host city for the 2015 Games, which were held in July and August 2015. Over 6,000 athletes participated in 36 sports and almost 400 events throughout the Greater Toronto and Golden Horseshoe areas.

The Government of Canada, the Province of Ontario, the City of Toronto and the Canadian Olympic and Paralympic Committees had overall responsibility for the Games. The Pan/Parapan American Games Secretariat of the Ministry of Tourism, Culture and Sport was responsible for overseeing Ontario's financial commitments to the Games. In turn, the Toronto Organizing Committee for the 2015 Pan American and Parapan American Games (TO2015) was responsible for organizing, planning, promoting, financing and staging the Games. TO2015's mandate was also to provide and assist in the preparation of facilities required for the Games, and to leave a tangible legacy including facilities and funding for amateur sport for future generations.

Auditor General's Report

On September 30, 2015, the Legislative Assembly's Standing Committee on Public Accounts passed a motion requesting that the Office of the Auditor General of Ontario (the Auditor General) conduct a value-for-money audit of the Games. The Standing Committee requested that the audit include an evaluation of whether the Games came in on time and on budget, an evaluation of the changes in the overall budget projections and Games venue completion projections, and a review of the concerns raised in the 2009 PriceWaterhouseCoopers report on budgetary risks.

The Auditor General issued a *Special Report on the 2015 Pan Am/Parapan Am Games* (the Report) on June 8, 2016, which included findings relating to the questions posed by the Standing Committee. Of particular significance to my investigation, the Auditor General included the following paragraph in the Report under the heading **Scope Limitation**:

We started planning for the audit in October 2015, immediately after the request from the [Standing] Committee. However, TO2015's wind-up process was already under way by then, and most of the staff involved in the delivery of the Games had already left. At the time of our audit, only five people were on contract with TO2015, including the chief executive officer and the chief financial officer. *We were unable to obtain answers to certain questions and could not obtain some documents we requested. We also were not able to obtain many computer hard drives that were disposed of by TO2015, including the CEO's.* [italics added]

The Office of the Auditor General provided my office with the following definition of a “Scope Limitation”:

A Scope Limitation is a restriction on an audit that is caused by the client, issues beyond the control of the client or other events that do not enable the auditor to complete all aspects of his/her audit procedures.

We were also referred to examples given in the *Canadian Standards on Assurance Engagements*¹ of when a scope limitation may arise, including when documentation the auditor considers to be necessary to inspect may have been accidentally destroyed.²

Response to the Report

The findings in the Report were the subject of discussions in the Legislative Assembly and in the media. In addition to questions about cost overruns at the Games and the payment of completion bonuses to senior staff at TO2015, concerns were raised about the impact of the **Scope Limitation**, particularly the Auditor General’s inability to obtain answers to certain questions, as well as documents and computer hard drives from TO2015.

I also received a letter from an MPP in which he raised concerns regarding the difficulty encountered by the Auditor General in accessing records while conducting the audit of the Games, and in particular, he pointed to the **Scope Limitation**. He questioned whether the actions of TO2015 staff met the standards set out in both the *Freedom of Information and Protection of Privacy Act* (FIPPA) and the *Archives and Recordkeeping Act* (ARA) and requested that my office investigate.

I reviewed the Report, giving particular attention to the observations contained in the **Scope Limitation** section. In light of these comments, and the questions raised publicly by this section, I initiated an investigation.

ISSUES

The key issues in this investigation are:

1. Did TO2015 have appropriate recordkeeping and record retention policies and practices in place?
2. Did TO2015 staff destroy or withhold documents with the intention of avoiding accountability or misleading the Office of the Auditor General in the course of its audit?

1 This *Canadian Standards on Assurance Engagements* is effective for direct engagements where the assurance report is dated on or after June 30, 2017.

2 The Auditor General’s office also referred us to sections 10 and 12 of the *Auditor General Act* as context for the Scope Limitation in the Report.

THE INVESTIGATIVE PROCESS

As part of this investigation, my office conducted interviews with representatives from: the Ministry of Tourism, Culture and Sport; Archives Ontario; the Office of the Auditor General; and TO2015 (Saad Rafi, Chief Executive Officer and Barbara Anderson, Chief Financial Officer).

My staff was provided with copies of all relevant documents that we requested from the ministry and from TO2015, including: agreements, records retention schedules, records management policies and procedures, staff training materials, emails and document lists. These documents were reviewed as part of my investigation.

During our investigation, the Auditor General's office also referred my office to sections 19 (audit working papers) and 27.1 (duty of confidentiality imposed on the Auditor General) of the *Auditor General Act*, which state:

19. Audit working papers of the Office of the Auditor General shall not be laid before the Assembly or any committee of the Assembly.

27.1 (1) The Auditor General, the Deputy Auditor General, the Advertising Commissioner and each person employed in the Office of the Auditor General or appointed to assist the Auditor General for a limited period of time or in respect of a particular matter shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her employment or duties under this Act.

Having regard to these sections, the Office of the Auditor General requested that we respect the confidentiality of her process, particularly the working papers related to the audit. Accordingly, we were limited in the information we asked for and received from her office. I will also respect her position by limiting the level of detail included in this report.

DISCUSSION

1. Did TO2015 have appropriate recordkeeping and record retention policies and practices in place?

The Agreements

TO2015's legal obligations with respect to records management are set out in two agreements: the *2015 Pan Parapan American Games Multi Party Agreement* dated November 5, 2009 and the *Ontario Transfer Payment Agreement* dated January 27, 2010.

The *Ontario Transfer Payment Agreement* (TPA) is the primary document relating to records management. It includes numerous provisions pertaining to the management of recorded

information, as well as requirements to ensure that staff of TO2015 follow processes consistent with FIPPA and the ARA.

Included in the TPA is a requirement placed on the Chief Executive Officer (CEO) of TO2015 to ensure the “on-going viability, integrity, preservation and security” of all recorded information created or acquired by the organization. The TPA specifies that this includes all electronic records such as emails and records stored on personal computers and shared drives.

Article 10.1 of the TPA establishes a requirement for a management position with corporate responsibility for the management of recorded information. The duties of that position are then enumerated in Article 10.3 as follows:

- (a) Ensure that staff follows appropriately defined processes of retention and disposal consistent with the *Freedom of Information and Protection of Privacy Act*, the Management Board Directive on Management of Recorded Information, the *Archives and Recordkeeping Act* and other legislation;
- (b) Ensure that staff create full, accurate and reliable records that document and support significant business transactions, decision, events, policies and programs;
- (c) Hold staff accountable for managing the recorded information that is under their control and custody;
- (d) Ensure that recorded information identified during retention scheduling as having permanent value is safeguarded so as to protect its ongoing accessibility and integrity and ensure that information identified as not having permanent value is disposed of in a timely manner; and
- (e) Establish responsibilities in consultation with the Archivist of Ontario for identifying and preserving records of permanent value and ensure that, if and where required by the Archivist of Ontario, these records are transferred to the Archives of Ontario at the end of their scheduled operational use.

Article 10.4 of the TPA contains a provision that TO2015 will transfer ownership of its records to the province at the end of the agreement. Finally, Article 13 sets out the following acknowledgement:

Freedom of Information and Protection of Privacy

FIPPA. The Recipient acknowledges that both it and Ontario are bound by the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time, and that any information provided to Ontario in connection with the Project or otherwise in connection with the Agreement is subject to disclosure in accordance with that Act.

In addition to the TPA, Article 15.1 of the *Multi Party Agreement* (MPA) required TO2015 to collect and preserve records of archival value:

Archival Material

All material of archival value produced by or for HostCo for which it holds ownership rights will be collected and organized by HostCo, and preserved and maintained by Ontario in accordance with the Archives and Recordkeeping Act, 2006, S.O. 2006 1990, c.34, Sched. A.

During our interview with representatives of the Ministry of Tourism, Culture and Sport, they explained that, since the province was to provide a significant financial contribution to TO2015, section 10 of the TPA was included to ensure that recordkeeping and record retention requirements were in place.

Having reviewed the TPA and the MPA, it is clear that the importance of records management and retention responsibilities was identified as an issue from the inception of TO2015 and was addressed in written agreements.

Approved Record Series by Archives Ontario

Archives Ontario (Archives) provided my office with the 26 approved record series pertaining to TO2015's records retention schedules, as well as provincial recordkeeping policies. During our investigation, Archives staff explained the development of the record retention schedules and the application of the policies to staff working at TO2015, as well Archives' role. This role was to provide advice and assistance to TO2015 in creating appropriate record retention schedules and to review the schedules to ensure that they were compliant with ARA requirements. Archives also provided TO2015 with guidance in determining which records were business records as compared to transitory records as well as in deciding the ultimate disposition of records.

Archives also worked with TO2015 to ensure that electronic records were preserved in a format that was easily transferrable to them. Archives was aware that staff at TO2015 were asked to maintain their business records in SharePoint, a cloud-based system, and their focus was therefore on the content of the records rather than the format. Archives staff indicated that they have no reason to believe that TO2015 has not complied with the requirements set out in the record series. They noted that there is nothing in the schedules that requires TO2015 to keep records in a particular format. Rather, many of the schedules specify or contemplate the use of electronic and cloud-based formats.

TO2015's Records Management Policies

In addition to its records retention schedules, TO2015 provided my office with the following documents:

- Records Management Policy
- Procedure for Transitory Records
- Document Management for Migration to SharePoint
- Email Policy

- Staff training and presentation materials:
 - Records Management Overview
 - SharePoint training – personal vs business records
 - File Naming Convention Best Practices
- Reminder emails to staff about TO2015’s records management policies and procedures

TO2015 finalized its *Records Management Policy* (the Policy) in April 2013 in accordance with the requirements of Article 10 of the TPA and Article 15 of the MPA. The Policy states that it is designed to assist TO2015 in complying with FIPPA and the ARA. The Policy includes definitions of “business record” and “transitory record”, and explains its purpose as follows:

The purpose of this policy is to define and establish requirements for the creation and management of authentic, reliable, enduring and useable business records in support of business functions and activities of [TO2015] and in accordance with TO2015 obligations to transfer authentic, reliable, enduring and useable records to the custody of the Province of Ontario upon completion of the TO2015 Pan/Parapan American Games.

Of particular importance to this investigation are the following sections of the Policy pertaining to the storage and management of business records:

8. ...TO2015 implements SharePoint as Enterprise Content Management system and organization-wide official repository for unstructured data. Once completed, all TO2015 electronic business records shall be filed and stored in SharePoint...
9. Business records shall not be stored on the hard drive of an individual’s computer, on portable devices or media, on an individual’s personal network drive or electronic workspace, or in a personal email account. In the case of hardcopy records, it is recommended to use designated filing cabinets for business records rather than individual’s physical file storage.

In addition to the Policy, TO2015 developed and implemented a *Procedure for Transitory Records* (the Procedure), which is meant to assist staff in the identification and disposition of transitory and other non-official records. As defined in the Procedure, transitory records “... are records of temporary usefulness in any format or medium, created or received by TO2015 in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record. Transitory records are of such short-term value that they are not required to meet legal or fiscal obligations...”.

The Procedure indicates that, “For the purpose of this Procedure, non-official records are transitory records, private records, reference materials, published works and blank forms.” The Procedure also provides that reference materials belonging to other organizations kept by TO2015 for general reference can be disposed of when no longer required by TO2015 functional

areas. Finally, it includes an appendix which provides a list of categories and types of transitory records, as well as exclusions.

Staff Training

The Records Manager at TO2015 provided presentations to staff outlining their obligations and records management requirements, including the creation, maintenance, classification, storage and management of business records. During this presentation, staff were reminded that business records were not to be stored:

- On the hard drive of an individual's computer
- On non-authorized portable devices or media
- On an individual's personal network drive or electronic workspace
- In a personal email account

Meetings were also held in November and December 2013 with the functional areas to discuss the organization's migration to SharePoint and to educate staff on moving all working files over to that location.

In addition to meetings and presentations, there were numerous email "blasts" sent from senior management to all TO2015 staff reminding them of the records management policies and procedures. On May 6, 2014, the Chief Financial Officer (CFO) sent an email to all staff attaching the key policies and procedures, and reminding them of TO2015's obligations relating to business records created within the organization.

Subsequent emails, marked "High Importance", were sent from the Senior Director of Finance and Planning to all TO2015 staff on March 9, April 30, June 1, July 30, and August 27, 2015. In her March and April emails, the Director reiterated the importance of 100% compliance with the policies, noting:

Records Management Policy and Email Policy: In addition, as everyone is slowly starting to move out to Venues/Facilities, we need ALL staff to ensure that they are filing their records, according to our Records Management Policy, and retaining emails appropriately. In short, we need to be sure all of your files are within your function folders on SharePoint, and not on hard drives and desktops...

As staff began moving out of offices and transitioning to venues and facilities for the Games, the Director sent additional emails in June and July reminding staff about the records management policies and procedures, including:

... Here is a list of instructions on what we require you to do with your records/documents before you go, so that we ensure everything is in the right place.

Electronic Records:

- Please ensure all files that are saved on your **Desktop, One Drive, Hard drive and any USB keys** are saved in your [Functional Area's] SharePoint site, under the appropriate folder.
- Please remove any duplicates, and just save the final version of the working document (with the exception of legal documents/contracts).
- Reference files – if you have files from previous games/sport associations or publications from external sources, these are not required to be saved, as they are reference materials only. They should be deleted or shredded.

...

Paper Files:

- I do not anticipate that many functions will have paper records to save. Most records are created electronically, and should be on SharePoint. We do **not** require a second set to be saved in hard copy.

Finally, once the Games had finished and TO2015 began winding down, the Director sent another email to all staff at the end of August with the same instructions as outlined in the previous emails.

It was also explained to us during our interviews with TO2015 that a decision had been made to lease computers as this was the most cost-effective solution. Accordingly, prior to a staff member's departure, it was expected that all relevant information would be uploaded from their hard drives into SharePoint in accordance with the policies and procedures discussed above. On a staff member's departure, his or her hard drive was "wiped" and returned to the vendor. Throughout our interviews with Archives and TO2015, it was repeated that their focus was on preserving the content of the records rather than the format of the records, and that they had no concerns with the practice of uploading and maintaining business records in SharePoint.

Analysis

From our review of the documents provided and interviews with the relevant parties, it is clear that the management at TO2015 made significant efforts to develop appropriate recordkeeping and record retention policies and procedures. Extensive efforts were made to ensure that staff were not only made aware of these policies and procedures, but were reminded repeatedly about the importance of complying with them.³ Particularly as the Games were winding down, there were reminders and clear directions to staff that all business records were to be uploaded to SharePoint. The Policy clearly stated that records were *not* to be stored on the hard drive of a staff member's computer. The actions of staff in uploading information to the cloud is consistent with the policies and directives that were put in place by TO2015. As long

³ For example, even employment agreements of TO2015 management included an explicit duty to comply with the policies and procedures established by TO2015.

as business records were uploaded, the wiping of computer hard drives on a staff member's departure was consistent with the ARA and FIPPA.

To be clear, the organization's recordkeeping and record retention responsibilities did not include maintaining and storing all hard drives indefinitely. It is clear from my review that TO2015 took reasonable steps to ensure that staff were aware of their records management responsibilities and that business records were to be uploaded to SharePoint as required. I also note that the Auditor General's **Scope Limitation** did not take issue with this practice.

Based upon the evidence that has been provided, I conclude that TO2015 had appropriate recordkeeping and record retention policies and practices in place, consistent with the requirements of the ARA and FIPPA.

2. Did TO2015 staff destroy or withhold documents with the intention of avoiding accountability or misleading the Office of the Auditor General in the course of its audit?

As noted, the **Scope Limitation** contained in the Auditor General's Report on TO2015 stated that many computer hard drives were unavailable to her staff. In addition to the hard drives, the Report raised concerns about some unspecified documents that the Office of the Auditor General was unable to obtain from TO2015.

During the course of this investigation, in addition to interviewing representatives of TO2015, my staff met with members of the Auditor General's office. I have also had discussions directly with the Auditor General. The Auditor General has made it clear to me that the unavailability of the hard drives and documents did not impede her ability to complete the audit. Further, she has no reason to believe that TO2015 staff intentionally destroyed or withheld hard drives or other documents to avoid accountability or to mislead her in the course of her audit.

My interviews and discussions, along with a review of the relevant documentation, lead me to the same conclusions as the Auditor General. I am satisfied that TO2015 staff did not intentionally destroy or withhold information to avoid accountability or to mislead the Office of the Auditor General. I also accept that the unavailability of the hard drives and documents referred to in the **Scope Limitation** did not impede the Auditor General in completing her audit.

I have decided not to provide greater detail of our investigation into this issue for two reasons. There is agreement between the Auditor General and me on these two conclusions. Equally importantly, I am very concerned about respecting the Auditor General's position on the confidentiality of her investigations, particularly the working papers related to the audit. Any further discussion of this issue would necessitate a more detailed description of communications between the Auditor General's staff and TO2015 and an inquiry into matters contained in the working papers.

CONCLUSION

I decided to conduct this investigation on reading the **Scope Limitation** contained in the Auditor General's *Special Report on the 2015 Pan Am/Parapan Am Games*. The **Scope Limitation** led to speculation that staff of TO2015 had failed to cooperate fully with the audit of the Games by intentionally wiping hard drives and failing to provide all relevant documents.

My investigation concludes that, from its inception, TO2015 recognized its records management responsibilities and the need to preserve business records. Reasonable steps were taken to implement recordkeeping and record retention policies and practices and to ensure that the requirements of the *Freedom of Information and Protection of Privacy Act* and the *Archives and Recordkeeping Act* were met.

I have further concluded that TO2015 did not intentionally destroy or withhold hard drives to mislead the Auditor General or to avoid accountability. Similarly, although some documents may not have been available to the Auditor General, this was not as a result of any attempt by TO2015 to mislead or hinder the work of her office.



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