



BY-LAW NO. 2014-041

A BY-LAW OF THE CORPORATION OF THE TOWN OF BRACEBRIDGE TO PROVIDE DELEGATED AUTHORITY TO THE DIRECTOR OF CORPORATE SERVICES/CLERK FOR ESTABLISHING AND AMENDING RETENTION PERIODS FOR THE RECORDS OF THE CORPORATION OF THE TOWN OF BRACEBRIDGE AND TO REPEAL BY-LAW 2010-010

WHEREAS Section 8 of the *Municipal Act, S.O. 2001, c. 25*, as amended (hereinafter referred to as the "Municipal Act") provides that the powers of a municipality under the Municipal Act or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS Section 9 of the Municipal Act provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act or any other Act;

AND WHEREAS Section 11 of the Municipal Act provides that a lower-tier municipality may pass by-laws respecting matters within its spheres of jurisdiction;

WHEREAS Section 255 (3) of the Municipal Act as amended, provides that a municipality may, subject to the approval of the municipal auditor, establish retention periods during which the records of the municipality and local boards of the municipality must be retained and preserved in accordance with Section 254 thereof;

AND WHEREAS the Council of the Corporation of the Town of Bracebridge passed By-law 2010-010 being a by-law to provide a schedule of retention periods for the records of The Corporation of the Town of Bracebridge;

AND WHEREAS by motion 14-GC-148, the Council of The Corporation of the Town of Bracebridge deems it expedient to repeal By-law 2010-010 and adopt a new Records Retention By-law that provides delegated authority for establishing and amending retention periods for the records of The Corporation of the Town of Bracebridge to the Clerk;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF BRACEBRIDGE ENACTS AS FOLLOWS:

1. DEFINITIONS

- 1.1. **Auditor** means the person or firm appointed by the Council of the Town of Bracebridge from time to time to perform the annual audit of the records of the Town of Bracebridge;
- 1.2. **Classification** (as in records classification) means the systematic identification and arrangement of records into categories according to logically structured conventions, methods, and procedural rules, represented in a classification scheme;
- 1.3. **Clerk** means the Director of Corporate Services/Clerk or their designate(s);

- 1.4. **Destroy** means the process of eliminating or deleting data, documents and records so that the recorded information no longer exists. NOTE: See also the definition for “Expungement”;
- 1.5. **Disposition** with respect to records – means a range of processes, associated actions, implementation, retention, destruction, loss, or transfer of custody or ownership that are documented in Disposition Notice or another instrument;
- 1.6. **Electronic Record** means records that exist in an electronic format only (may include e-mail or electronically created records or electronic records contained in other electronic databases);
- 1.7. **Expungement** means a process to eliminate completely, to wipe out, to destroy, or to obliterate an electronic record NOTE: See also the definition for “Destroy”;
- 1.8. **Files** has the same meaning as “Records” and may be used inter-changeably;
- 1.9. **Medium/media** means the physical material which serves as a functional unit, in or on which information or data is normally recorded, in which information or data can be retained and carried, from which information or data can be retrieved, and which is nonvolatile in nature;
- 1.10. **Official Records** means recorded information in any format or medium that documents the Town’s business activities, rights, obligations or responsibilities or recorded information that was created, received, distributed or maintained by the Town in compliance with a legal obligation”;
- 1.11. **Orphan Data** means data that is not machine readable because the data exists with no identifiable computer application or system that can retrieve it, or the data is machine readable but does not have sufficient content, context or structure to render it understandable;
- 1.12. **Records** means any recorded information, however recorded, whether in printed form, on film, by electronic means or otherwise, including, but not limited to, correspondence, memoranda, plans, maps, drawings, graphic works, photographs, film, microfilm, microfiche, sound records, videotapes, LaserFiche, e-mail, machine readable records, and any other documentary material regardless of physical form or characteristics, and includes Official Records” and “Transitory Records”;
- 1.13. **Retention Period** means the period of time during which records must be kept by the Town before they may be disposed of;
- 1.14. **Retention Schedule** means a control document that describes the Town’s records at a series level, and indicates the length of time that each series shall be retained before its final disposition. It specifies those records to be preserved for their archival or legal values, and authorizes on a continuing basis the destruction of the remaining records after the lapse of a specified retention period or the occurrence of specified actions or events. Records retention schedules serve as the legal authorization for the disposal of the Town’s records;
- 1.15. **Town** means The Corporation of the Town of Bracebridge;
- 1.16. **Transitory Records** means records kept solely for convenience of reference and of limited value in documenting the planning or implementation of Town policy or programs, such as:

- 1.16.1. copies of miscellaneous notices or memoranda concerning routine administrative matters or other minor issues;
- 1.16.2. information copies of widely distributed materials, such as minutes, agendas and newsletters, unless the information copy has been annotated to reflect significant input or for other program purposes;
- 1.16.3. preliminary drafts of letters, memoranda or reports and other informal notes which do not represent significant steps in the preparation of a final document and which do not record decisions;
- 1.16.4. duplicate copies of documents in the same medium which are retained only for convenience or future distribution;
- 1.16.5. voice-mail messages;
- 1.16.6. e-mail messages and other communications that do not relate to Town business;
- 1.16.7. copies of publications, such as, published reports, administration manuals, telephone directories, catalogues, pamphlets or periodicals;
- 1.16.8. duplicate stocks of obsolete publications, pamphlets or blank forms; and;
- 1.16.9. unsolicited advertising materials, including brochures, company profiles and price lists.

2. RETENTION SCHEDULE

- 2.1. The authority for establishing and amending retention periods for the records of the Town shall be delegated to the Clerk subject to the approval of the Municipal Auditor of such retention periods;
- 2.2. The Clerk shall administer this by-law and shall ensure that the retention periods comply with all relevant legal requirements for record retention;
- 2.3. In determining the retention periods for any records, the Clerk shall consider, in consultation with other Town employees and Town solicitors, where appropriate:
 - 2.3.1. The operational nature of the records, including the period of time during which the Town uses the records to perform its functions;
 - 2.3.2. The legal nature of the records, including the period of time necessary to comply with statutory or regulatory requirements or requirements imposed by agreements, permits or similar documents, or to ensure that the records are available in case of investigation or litigation;
 - 2.3.3. The fiscal nature of the records, including the period of time necessary for audit or tax purposes; and
 - 2.3.4. The historical nature of the records, including the long-term value of the records for documenting past events or the origins and history of the Town.

3. ELECTRONIC RECORDS

- 3.1. The Clerk shall be authorized to create and maintain a list of corporate records that the Town manages and stores in electronic format only;
- 3.2. To determine if a record may be added to the list of electronic records, the Clerk shall consider the following:
 - 3.2.1. That the record originated electronically and was made in the normal and ordinary course of business (i.e. not a scan of an original document);
 - 3.2.2. That the record is protected throughout its entire lifecycle against unauthorized access/disclosure, possession, loss, theft, damage, change or destruction;
 - 3.2.3. The electronic record is in a secure location, controlled and protected through the use of appropriate techniques such as, but not limited to, computer system passwords, computer system security features, computer system failure (back-up), physical security controls and proper environmental conditions suited to various media; and
 - 3.2.4. The circumstances of making the record.
- 3.3. Where the Clerk has authorized a record to be stored in electronic format only, such record shall be deemed to be an original record.

4. EMPLOYEE RESPONSIBILITIES

- 4.1. All Town employees who create, work with or manage records shall:
 - 4.1.1. Comply with the retention periods;
 - 4.1.2. Ensure that official records in their custody or control are protected from inadvertent destruction or damage; and
 - 4.1.3. Ensure that transitory records in their custody or control are destroyed when they are no longer needed for reference.

5. CLERK

- 5.1. The Clerk shall:
 - 5.1.1. Develop and administer policies and establish and administer procedures for the Town's records management program;
 - 5.1.2. Periodically review and make recommendations with respect to this by-law;
 - 5.1.3. Ensure that official records are preserved and disposed of in accordance with the Retention Schedule; and
 - 5.1.4. Ensure that all Disposition Notices prepared pursuant to Subsection (6.1) of Section 6 of this by-law and all certificates of disposition prepared pursuant to Subsection (6.3.4) of Section 6 of this by-law are preserved.

6. DISPOSITION OF RECORDS

- 6.1. The Clerk shall notify the appropriate Town department head or manager in writing of the scheduled Disposition of records, (the "Disposition Notice") including a list of the records eligible for Disposition and the scheduled disposition date;
- 6.2. The Town department head or manager shall notify the Clerk in writing, before the scheduled disposition date, whether any of the records included in the Disposition Notice need to be retained past the scheduled disposition date, and the reason why such further retention is necessary;
- 6.3. Prior to destruction of an information database or Orphan Data, the following documents shall be required:
 - 6.3.1. a written description containing, to the extent that such information is available, the following:
 - 6.3.1.1. the title of the system;
 - 6.3.1.2. the identification of the business unit responsible for the creation or use of the data;
 - 6.3.1.3. a brief description of the system's purpose;
 - 6.3.1.4. where possible, a contents list of the information being destroyed;
 - 6.3.1.5. a brief description of any sub-systems, their purpose and relationship to the main system or other sub-systems; and
 - 6.3.1.6. the name of the technical contact person who is responsible for documenting the system.
 - 6.3.2. the written approval of the signing authority if necessary;
 - 6.3.3. where applicable to satisfy the provisions of the *Federal Income Tax Act*, *Excise Tax Act*, *Employment Insurance Act* or Canada Pension Plan, an exemption from the Minister of National Revenue from the requirement to keep records in an electronically readable format;
 - 6.3.4. after the destruction of an information database or Orphan Data, the signing authority must provide a destruction certificate to the Clerk to provide an audit trail.
- 6.4. Where appropriate and taking into account the principles governing the Disposition of Official Records, the Clerk shall re-schedule the Disposition of any records listed in the Disposition Notice referred to in Subsection (6.1) for up to one year later than the scheduled disposition date;
- 6.5. Re-scheduling the Disposition of any records beyond a one year period requires written notice from the Town department head or manager to the Clerk for each additional year;
- 6.6. If no notice is received under Subsection (6.2) of this by-law before the scheduled disposition date, the records shall be deemed to be authorized for Disposition by the Town department head or manager; and

- 6.7. When official records have been disposed of pursuant to this by-law, the Clerk shall obtain written confirmation of such disposition.

7. PRINCIPLES GOVERNING THE DESTRUCTION OF OFFICIAL RECORDS

- 7.1. The following principles shall govern the Destruction of official records:
- 7.1.1. When there are no further business or legal reasons for retaining official records, they shall be destroyed or expunged as appropriate;
 - 7.1.2. Official records pertaining to pending or actual investigation or litigation shall not be destroyed; and
 - 7.1.3. Official Records disposed of at the end of a retention period, as well as drafts and copies of records disposed of on a regular basis, shall be destroyed in a way that preserves the confidentiality of any information they contain.
- 7.2. Official records in the custody or control of the Town shall not be destroyed unless such records are older than the retention period set out in the Retention Schedule approved by the Clerk and have been identified in a Disposition Notice prepared pursuant to Subsection (6.1) of this by-law; and
- 7.3. Copies of official records may be destroyed at any time if the original records are being retained in accordance with the Retention Schedule.

8. APPROVAL OF BY-LAW

- 8.1. This by-law shall come into force and effect immediately upon passage.

9. CITING OF BY-LAW

- 9.1. This by-law may be cited as the "Records Retention By-law".

10. REPEAL

- 10.1. Upon the date of enactment of this by-law, By-law 2010-010 is hereby repealed.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 11th DAY OF JUNE 2014.

Mayor, Graydon Smith

Director of Corporate Services/Clerk,
Lori McDonald