

# PRIVACY TALK SPECIAL TOPIC – EMAIL AND INSTANT MESSAGING

## ARE INSTANT MESSAGES AND EMAILS SENT FROM OR RECEIVED IN PERSONAL EMAIL ACCOUNTS “RECORDS”?

Yes. The term “record” is defined in section 2(1) of *MFIPPA*, in part, as follows:

“record” means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes:

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine-readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof; and
- (b) any record that is capable of being produced from a machine-readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution

Instant messages and emails are forms of electronic correspondence and are considered records under the acts, regardless of the tool or service used to create them.

## ARE INSTANT MESSAGES AND EMAILS SENT FROM OR RECEIVED IN PERSONAL EMAIL ACCOUNTS SUBJECT TO THE ACTS?

Section 4 of *MFIPPA* states that “every person has a right of access to a record or a part of a record in the custody or under the control of an institution” unless specific exemptions apply.

The IPC has set criteria that are used to decide if a record is in the custody or control of an institution. **These go beyond the physical location of a record and involve factors such as the purpose of the record, who created it, and whether or not it relates to the institution’s mandate or functions.**

A record does not need to be both in the custody and control of an institution, but rather one or the other. Therefore, in those cases where a record is not in the custody of the institution, the question is whether it is under the institution’s control. In deciding this, the IPC considers the following:

- Do the contents of the record relate to the institution’s business?
- Could the institution reasonably expect to obtain a copy of the record on request?

Applying this approach, instant messages and emails sent from or received in personal email accounts have been found to be under an institution’s control for *MFIPPA* purposes.

## WHAT DOES THIS MEAN FOR YOU?

- **Emails exchanged between staff members about work matters are not private** and may be released to the public under MFIPPA, via Freedom of Information (FOI) requests.
- Use your board email account only for work-related communications.
- Avoid including **personal opinions, sensitive personal information, or unrelated content** in work emails.
- Be aware that **informal communications (e.g., text messages, handwritten notes)** may also be considered records if they pertain to school board business.