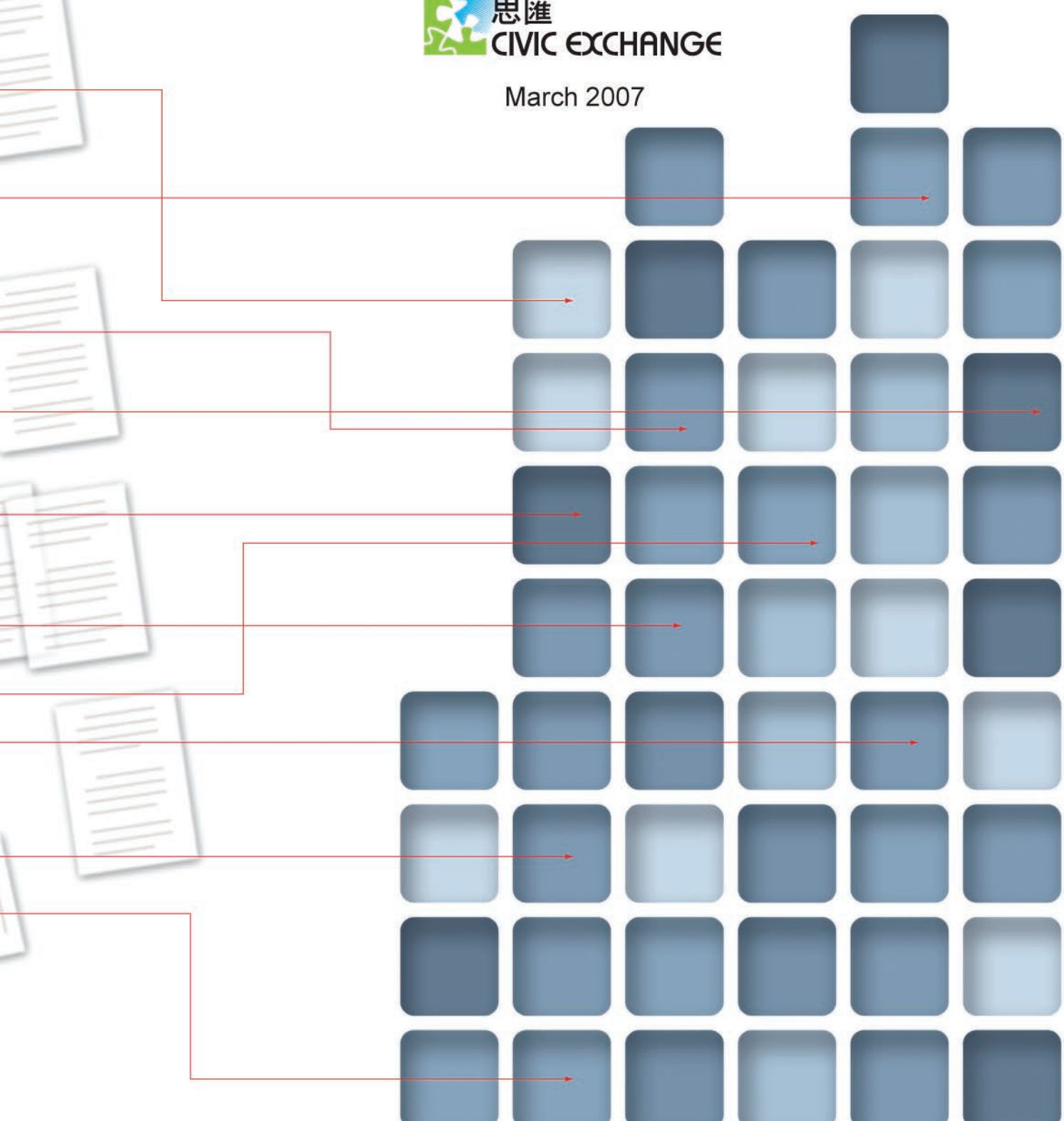


Managing Public Records for Good Governance and Preservation of Collective Memory: The Case for Archival Legislation

Christine Loh, Marcos Van Rafelghem and Jaimie C. Graham



March 2007



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Preface

Civic Exchange embarked on a study on Hong Kong's archival system to better understand how the HKSAR Government has been managing the city's public records and what improvements could be introduced. Public records are valuable from many perspectives. We hope this report will raise the awareness of the need to ensure proper public record-keeping in Hong Kong within a legislative framework as public records management is a fundamental component of good governance.

While most jurisdictions around the world, including Mainland China and Macau, have established archival systems and archival institutions that are underpinned by a legislative framework, Hong Kong's system is implemented only through administrative arrangements. This is an aspect of our local governance that needs urgent correction. The lack of archival legislation in Hong Kong impedes appropriate records management in the public sector. Putting the system within a proper legislative framework can only help to improve accountability.

We are grateful to the Hong Kong Archives Society for funding this report. We are also grateful to the many experts on public records management who shared their knowledge with us, including Christine Wong, the Government Records Service Director; Don Brech, former Government Records Service Director and current Principal Consultant of Records Management International Ltd.; and members of the Hong Kong Archives Society.

We also wish to thank Marcos Van Rafelghem, the principal author, and Jaimie C. Graham, our intern from Wellesley College in 2006 who assisted with the early stage of the research. Civic Exchange's Yan-yan Yip co-ordinated the project; Ken Li designed the cover; Bill Leverett edited the report; and Pauline Poon translated the report into Chinese. We want to thank each and everyone for their assistance.

Christine Loh
Chief Executive Officer
January 2007

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Executive Summary

Hong Kong is one of the few jurisdictions that has not enacted archival legislation, not only in Asia but worldwide. The absence of archival legislation has resulted in gross structural deficiencies regarding the management of public records, which affect not only the preservation of documentary heritage but also the efficiency, transparency and accountability of the government. These deficiencies are alarming and require urgent solutions because public records are fundamental to the operation of the government and its services to the people. More specifically:

Records are highly valuable assets. The records generated by a government in the course of its activities need to be properly managed to support the operation and delivery of services; to protect individual, corporate and government rights; and to provide reliable information for research and study that helps in understanding the past and fosters innovation, competition and sustainable growth in the future.

Effective recordkeeping is a necessary component of overall good governance. No government can operate without records because records constitute its memory. Properly managed records support decision-making; increase government efficiency; enhance legal compliance and provide for accountability. Public access to government records facilitates public understanding and monitoring of government activities. It promotes public discussion of and participation in public policies and programmes, which in turn make government more open, accessible and accountable to society.

Traditional recordkeeping practices must be updated to cater for the challenge brought about by the proliferation of electronic records. The rapid growth of information technologies has changed dramatically how information is created, stored, transmitted, preserved and disposed of as well as the way the government conducts business and interacts with people. Electronic records pose new challenges to recordkeeping because they are technology dependent, lack physical structure and are easily altered or deleted. As a result, formal, deliberate and co-ordinated policies to guide the management of electronic records in compliance with standards and protocols are essential to ensure that such records are properly captured and their authenticity, accessibility and usability are protected.

Proper recordkeeping practices are better assured when carried out within a legislative framework. Archival legislation provides a legally binding framework for the management of public records. It establishes and empowers an archival authority to accomplish specified missions and functions. Archival legislation ensures a consistent and coherent approach to the creation, maintenance, protection and disposal of records, and the transfer of those of enduring value to the archives for permanent preservation according to established standards and practices. It is also the best way to ensure timely and equitable public access to government records.

Current Problems

The Government Records Service (GRS), which is supposed to be the government record authority, is neither empowered nor given the capacity to lead or monitor effective record policy and practices across government. Government bureaux and departments are not legally obliged to create and maintain records, let alone to transfer those of enduring value to the archives for preservation and public access.

Under the current administrative arrangement, there is no guarantee that the decisions and implementation of public policies and programmes are adequately and accurately documented. Government agencies are asked to approach GRS when they want to dispose of their records. However, some of the important records may be arbitrarily destroyed or never become accessible to the public without GRS' knowledge because GRS has no legal or administrative means of becoming aware of such undue actions. Public access to government records is not a statutory right and is subject to many broadly defined exceptions and inconsistent approaches. There is no judicial appeal mechanism to address any rejection of access to records.

Further, records of statutory bodies are not considered public records and thus fall outside government control. These public organisations, though supported by public resources in performing important public functions, are left free to manage their records without government oversight or public scrutiny. Last but not least, the lack of policy direction, standards and proper management practices for electronic records that are fast growing in volume and rapidly replacing paper records threatens the authenticity, usability and preservation of public records over time.

It is not known why the Hong Kong Government has consistently ignored the above problems. The need for archival legislation was first recognised in the early 1970s when the government archives, the Public Records Office (PRO), was established. Since then, successive government archivists have explained the need for a proper legislative framework to ensure good recordkeeping practices. In 1994, a Legislative Council Panel which examined the government's decision to relocate the PRO from Central to Tuen Mun expressed concerns about the way government records were managed and requested the Administration to introduce archival legislation. These inputs, however, received little attention.

Necessary Changes

The government must urgently address this neglected policy area. Legislative frameworks should be explored to establish a record system that defines the rights, entitlements and obligations of both the government and the people, ensures proper records management and promotes good governance. The proposed archives legislation should address at least the following core areas:

Recordkeeping obligations. Legislation is needed to impose recordkeeping obligations on all government agencies and public bodies, including obligations to create and properly manage their records, comply with records management standards and best practice, and transfer those of enduring value to designated archives.

Empowerment of the record/archival authority (called "archival authority" hereafter). The archival authority must be given a clear legislative mandate and adequate resources to pursue its functions effectively. In particular, it requires professional competency with regulatory power to develop proper record standards and monitor compliance of government agencies and public organisations.

Electronic records management. Legislation is needed to ensure that all branches of the government comply with government recordkeeping policies, standards and practices in respect of the electronic records currently held and being generated.

Public access right. A statutory right of access to public records, an essential political right in a liberal society, should be introduced. The grounds for access

exemptions should be clearly defined with an appeal mechanism established to deal with access denial.

Ultimately, effective management of public records should no longer be a matter of discretion by the government – as it is today – but a legally enforceable requirement.

Recommendations

An effective archives and record programme thrives on a strong statutory base, appropriate placement within the structure of government and sufficient resources and expertise to perform its responsibilities. Thus archival legislation should replace the current administrative arrangements in order to:

- Establish that public records are held in trust by the government on behalf of the Hong Kong people who are their ultimate owners.
- Provide a government-wide framework for efficient and effective management of public records, setting out the principles that govern recordkeeping practices.
- Establish a statutory archival authority responsible for record policy and records management standards and practices.
- Provide a definition of public records inclusive of all record formats and the records of statutory bodies.
- Provide for mandatory compliance with archival legislation and records management standards by all public sector agencies with clearly defined exceptions as appropriate.
- Make the government responsible for the authenticity, reliability, accessibility, usability and preservation of government records and archives in electronic form as long as required.
- Support and protect creators and keepers of public records against abuse of administrative or political power.
- Give autonomy and protection to the chief executive or government archivist of the archival authority analogous to that of the Director of Audit or the Ombudsman.
- Confer on the public a right of access to public records after a prescribed period(s) of record closure, taking into consideration the nature and security grading of the records and other legal requirements.
- Establish an appeal mechanism to address denial of access to records by the Administration.

Methodology

This report incorporates research using primary and secondary sources during the second half of 2006. These sources include literature reviews (printed and online materials), and interviews with different stakeholders and specialists.

We interviewed the Government Records Service Director, Christine Wong. We also interviewed Don Brech, former Government Records Service Director, and current Principal Consultant of Records Management International Ltd. In addition, we have been assisted by specialists from the Hong Kong Archives Society who have shared with us their knowledge and experience. All meetings and interviews reported in this study were conducted by Civic Exchange's research team in Hong Kong during the second half of 2006.

The comparative chart presented in Annex B was developed using information available on the UNESCO Archives Portal¹ as well as complementary research materials. Section 6 of this report was enriched by the report *Archival Legislation for Commonwealth Countries*, published by the Association of Commonwealth Archivists and Records Managers.² Finally, the authors alone are responsible for the contents of this report, including any mistakes that may be present.

¹ Available at http://www.unesco.org/cgi-bin/webworld/portal_archives/cgi/page.cgi?d=1.

² See note 51.

1. Introduction

Hong Kong is one of the most successful economies in Asia and it uses information technology extensively to create, receive, disseminate, maintain and dispose of records.³ It is thus anomalous that, among the jurisdictions in the region including Mainland China and Macau, Hong Kong is one of the rare exceptions that lack an archives law to regulate records in the public sector. The government record system in Hong Kong is implemented through advisory administrative arrangements that are easily undermined by higher administrative authorities and overruled by record related provisions in existing laws.

Most jurisdictions in Asia, Europe, Africa, the Americas and Australasia have established archival systems and archival institutions underpinned by a legislative framework.⁴ While their approaches to archival legislation may differ, they all share some common missions and goals. A number of core principles regarding records and archival legislation have become widely accepted:

a. *Records are highly valuable assets.* The records generated by a government in the course of its activities need to be properly managed to support the operation and delivery of services; to protect individual, corporate and government rights; and to provide reliable information for research and study that helps in understanding the past and fosters innovation, competition and sustainable growth in the future.

b. *Effective recordkeeping is a necessary component of overall good governance.* No government can operate without records because records constitute its memory. Properly managed records support decision-making; increase government efficiency; enhance legal compliance and provide for accountability. Public access to government records facilitates public understanding and monitoring of government activities. It promotes public discussion of and participation in public policies and programmes, which in turn make government more open, accessible and accountable to society.

c. *Traditional recordkeeping practices must be updated to cater for the challenge brought about by the proliferation of electronic records.* The rapid growth of information technologies has changed dramatically how information is created, stored, transmitted, preserved and disposed of as well as the way the government conducts business and interacts with people. Electronic records pose new challenges to recordkeeping because they are technology dependent, lack physical structure and are easily altered or deleted. As a result, formal, deliberate and co-ordinated policies to guide the management of electronic records in compliance with standards and protocols are essential to ensure that such records are properly captured and their authenticity, accessibility and usability are protected.

d. *Proper recordkeeping practices are better assured when carried out within a legislative framework.* Archival legislation provides a legally binding framework for the management of public records. It establishes and empowers an archival authority to accomplish specified missions and functions. Archival legislation ensures a consistent and coherent approach to the creation, maintenance, protection and disposal of records, and the transfer of those of enduring value to the archives for permanent preservation according to established standards and practices. It is also the best way to ensure timely and equitable public access to government records.

³ "Archive" and "record" are different concepts which, however, are sometimes used interchangeably. "Archive" means a record of enduring value in the custody of the archival agency. "Record" means any document or other source of information compiled in any form. Thus, a document may be referred as a "record" while being used by a government department, and as an "archive" after it has been transferred to the custody of the archival agency. See Glossary in Annex A.

⁴ See Annex B – Comparative Archival Regulations Chart.

Despite these considerations, Hong Kong has yet to put archival legislation in place. Government records are managed by bureaux and departments according to their priorities and operational criteria, with guidance and advice from the Government Records Service (GRS), a division that operates under the Administration Wing of the Chief Secretary for Administration's Office. This arrangement has resulted in serious deficiencies regarding archives and records management practices that, in turn, have led to some notorious cases of lack of accountability.⁵ Introducing archival legislation is a vital step to overcome these pressing problems.

There appears to be no valid reason why this policy area should continue to be neglected. Introducing archival legislation would be a move in line with Hong Kong's officially stated objective of achieving "excellent governance".⁶ As part of a wider legislative base for accountable and efficient government, archival legislation would complement and enhance the current objectives of the Hong Kong Government. In addition, a regulatory framework of this kind would be unlikely to have significant financial implications for the government or the business sector. The only obstacle to introducing archival legislation may be the reluctance of some government bodies to operate their records according to specific legal requirements. However, this is not a legitimate reason to deter a necessary legislative development.

This study aims to create awareness of the need for archival legislation in Hong Kong. To this end, this report describes the government's record system, identifies problems and challenges, and recommends a way forward. An additional aim of this study is to contribute research and analysis to the development of Hong Kong's future archival legislation. In this connection, this study discusses specific issues in drafting archival legislation for Hong Kong and provides an overview of how other jurisdictions have tackled these issues. This study presents a number of recommendations, which, it is believed, would improve archives and records management in Hong Kong.

⁵ See section 5 of this study.

⁶ See Chief Executive Donald Tsang, 2005-2006 Policy Address, at: <http://www.policyaddress.gov.hk>.

2. Evolution of Hong Kong Government Archives

In 1971, the Hong Kong Government hired its first archives consultant, an Australian archivist named Ian Diamond, to study and develop Hong Kong's first archival system. Diamond's recommendations led to the establishment of the Public Records Office (PRO) in 1972 and the introduction of Hong Kong's first set of archival rules. He also became the first Archivist of the PRO.⁷

A document from the Executive Council dating back to the early 1970s provides an insight into how the government of Hong Kong, even at that time, recognised that it lagged behind other jurisdictions in not having a proper archival law and archival practices in place:

"Most countries have a Public Records Office where old documents of historical interest are preserved and where they may be inspected by members of the public in accordance with certain rules.

In Hong Kong there is no Public Records Office and no legislation on the subject.

If Hong Kong is to follow Britain's best practice, a system will have to be devised to cover as a minimum the following aspects of the problem: ...(c) the preparation of legislation, (d) the establishment of an office (or offices) where the records can be preserved and inspected ..."⁸

The impetus for the creation of the PRO occurred in the years following 1958 when the United Kingdom (UK) implemented a new Public Records Act that reduced the record closure period from fifty to thirty years.⁹ As with most other legislative developments in the UK, the new Act triggered a reaction in Hong Kong. However, that reaction was delayed because a large part of Hong Kong's public records had been destroyed during World War II, leaving a relatively small quantity of un-appraised historical records for public access.¹⁰

By the late 1960s, the need for a government archives to manage records and select those of enduring value for public access according to the spirit of the UK Public Records Act could no longer be postponed. The establishment of the PRO and the introduction of the Public Records (Access) Rules in 1972, as proposed by Ian Diamond to the Executive Council, constituted the starting point of a formal archival system for the government. However, this was a limited initial development compared with other jurisdictions as the PRO was given a very low position within the bureaucratic hierarchy and limited functions. The PRO was to play a generally passive role in appraising and acquiring records of archival value that were no longer needed by government agencies and preserving them for public access thirty years after they had been created.

Interestingly, when the setting up of the PRO was discussed in the Executive Council, Ian Diamond recommended that archival legislation should be implemented in the near future and the government also looked on this view favourably:

"It is envisaged that initially the Public Records Office would be for administrative purposes part of the Colonial Secretariat, but that in due course it might become a separate department, and its powers and functions the subject of legislation"¹¹

⁷ See Memorandum for the Executive Council, "Public Records Office", 28 September 1971, XCR(71)206.

⁸ Memorandum for the Executive Council, "Public Records Office", 14 April 1970, XCR(70)118.

⁹ UK Public Records Act 1958.

¹⁰ In this regard, it has been noted that the UK 1958 Act "had little relevance for Hong Kong because most Government records were destroyed during the war, leaving few which were 50 years old." See Memorandum for the Executive Council, "Public Records Office", 14 April 1970, XCR(70)118.

¹¹ See Memorandum for the Executive Council, "Public Records Office", 28 September 1971, XCR(71)206.

It is not clear why the issue of archival legislation gradually faded from the government agenda. Presumably, the lack of public interest and the government's need to attend to other more "urgent" matters were among the reasons.

The issue of public records regained importance in the late 1980s and early 1990s with the forthcoming reunification of Hong Kong with China. The British and Chinese had different interests regarding Hong Kong's records. On the one hand, the British government intended to retain copies of significant records and, with this aim, a Government Records Co-ordination Unit was created to carry out a microfilming programme whereby copies of relevant records were made and sent to the UK. The Chinese government, on the other hand, wanted a smooth handover of colonial records to the new administration of the HKSAR.

In this context, Don Brech, another Australian archivist who had been appointed Government Records Co-ordinator in Hong Kong in 1987, submitted a proposal in 1989 to improve the government records management system. In Brech's view, some of the main problems at the time were: the lack of records legislation; the PRO's limited role and powers; the absence of a clear government records management policy; and the government's inability to deal with emerging new technologies.¹² Brech's proposal was partially implemented with the establishment of the Government Records Service (GRS) in 1989 as the government's lead record agency. The GRS then comprised the PRO, the Special Duties Unit, which took over the work of the Government Records Co-ordination Unit, and a newly created unit, the Records Management Office (RMO).

In 1994, the GRS formed a partnership with the Management Services Agency under the leadership of the Director of Administration to launch a service-wide Records Management Strategy (RMS). The Strategy aimed at controlling the excessive growth of government records and improving the quality and cost-effectiveness of records management in bureaux and departments primarily through encouraging systematic records disposal, introducing the use of new information technologies and providing record consultancy and training services. The RMS was implemented in three phases from 1994 to the end of 1999.

Also in 1994, when the government suddenly announced the relocation of the PRO from Central to an industrial site in Tuen Mun, the Royal Asiatic Society Hong Kong Branch, in opposing the move, presented a case for archival legislation to the Legislative Council (LegCo) Panel on Information Policy. Members of the LegCo Panel agreed on the need to introduce archival legislation in Hong Kong and to improve the way in which public records were managed by the Administration.¹³ Some of the LegCo Panel's significant findings were:

"There were deficiencies and restriction in the present management, preservation of and access to Government records under administrative arrangements which required a high degree of self-discipline and motivation. An objective approach was proposed for the enactment of public records legislation to provide for statutory obligations on all Government departments to transfer records and files to the Public Records Office (PRO). A framework legislation of this kind would not involve significant financial implications on the Administration.

The Administration had very low priority for records management and protection resulting from a lack of understanding and recognition of the value of records for preserving the historical and cultural integrity of Hong Kong. They also did not have the concept that the public records were assets which belonged to the community of Hong Kong.

¹² Don Brech, former Government Service Director, and Principal Consultant of Records Management International Ltd; interview conducted on 3 August 2006.

¹³ See LegCo Panel on Information Policy, Notes of Meeting on 7 March 1994, LegCo Paper No. 2239/93-94.

Members were in support of legislative protection for public records to maintain a high degree of continuity and seek for judicial review if records had been deliberately erased, taken away or destroyed by the Administration. It was feared that sensitive documents could be easily destroyed at the discretion of Government under non-legislative system.

Members felt that Government should be urged to change and convert its attitude on public records which should be given greater attention and respect than just physical management.”¹⁴

In response to the concerns expressed and the queries made by the LegCo Members, the government acknowledged that:

“There was no statutory responsibility for the Heads of branches and departments to hand over their records to Government Records Service Division (GRSD). Under present system, GRSD had no means to know or control the source of information and records being kept by the policy branches, departments and places like Government House if they did not initiate the transfer of records to GRSD. Also, there was no policing system to ensure that records would not be destroyed by branches and departments without the knowledge of GRSD.”¹⁵

In spite of the Members’ suggestions and even acknowledging some major deficiencies, the Administration rejected the proposition that archival legislation or other changes were required. The Administration responded that “the present administrative measures and arrangements were sufficient to ensure that public records of historical value could be retained and the need for legislative protection of public records was not apparent at the moment”.¹⁶ Thus, no legislative action was pursued.

Further development of the government's archival system occurred in 1997 with the opening of the PRO's new building in Kwun Tong, Kowloon, which was the first purpose-built archival facility in Hong Kong.¹⁷ Additionally, the GRS was reorganised in 2003 with a significant portion of its existing resources directed to the establishment of a new unit: the Records Systems Development Office (RSDO) to tackle the challenge of electronic records management. However, since its inception, the RSDO has not demonstrated any progress in terms of policy direction, strategy, or the formulation of standards and best practices for electronic records management.¹⁸ Moreover, as a consequence of the reorganisation of the GRS and budget cuts within the Hong Kong Government over the past several years, resources available to support the functions and services of other GRS record programme areas have been considerably reduced.

As shown by this brief account, archives and records management emerged late on the Hong Kong Government scene and is still undeveloped. The need for archival legislation was stated as early as the 1970s but there has been no follow-up for more than three decades. In recent replies to questions on archival legislation raised in LegCo, the Administration reiterated that the government recordkeeping system was effective and

¹⁴ Ibid. pp. 4-5.

¹⁵ Ibid, pp. 3-4.

¹⁶ Ibid, p. 5.

¹⁷ For more information on the Hong Kong Public Records Building, see <http://www.grs.gov.hk>.

¹⁸ The GRS Director informed Civic Exchange that the main accomplishment in terms of electronic records management (ERM) since the RSDO was established is having embarked on a pilot project to study the issue of ERM. However, definitive results of the pilot project are still pending and no concrete policy on ERM has been put in place. Christine Wong, Government Records Service Director, interview of 4 December 2006.

archival legislation was not a priority item.¹⁹ The irony is that the GRS recognises that there are no statistics or specific criteria to measure the effectiveness of the government recordkeeping system, nor is there sufficient information on the actual recordkeeping practices of bureaux and departments.²⁰ Rather, the effectiveness of the current recordkeeping system is proclaimed on the basis that the GRS has not received complaints from bureaux and departments.²¹

¹⁹ Chief Secretary for Administration's replies to questions asked by LegCo Councillor Margaret Ng on 25 October 2006 and 8 November 2006. See Government News Archives, "Management of government records" (25 October 2006), and "Management of records of Government and statutory bodies" (8 November 2006), at <http://www.info.gov.hk/isd/news/index.htm>.

²⁰ Christine Wong, Government Records Service Director, interview of 4 December 2006.

²¹ *Ibid.*

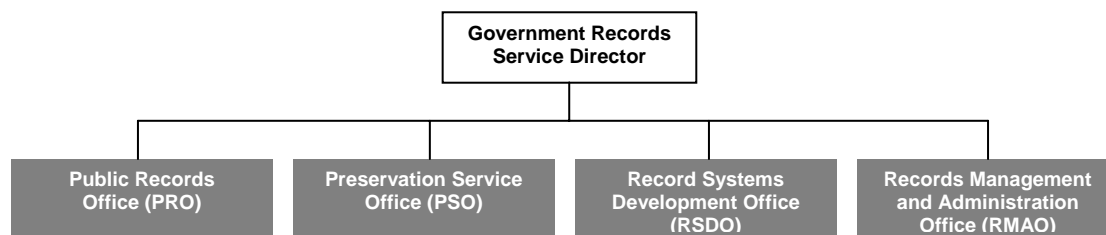
3. The Existing Record System

This section presents an overview of the government record system both in terms of the administrative authorities in charge of carrying out record practices, and the administrative guidelines related to the archival system.

3.1 Authorities

The government's archives and records function is executed by the **Government Records Service (GRS)** and its subordinate offices.²² Officially, the GRS is responsible for developing a recordkeeping programme that enables bureaux and departments to manage information resources appropriate to their purpose. The GRS, however, has limited power and authority: it is not a statutory body; it does not have any regulatory powers; and it operates as a division of the Administration Wing of the Chief Secretary for Administration's Office.²³ The head of the GRS, the Government Records Service Director (GRS Director), has a "D1" rank, equivalent to a section head of a medium size department. The position of GRS Director was created as a professional post but is currently held by an Executive Officer with no previous professional expertise in managing archives and records.

The GRS includes four subordinate offices: the Public Records Office, the Preservation Service Office, the Record Systems Development Office, and the Records Management and Administration Office.



The GRS was reorganised in 2003 with the functions of the **Public Records Office (PRO)** reduced to the selection of government records as archives and the provision of reference and research services to the public.²⁴ In addition, the PRO may accept records or materials from private organisations and individuals if they possess enduring value. Although the PRO still plays the key role in nominating archives, it has no authority to require any government agencies to make their records available for appraisal or transfer. The selection of records normally takes place when certain government records are no longer required for use by a government agency; the agency then makes an approach to the Records Management and Administration Office Unit (RMAO) of the GRS for records disposal, and RMAO subsequently makes a referral to the PRO to verify if there are any records of enduring value to be preserved as archives.

The **Preservation Service Office (PSO)** originally operated under the PRO but in 2003 became an independent office. It undertakes two main functions: preserving records and executing a microfilm programme. The first function aims to protect valuable archival records and library holdings of the PRO through photography, bookbinding, and conservation of

²² See GRS website at <http://www.grs.gov.hk/ws/english/index.htm>.

²³ The Chief Secretary for Administration's Office - Administration Wing is given the mission of developing and implementing "policy for the management of government records in accord with legal, fiscal, administrative, programme and historical values; and to collect and make accessible archival records in accord with provisions for access to information." See its official website at http://www.admwing.gov.hk/eng/about_us/policy.htm.

²⁴ Further details at http://www.grs.gov.hk/ws/english/org_pro.htm.

fragile or degraded materials. The second function of the PSO is to operate the Government Microfilm Centre, which provides microfilming service for government agencies.²⁵

The **Record Systems Development Office (RSDO)** was established in 2003 to address the challenge posed by electronic records management. The RSDO is tasked with exploring how technology can bring efficiency, build knowledge and retain a reliable record of decision-making processes.²⁶ The RSDO is headed by a Senior Executive Officer, a relatively junior rank within the administration, who is not a record professional.²⁷

Finally, the **Records Management and Administration Office (RMAO)** has the responsibility to develop and oversee the implementation of the government record system that manages records effectively and efficiently. In addition, it operates record centres and provides administrative services to the subsidiary offices of the GRS.²⁸ Although the RMAO is largely responsible for providing training, consultancy services and publications on all aspects of records management, it has no professional record staff but comprises mostly Executive and Clerical officers.

3.2 Administrative Guidelines

Hong Kong lacks any record regulations. Instead, the government relies on advisory, administrative guidelines and publications prepared by the GRS in the performance of archives and records management functions and services. Government bureaux and departments are free to observe or disregard the guidance from the GRS as they see fit. Access to archival records kept by the PRO is managed through the Public Records (Access) Rules issued by the Chief Secretary.²⁹ Additionally, the Code on Access to Information, an administrative code, sets out record access guidelines applicable to records kept by government departments.³⁰

The **Public Records (Access) Rules 1996** (the Rules) have a very narrow scope of application. They provide a definition of public records;³¹ establish a record closure period of thirty years and lay down a few provisions on record access. These Rules tend to create more obligations on, rather than rights for, users.

The Public Records (Access) Rules give extensive discretion to the government in granting and rejecting access to public records. The Chief Secretary, for example, has the power to refuse access to public records even after the expiration of the closed period of thirty years. The Rules provide no details about the grounds on which the Chief Secretary may deny access. Instead, it is simply stated that “If it *appears* to the Chief Secretary... that any such records contain information the disclosure of which would not be in the public interest, such records shall not be available in the Government Records Service for public inspection even after the expiration of the period determined under Rule 3.”³² The Rules are silent about any

²⁵ Further details at http://www.grs.gov.hk/ws/english/org_pso.htm.

²⁶ Further details at http://www.grs.gov.hk/ws/english/org_rsd.htm.

²⁷ The other GRS subsidiary offices are headed by higher ranked positions such as Archivist in the PRO and Chief Executive Officer in the RMAO.

²⁸ Further details at http://www.grs.gov.hk/ws/english/org_rmao.htm.

²⁹ The Public Records (Access) Rules are available online at <http://www.grs.gov.hk/ws/english/engimages/publicforms/access.pdf>.

³⁰ See difference between “record” and “archive” in note 3 and glossary in Annex A.

³¹ “Public Records” means all record material of any kind, nature or description which have been made, received or acquired in the course of legislative, judicial or executive transactions, together with all exhibits and other materials evidence which form part of or are annexed to or are otherwise related to any record, which may be transferred to or be acquired by the Public Records Office of the Government Records Service.” Public Records (Access) Rules, section 2 (see note 29).

³² See Public Records (Access) Rules, section 6 (see note 29).

form of appeal on an access decisions.³³ This means that members of the public may be refused access based on vague and ambiguous grounds and cannot challenge the decisions before another authority.

The remaining sections of the Public Records (Access) Rules set out the procedures by applicants who wish to examine closed public records in the custody of the PRO. Under these provisions, applicants must apply in writing to the GRS Director stating the purpose for which they require access, and accompany their application with a reference from an institution or a “prominent and responsible person resident in Hong Kong.”³⁴ It is understood that these applications are mostly addressed to the PRO and are always referred to the record creating or transferring agencies to determine the access status. Decisions of the transferring agencies are final.³⁵

The **Code on Access to Information** (the Code) contains provisions for public access to government records.³⁶ These provisions apply to some eighty government departments listed in the Code. Government departments are required to inform the public about their activities and the broad categories of their records.³⁷ Each department is required to designate an Access to Information Officer responsible for promoting and overseeing the application of the Code.³⁸ The Code also requires civil servants “to provide information unless there are specific reasons for not doing so.”³⁹ However, the departments do not have to acknowledge whether certain records exist. They are not obliged to make the lists of their existing records available for public inspection. Nor does the Code stipulate procedures for compliance monitoring or sanctions.

The Code provides an extensive list of exemptions by which release of information may be refused to the public⁴⁰ and it does not oblige departments “to create a record which does not exist.”⁴¹ In fact, about one half the Code’s text is devoted to access exemptions. The Code provides very limited mechanisms to handle complaints by the public based on non-compliance with the Code’s provisions, establishing that “Any person who believes that a department has failed to comply with any provision of the Code may ask the department to review the situation”⁴², or “may also complain to the Ombudsman.”⁴³ Therefore, the

³³ In a response provided at LegCo to a questions asked by Councillor Margaret Ng (see note 19, question of 25 October 2006), the government suggested that the public could appeal to the Director of Administration or the record creating agency about denial of record access. However, such a mechanism cannot be found in the Public Records (Access) Rules.

³⁴ The Government Records Service Director may permit access to records without written application or a letter of reference: section 8(4). It is noteworthy, however, that requiring applications to be endorsed by a “prominent” person may contradict the principle of equality.

³⁵ The role of the Chief Secretary in granting or rejecting access to public records is delegated to the record creating or transferring agencies by convention in spite of the provision in the Public Records (Access) Rules, section 8.

³⁶ The scope of the Code is established in the following terms: “This Code defines the scope of information that will be provided, sets out how the information will be made available either routinely or in response to a request, and lays down procedures governing its prompt release.” See Code on Access to Information, Introduction, available at <http://www.access.gov.hk/code.htm>.

³⁷ The Code’s definition restricts the character of “records” to certain formats listed therein. This approach is contrary to the approach followed by modern archival regulations which define records in a way in which all records are covered by the definition, regardless of their format.

³⁸ Code on Access to Information, section 1.8.

³⁹ Code on Access to Information, Introduction.

⁴⁰ Pursuant to sections 2.1-2.18, information which may be refused includes that which if released may affect defence and security; external affairs, nationality, immigration and consular matters; law enforcement, legal proceedings and public safety; damage to the environment; management of the economy; management and operation of the public service; internal discussion and advice; public employment and public appointments; improper gain or advantage; research, statistics and analysis; third party information; privacy of the individual; business affairs; premature requests; and legal restrictions.

⁴¹ Code on Access to Information, section 1.4.

⁴² Code on Access to Information, section 1.25.

⁴³ Code on Access to Information, section 1.26.

Ombudsman, an administrative body, is the highest level of appeal if the Code is infringed. Ultimately, it remains up to government departments whether or not to release the information requested by the public.

4. Deficiencies in the Government Record System

The current system for managing public records exhibits gross deficiencies that are attributable to the lack of a regulatory framework. These structural deficiencies affect government efficiency, accountability and transparency. Major deficiencies in the current system include the following:

- Current recordkeeping guidelines lack legal force.
- There are insufficient recordkeeping obligations on the government.
- The GRS has limited powers and resources to develop and ensure proper archival and records management practices.
- Records of statutory bodies are not regulated.
- Transfer of public records to the archives and public access to such records are uncertain.
- There is no policy to ensure the effective management of electronic records.

4.1 Current Guidelines Lack Legal Force

The Public Records (Access) Rules have a very narrow scope of application, merely specifying the conditions of access to those government records appraised by the PRO as having archival value. They do not affect any rights or restrictions on records access imposed by other laws and regulations in force. Where inconsistency exists between the Public Records (Access) Rules and a regulatory provision, the latter will take precedence. There is no mention of what is to be done when government agencies refuse to follow the Public Records (Access) Rules. These considerations are equally applicable to all GRS guidelines and publications.

It is obvious that the government's archives and recordkeeping function is not sufficiently supported, and is even threatened by competing legal or administrative rules. Further, there is no appeal mechanism for the public to address any denial of record access. Members of the public cannot file an effective claim based on these administrative guidelines, nor can they bring an action before a court to have the guidelines enforced.

The GRS is not empowered to perform any record controlling or auditing function. There is simply no way that the GRS and its subsidiary offices can rely on their administrative guidelines to ensure that government agencies will perform their records management duties and hand over their archival records.

Similarly, being an administrative code, the Code on Access to Information does not override legal restrictions on information access, whether these are statutory prohibitions, or obligations arising under common law or international agreements applicable to Hong Kong.

It is noted that current record policy and measures made in the form of voluntary guidelines are inadequate. Voluntary guidelines are used in cases where there is no need for binding regulations. This is certainly not the case with public records and, as shown in Annex B, most jurisdictions worldwide have put in place proper record regulatory frameworks, not merely voluntary standards.⁴⁴ Since recordkeeping is a means of providing an audit trail for government accountability, government should not be given the "option" of not keeping proper records of its activities – which is what happens with voluntary guidelines. Consider a public officer who has committed an improper act and who can erase the records that are evidence of his improper action without any legal consequence. How can his wrong-doing be traced and accountability be ensured? By the same token, the current record system fails as

⁴⁴ See Annex B – Comparative Archival Regulations Chart.

it allows government agencies not to document their activities or to prematurely destroy their records without sanctions.

4.2 Insufficient Obligations on Government

The current recordkeeping system allows excessive discretion to be exercised by government agencies. As a result, proper records management is not assured but left to the decisions of bureaux and departments which have different priorities, interests and resources. To rectify this situation, government bodies must be obliged to:

a. Create records. If adequate and accurate records are not created, all other records management activities such as records maintenance, preservation, transfer, disposal, etc, may be rendered irrelevant.

b. Maintain and preserve records. Currently, there is no effective monitoring system to ensure that records are properly maintained and not destroyed by government agencies. Although public agencies should consult the GRS before destroying or disposing of their records, public officers may easily avoid this obligation by not notifying anyone of the destruction of the records. Furthermore, records may never be subject to appraisal by the PRO, if the RMAO, which has no professional record staff, does not make a referral.

c. Transfer records. There is no obligation on government agencies to transfer records to the PRO and they may choose to retain their records *indefinitely*. As a consequence of the lack of a requirement to transfer records, many valuable records fail to make their way into the PRO's custody and are not accessible to the public.⁴⁵

d. Open their records for inspection. Government agencies are not obliged to make their records available for inspection by the GRS. Accordingly, apart from the agencies themselves, no one knows what types and what quantities of records are being held and how they are managed and used, nor what storage media are employed.

e. Comply with GRS' requirements. Although the GRS is purported to be the specialist agency in archives and records management, its guidelines and advice can be disregarded by government bureaux and departments.

f. Provide access to records. Government agencies may destroy records without the knowledge of the GRS. They also have the authority to keep certain records closed forever. Exceptions to the right of access are numerous and vague. Furthermore, where access to records is denied, no appeal mechanism is available to the public.

4.3 The GRS' Limitations

As the government archival authority, the GRS is responsible for ensuring proper records management within the government. However, it lacks the necessary authority, influence, and resources to accomplish its mission. In particular:

- The GRS cannot issue mandatory records management instructions to government agencies.

⁴⁵ The Government Records Service Director stated that government bureaux and departments are generally very cooperative, yet there were some agencies which have not transferred their records to the PRO but these were mainly new agencies (Christine Wong, interview of 4 December 2006). However, an on-line search of PRO's holdings revealed that a number of well-established agencies such as the Constitutional Affairs Bureau, Efficiency Unit, RTHK, the Central Policy Unit and the Chief Executive's Office have had no records transferred to the PRO.

- The GRS is not empowered to inspect or examine public records held by government agencies. Consequently, if government agencies do not initiate a record disposal request or inform GRS of any proposed disposal, GRS has no means of knowing about or controlling government information and records.
- As a result of the preceding point, it is difficult for the GRS to plan its operations and monitor the records management practices of government agencies.
- The GRS cannot oblige government agencies to transfer valuable records to the archives when due.
- The GRS does not have adequate resources and the professional competency to perform its archives and record functions properly. Its current leadership lacks awareness of and expertise in addressing many issues in archives and records management, which are compounded by the absence of a regulatory framework and restrictions imposed by other competing record related laws.

These problems in systems and operations are detrimental to effective government recordkeeping. Drawing a comparison, it is equivalent to a public auditor who is neither empowered to inspect what needs to be audited nor able to impose any penalties in a case of malfeasance. Indeed, Hong Kong's Director of Audit is a statutory position to which a high degree of autonomy is conferred by the Audit Ordinance.⁴⁶ The Director of Audit also has wide powers of access to the records of departments.⁴⁷ These access powers, however, may become useless if the records to be audited are not complete, authentic or accurate.

The GRS' lack of authority is aggravated by inadequate resources and lack of sufficient capacity.⁴⁸ After the reorganisation of the GRS in 2003, the PRO was left with only four archivists to undertake the appraisal and processing of archival records of the entire government and to provide access and reference services to the public. Other GRS units are headed by officers who have no professional qualifications or expertise in archives or records management. Insufficient professional expertise has been a continuous problem over many years that seriously hampers the growth and development of a proper record regime within the government.⁴⁹

To be effective in its continuing role across the broad spectrum of archives and records management, an archival authority needs the support of legislation. A clear legislative mandate to work with government agencies at an early stage in establishing and prescribing recordkeeping requirements is of prime importance.⁵⁰ It is learned from overseas experience that "the efficient creation and management of an agency's records rests on the authoritative role an archives has in setting mandatory standards that ensure the necessary business records of all agencies are maintained and made accessible."⁵¹

⁴⁶ Audit Ordinance 2000, Chapter 122, section 9: "In the performance of his duties and the exercise of his powers under this Ordinance the Director shall not be subject to the direction or control of any other person or authority." Audit Ordinance 2000 available at

http://www.legislation.gov.hk/blis_ind.nsf/CurAllEngDoc?OpenView&Start=122&Count=30&Expand=122.1#122.1.

⁴⁷ Audit Ordinance 2000, Chapter 122, section 9: "The Director and any public officer or other person authorised in writing by him shall have access to all records, books, vouchers, documents, cash, receipts, stamps, securities, stores and any other Government property in the possession of any public officer."

⁴⁸ The GRS has 88 staff out of which there are only nine archivist grade officers. Among the latter only one of them, the Archivist of the PRO, holds a senior post. See note 19.

⁴⁹ See note 14.

⁵⁰ See LegCo Panel on Information Policy, Notes of Meeting on 7 March 1994, LegCo Paper No. 2239/93-94, p.

4.

⁵¹ Dagmar Parer, *Archival Legislation for Commonwealth Countries*, Association of Commonwealth Archivists and Records Managers, 2001, p. 3, available at <http://www.acarm.org/publications/legislation.pdf>.

Legislation should establish a statutory archival authority and empower it to exercise regulatory, audit and enforcement functions in relation to records management practices carried out by all government agencies. A higher position in the government's hierarchical structure would also help the records authority to obtain the necessary resources and develop appropriate competencies.

4.4 Statutory Bodies' Records are not Regulated

In addition to properly managing the public records of government agencies, a responsible government should also protect information and records in the public sector at large that are of value and interest to its people. Currently, there is no obligation on government statutory bodies to properly manage their records or to transfer them to the PRO for preservation and public access. The physical management, protection and preservation of records of some 200 statutory bodies – most of them supported by public resources – such as the Housing Authority, Hospital Authority, Airport Authority and Office of the Privacy Commissioner, however, are not covered by the government record system. Without legislation, records of these public bodies will remain outside the GRS' jurisdiction and will not be readily available for public inspection.

This omission is detrimental to accountability and transparency. The activities carried out by the statutory bodies, in most cases, have a significant impact on society and, therefore, they should be subject to public scrutiny. Such scrutiny is not possible unless adequate records are created and properly maintained. This deficiency is well illustrated by the SARS incident where decisions of the Hospital Authority could not be assessed because of the lack of records.⁵² To address this problem, a proper definition of public records should be formulated to include the records of government sponsored statutory bodies, which, consequently, would be subject to the GRS' jurisdiction.

4.5 Public Access to Records is not Ensured

The right of access to public records is weakly implemented under the Public Records (Access) Rules. It is not a statutory right and is subject to many exceptions whose grounds are not precisely defined. These rules are issued by the Chief Secretary and have a narrow administrative application. Instead of judicial review, which is commonly available in other jurisdictions, there is no appeal mechanism to deal with denial of access under the Public Records (Access) Rules.

Contrary to Hong Kong's current practice, modern archival laws confer a right of access subject to some narrowly defined exceptions. Permanent restrictions on public access to records are not implemented save in exceptional circumstances. In Australia, for example, the Law Reform Commission on the Review of the Archives Act 1983 identified indigenous secret/sacred material as the only permanent exception to the right of access.⁵³ The Australian Commission presented an interesting conception of this right by stating that:

“The fundamental premise from which any consideration of access rights should flow is that the records of government are created and held in trust for the people. It necessarily follows that any limitation or qualification that the legislation places on the right of access by individuals to the records of their government must be justified

⁵² See section 5 of this study.

⁵³ Australian Law Reform Commission, *A review of Archives Act 1983*, Report 24 - Records relating to Aboriginal and Torres Strait Islander People, Australian Government Publishing Service, 1998.

on carefully and narrowly defined grounds that serve the interests of the nation as a whole.”⁵⁴

The status of public access to government records in Hong Kong should be changed to embrace this important principle.

4.6 Inconsistent Provisions

Legal rules and administrative arrangements on freedom of information, privacy protection, and records and archives often affect the sharing of information between government bodies with different objectives. For example, while the Personal Data (Privacy) Ordinance (the Privacy Ordinance) restricts the disclosure or transfer of personal data without the consent of the data subject to safeguard the privacy of an individual, archival legislation provides for the transfer of records containing personal data to the archives where they will ultimately be made accessible to the public. Therefore, it is necessary to reach a balance and harmonise these provisions so that an effective flow of information across government is ensured while, at the same time, divergent interests are protected.

In Hong Kong, however, such a balance has not been achieved. Although privacy protection legislation has been enacted, archival legislation is missing. The Privacy Ordinance disallows the transfer of personal data without the prior consent of the individual who is the subject of the data.⁵⁵ This obstructs archival operations because government agencies cannot legally transfer records of enduring value to the PRO if they contain personal data.⁵⁶ The Privacy Ordinance also provides that personal data must be erased when the data are no longer required for the purpose for which they are used.⁵⁷ In the same sense, the Census and Statistics Ordinance obstructs the information flow as it mandates destruction of raw statistical data that may be of archival value.⁵⁸ Similarly, the Code on Access to Information exempts government agencies from releasing information if it contains internal discussions, which, however, may be disclosed under the Public Records (Access) Rules.

Archival legislation is required to remove legislative obstructions to the effective management of government records and act as a counterweight to provisions in existing legislation that tend to inhibit the preservation of and public access to government records.

The above are just a few examples that illustrate the need for archival legislation in order to implement a consistent and balanced system for the preservation and sharing of public records. Further research into Hong Kong's legal system would undoubtedly reveal other conflicting regulatory provisions.

⁵⁴ Australian Law Reform Commission, *A review of Archives Act 1983*, Report No. 85, Australian Government Publishing Service, 1998, section 51.4.

⁵⁵ Personal Data (Privacy) Ordinance, section 20, available at <http://www.pcpd.org.hk/english/ordinance/ordfull.html>.

⁵⁶ In this regard, it is worthy to note that obtaining the consent from the data subject every time a record contains personal information in order to transfer the record to the GRS is not administratively feasible.

⁵⁷ Personal Data (Privacy) Ordinance, Section 26. Section 26 provides that the data will be erased unless such erasure is prohibited under any law or it is in the public interest to preserve the data. As such, archival regulations could complement section 26 by introducing a prohibition to erase certain records or by clarifying that preserving data for archival purposes is in the public interest.

⁵⁸ See Census and Statistics Ordinance, sections 9(2)(a)(V) of CAP 316, Paragraph 9 of CAP 316A, 316B, 316C, 316E, and 316F.

4.7 Lack of Electronic Records Management Policy

Despite the vast amounts of electronic records currently being generated by the Hong Kong Government,⁵⁹ electronic records management (ERM) standards are yet to be put in place. Although a specialised agency, the RSDO, was established in 2003 to identify and implement solutions for the challenges posed by ERM, that agency is still in the process of developing a set of ERM guidelines subject to the outcome of a pilot study.

Whilst ERM guidelines are being defined, to ensure record authenticity, the GRS is advising government agencies to “print and file” their electronic records as an interim measure. However, as the GRS Director recognises, this is an unsatisfactory solution because electronic records can be easily and undetectably altered before they are printed and some records such as audio and video files cannot even be reproduced in printed form.⁶⁰

ERM requires particular solutions because electronic records are highly volatile and subject to manipulations. They can be deleted, erased, changed, and destroyed much more easily than written records. In addition, documents in electronic formats may become unreadable or unusable due to technological changes (i.e. software or hardware which are no longer used) because the new technology used may not support previous record formats. Moreover, most recordkeeping processes developed over a long period of time are paper-oriented and, therefore, unsuitable for effectively capturing electronic records.⁶¹

A primary measure regarding ERM is to ensure that the definition of records provided by archival legislation includes electronic documents. Jurisdictions such as Singapore and Korea have already amended their archival laws to ensure that their definition of records covers electronic records.⁶² The authenticity of electronic records also needs to be ensured through particular measures such as data migration programmes, distributed custody schemes, and automatic backup mechanisms.⁶³ These initiatives may help to create more ‘static’ records that can be inviolable and satisfy evidentiary requirements of courts.

The technical and recordkeeping requirements for electronic records must be aligned as early as possible to ensure that, for each record, the necessary data content and structure are properly captured and that its value as a formal record for the delivery of quality service and as evidence of official transactions is safeguarded. A legislative requirement for adequate, accurate and up-to-date recordkeeping practices in accordance with mandatory standards and guidelines is needed to protect their authenticity, reliability, accessibility, preservation and usability over time. Archives legislation should clarify the role of the archival authority and its relationship to the record creating agencies and other related government bodies responsible for information and technology services to ensure an integrated and proactive approach in the management of electronic records.

⁵⁹ The Hong Kong Government is currently implementing 12 “e-initiatives” which are producing enormous amounts of electronic records. See E-Government in Hong Kong website, available at <http://www.info.gov.hk/digital21/e-gov/eng/init/index.htm>.

⁶⁰ Christine Wong, GRS Director, interview of 4 December 2006.

⁶¹ For example, the departmental registry is responsible for classifying, filling and registering correspondence according to established rules and procedures. Before the emergence of email and modern messaging systems, *all* official correspondence was received and sent through the departments’ registry. However, email or instant messaging systems allow direct communication between public officers thus bypassing the registry.

⁶² See East Asian Archives, *Executive Board Meeting and the Seminar on Electronic Archives Management Strategy*, EASTICA, June 2001, pp. 14-43.

⁶³ Ross Gibbs and Justine Heazlewood, *Electronic Records – Problem Solved?: the Victorian Electronic Records Strategy and the Future of Electronic Record Keeping in Victoria*, 2000, available at http://www.vala.org.au/vala2000/2000pdf/Gib_Hea.PDF.

5. Examples of Deficient Record Practices

The following cases illustrate how the structural deficiencies discussed in the preceding section have resulted in major failures in terms of government efficiency, transparency, and accountability. These failures are not abstract matters, but directly affect the well-being of the people of Hong Kong.

5.1 Discovery Bay

The Discovery Bay (DB) incident shows how the lack of accurate records may obstruct accountability. In this case, senior government officials were unable to effectively respond to an Audit Commission inquiry simply because “there were no records.”⁶⁴

In the early 1970s, the Hong Kong Government granted land for the development of a holiday resort and recreational facilities to a private company called Hong Kong Resort Company Ltd. The land granted for development consisted of Discovery Bay and Yi Long Wan on the northeast coast of Lantau Island.⁶⁵ The basic concept of the DB development was to create a self-contained recreation and leisure community with a wide range of recreational facilities, including a holiday resort and a golf course. The lease conditions restricted the land use to these specific purposes and stated that the DB project was to be developed in accordance with the Master Layout Plan (MLP) as approved by the government.⁶⁶

However, the developers changed their plan and by the 1980s Discovery Bay had become a first-home community residential property. It also transpired that no public golf course or hotel was built in DB.⁶⁷

In 2004, an Audit Commission was established to conduct a special inquiry into the illegal change of land use at Discovery Bay. The inquiry revealed major deficiencies in the records management practices of the Administration when the Acting Director of Lands stated that “the Lands Department had no record of how the lease conditions were drawn up or by whom.”⁶⁸ In response to the inquiry into the internal dealings of the Administration, the Lands Department informed the Audit Commission that “there were no records of any inter-departmental discussions on the deletion of the golf course prior to the approval of MLP in February 1982.”⁶⁹

According to government regulations, a change in land use requires payment of a land premium fee. However, no payment was ever made and there were no records to explain why the Lands Department did not charge the DB developers a land premium fee. The Audit Commission estimated a loss of HK\$160 million in uncharged land premiums over 17 years.⁷⁰ As a result of this, the former Secretary for the New Territories in the 1970s, who oversaw the early development of DB, was summoned before LegCo's Public Accounts Committee.⁷¹

⁶⁴ See responses by the Acting Director of Lands and by Sir David Akers-Jones to the Audit Commission at p. 164, at: http://www.legco.gov.hk/yr04-05/english/pac/reports/43/ch_5.pdf.

⁶⁵ Audit Commission, Report 43 of the Director of Audit, p. 1 available at http://www.aud.gov.hk/pdf_e/e43ch06_summary.pdf.

⁶⁶ Ibid.

⁶⁷ Audit Commission Report, Chapter 5, p. 154, available at http://www.legco.gov.hk/yr04-05/english/pac/reports/43/ch_5.pdf.

⁶⁸ Ibid, p. 157.

⁶⁹ Ibid, p. 195.

⁷⁰ “Disco Bay probe calls Akers-Jones”, *The Standard*, 14 December 2004.

⁷¹ Ibid.

Although further irregularities were evident, without complete and accurate records, the Audit Commission could not ascertain to what degree the various parties should be held responsible for the illegal change in land use.

Conclusions that can be deduced from the Discovery Bay incident include:

- The government record system does not ensure the creation and preservation of key public records.
- Examination of past events is not possible without accurate records.
- The lack of public records negates government accountability and contributes to losses of public funds.

5.2 SARS

The SARS incident illustrates the deficiencies in the management of the records of statutory bodies in the absence of archival legislation.

In 2003, the outbreak of Severe Acute Respiratory Syndrome (SARS) hit Hong Kong.⁷² After the epidemic was brought under control, some Hong Kong residents accused the Hospital Authority, a statutory body, of malpractice. In the process of verifying these accusations, it was found that major decisions on countering SARS taken by the Hospital Authority were either undocumented or unavailable for examination and assessment. As a statutory body, the Hospital Authority does not fall within the GRS' jurisdiction and it has no obligation to create or preserve records of its actions. The record problems of the Hospital Authority once again obscure accountability to the public.⁷³

5.3 International Examples

Programmes to improve government recordkeeping practices have been developed by a number of international organisations as a way to address critical problems such as poverty, corruption and lack of civil liberties.

The International Records Management Trust (IRMT) is a UK-registered charity which works with governments throughout the world to develop new strategies for managing public sector records.⁷⁴ The IRMT has developed around the concept that "efficient information and records management provides the basis for: poverty reduction; accountability; effective management of state resources; protection of rights and entitlements; services for citizens; anti-corruption strategies; and the rule of law."⁷⁵ The IRMT operates several records management programmes worldwide, provides consultancy and education services and conducts research. According to the organisation:

"Records are so fundamental to democracy that governments and international organisations often take it for granted that records will be there to underpin constitutional arrangements. However, over the last several decades there has been deterioration in the management of official records, with consequences for efficiency, effectiveness, accountability, the protection of human rights, services to citizens, poverty reduction strategies and the rule of law. The loss of control of evidence has been as insidious and gradual as the deterioration of the environment."⁷⁶

⁷² For further details see Christine Loh and Civic Exchange (eds.) 2004, *At the Epicentre – Hong Kong and the SARS Outbreak*, Hong Kong University Press.

⁷³ See SARS Expert Committee, "SARS in Hong Kong – From Experience to Action", p. 51, available at: http://www.sars-expertcom.gov.hk/english/reports/summary/files/e_sumrpt_sect4.pdf.

⁷⁴ See International Records Management Trust website, at <http://www.irmt.org/>.

⁷⁵ Ibid.

⁷⁶ Ibid.

The World Bank, in turn, has started a programme called *Evidence-Based Governance in the Electronic Age* that aims to tackle “the loss of control of records and information systems, particularly in electronic environments.”⁷⁷ It is significant that having an effective records management system in place is becoming a prerequisite imposed by international financial organisations, such as the World Bank, for granting financial aid to developing countries. By imposing such a precondition, these development-funding institutions intend to address significant problems relating to the misuse of their financial aid and the severe lack of accountability. What is particularly striking about these examples is how directly and practically records management may affect governance and the well-being of citizens.

⁷⁷ This programme is run in conjunction with the IRMT. Further details at <http://www.irmt.org/evidence/wbabout.html>.

6. Typical Contents of an Archival Law

Archival legislation establishes the legal and administrative base that allocates functions, powers and responsibilities relating to recordkeeping among accountable bodies within a jurisdiction, and expresses the rights and expectations of citizens with respect to recorded information and documentary heritage.⁷⁸ Archival legislation concerns different policy areas, implements broad governing principles (i.e. accountability, transparency, freedom of information), regulates administrative matters (i.e. the roles and responsibilities of archival authorities) and provides for specific operational rules (i.e. records management rules).

Archival legislation may comprise both primary and secondary legislation. Primary legislation (such as acts, decrees, and ordinances) is enacted by the parliament, or other supreme legislative authority. Secondary legislation (such as statutory instruments, rules and administrative regulations) is usually promulgated by an executive authority under the powers conferred by the primary legislation. Two approaches can be taken when framing archival legislation: (1) detailed prescriptive primary legislation; or (2) a general framework established by primary legislation to which detailed provisions are added by secondary legislation. Modern archival legislation usually adopts the second approach by providing enabling legislation and using secondary legislation to add or modify policies and procedures without the need to undergo lengthy and complex legislative processes.

The following sections provide an outline and brief analysis of the archival law commonly found in other jurisdictions.⁷⁹

6.1 Introductory Provisions

a. Object clause. The object clause sets out the legislation's major objectives. It may state the fundamental nature of the relationship of government records as instruments of government accountability to the people. This clause may also emphasise that recordkeeping is the responsibility of all government agencies, not just that of the archival agency.

b. Definitions. Archival legislation should include clear and consistent definitions of specific terms and expressions used throughout the legislation to ensure a uniform and accurate interpretation of the law.⁸⁰ Clear definitions of "record" and "public record" are particularly important to dispel any ambiguity of their coverage and the role that the archival authority has in relation to records. The definition of "record" should be formulated to allow for the incorporation of any new record formats that arise from the advent of new technologies. "Public record" may be defined differently from one jurisdiction to another according to its history, culture and political institutions. The definition of "public record" may include specific exemptions.

6.2 Administrative Framework

An important feature of archival legislation is the setting up of an administrative framework for an archival authority and delineation of the roles and responsibilities of different players. This framework generally includes the following provisions:

⁷⁸ Sarah Choy, 2004. "Principles for Archives and Records Legislation", Research Paper for the International Council on Archives.

⁷⁹ The information presented in sections 6.1 to 6.5 is partly based on Dagmar Parer, *Archival Legislation for Commonwealth Countries*, note 51, and Sarah Choy's paper in note 78.

⁸⁰ Some commonly defined terms are: archives, appraisal, compliance, disposal, disposal authority, full and accurate records, intellectual control, metadata, preservation, recordkeeping, records, active records, inactive records, records continuum, public record, and standards.

a. Placement of the archival authority. The placement of the archival authority within the government hierarchy affects its functions, influence and degree of autonomy. It is often a department reporting to a minister or higher; or it can be an executive agency. Given the importance of public records to sound administration and proper governance, it is imperative that the ultimate responsibility should rest with a high or even independent authority. Decisions on placement may be guided by the nature of the work, the need for independence from the executive government, for financial autonomy, and for support and protection. The possibility of conflicting or competing interests with other agencies needs to be particularly considered.⁸¹

b. Governance of the archival authority. It may be governed by its chief executive or a council, and advised by an advisory body. An advisory body usually comprises public and private groups interested in archival issues and its primary responsibility is to ensure that the archival authority remains responsive to the community.

c. Administration of the archival authority. General administrative arrangements are provided for by the primary legislation with the details being regulated by secondary normative instruments. In broad terms, the general arrangements would comprise:

- *The role of the archival authority.* Its functions and mission should be clearly spelled out. Specific matters would include its institutional status, responsibilities, authority to determine policy and prescribe and enforce rules, and funding.⁸² The protection against political influence is an important issue addressed by modern archival laws.
- *The functions and obligations of the archival authority in relation to public records.* These include: the drawing up of mandatory standards, codes of best practice and guidelines; authorising disposal schedules; deciding on the appraisal and transfer of records; determining custodial arrangements; arranging and describing records; ensuring the deposit of official publications; ensuring the preservation of records; inspecting government records; recommending and/or imposing sanctions; and reporting on archives and records issues.
- *The role of the chief executive.* This includes provision of professional leadership in archives and records management within the relevant jurisdiction and the power to: prescribe and monitor compliance with guidelines and standards; impose penalties; advise on recordkeeping practices; designate records as archives; decide on access to and preservation and destruction of records; copy records; and issue certified copies.
- *Reporting requirements.* This specifies by whom and to whom reports will be made.
- *Internal structures within the archival authority.* In some cases, the internal structure may not be defined by the primary legislation to allow for more flexibility in the organisation and staffing of the organisation. Archival legislation may give the chief executive exclusive power to determine the internal policies and professional needs of the agency.
- *Ministerial responsibilities and relationships.* This may include specific provisions regarding the responsibilities that the chief executive or governing bodies have to the controlling authority.

⁸¹ Eric Ketelaar, *Archival and Records Management Legislation and Regulations: A RAMP Study with Guidelines*, UNESCO, 1985.

⁸² *Ibid.*

6.3 Records Management

The quality of a record depends to a large extent on how it is generated, maintained and used by the creating agency. The rules on managing public records, established through primary and secondary legislation, are intended to ensure record authenticity, integrity and usability by providing for adequate and accurate recordkeeping practices throughout the record life cycle, from creation to ultimate disposal.

a. Ownership. The ownership of public records may be vested in the central government or in the state in which the record is created; this should be specified in the primary archival legislation.

b. Inalienability and imprescriptibility of records. The declaration of inalienability and imprescriptibility of public records, including those in the custody of privatised bodies, means that the archival authority has the right to inspect, purchase (if not recover) and instruct on the protection of public records through established mechanisms. Archival legislation often contains specific provisions to ensure the adequate management and preservation of records of public organisations and government bodies that have been privatised.

c. Treatment of non-government records. In many jurisdictions, the archival authority is empowered to declare which documents are of historical, cultural or literary value. It may acquire and help preserve valuable records of non-governmental bodies, such as corporate bodies, trade unions, educational institutions and political organisations, and the papers of private organisations and individuals.

d. Electronic records. Modern archival legislation does not make distinctions between record formats in its management requirements but ensures that its legislative instructions cover all types of records, including electronic records. In addition, secondary legislation generally establishes specific provisions to ensure adequate management of electronic records.

6.4 Archives Administration

Archival legislation generally contains provisions dealing with the main processes of archives administration as set out below. These processes are usually regulated in more detail through standards and guidelines issued by the archival authority.

a. Appraisal. This refers to the process of identifying values and defining retention periods to be applied to records once they exist. Appraisal provisions also deal with the need to make records and maintain them in an accessible condition to meet business needs.

b. Disposal. The destruction of public records without prior authorisation of the archival authority is usually prohibited. Legislation often refers to a 'record disposal schedule' which identifies the records of archival value to be preserved, and authorises the destruction of the remaining records after the lapse of specified retention periods.

c. Transfer. This is the process whereby the records are placed under the jurisdiction of the archival entity. The transfer of jurisdiction may or may not include the transfer of the physical custody to the archival authority. For example, electronic records may not be physically transferred to the archival authority but remain as 'archives' in a designated repository.

- d. **Public records of a certain age.** Most archival laws provide that public records of a certain age must be appraised by the archival authority and those of archival value be transferred to designated repositories.
- e. **Custodial arrangements.** The physical custody of records may be allocated to a central archival agency or distributed among records creating agencies.
- f. **Arrangement and description.** Legislation may impose the obligation to describe and arrange all public records and other archival material acquired by the archives authority. The detailed provisions dealing with arrangement and description are, however, generally defined in guidelines issued by the archival authority.
- g. **Preservation.** A fundamental responsibility is the safe custody, in a suitable form, of all archives. The archival authority is also authorised by law to provide facilities for the repair and conservation of archival material.

6.5 Compliance with Standards and Guidelines

Archival legislation usually requires that standards issued by the archival authority are binding on all government agencies and that compliance is the responsibility of each agency. Such standards may apply equally to records created by public organisations and contractors providing functions or services on behalf of the government.

Archival legislation generally vests in the archival authority a general right to inspect public records held by public agencies. An important consideration in this regard is that inspection is of little value without a provision for sanctions as an ultimate remedy. Legislation may explicitly provide that a public servant who fails to comply with a requirement under archival legislation commits an offence and is subject to disciplinary action.

6.6 Access to Records

Effective and equitable public access to records is a key component of archival practice. It is understood that public records are created and held in trust by the government on behalf of its people. Therefore, limitations on the right of access by individuals to the records of their government must be justified on the narrowly defined grounds of a higher public interest. In modern archival laws, necessary exceptions to the right of access are limited and the final decisions against disclosure of government information are subject to review by an organ independent of the government (i.e. right of appeal before a court).

Archival legislation generally contains a number of specific provisions dealing with access to records including the following:

- a. **Provision of public access.** This provision spells out the right of access by the public to government records.
- b. **Closed access period.** This determines the time at which records will become available. The closed access period may vary for different types of records. Many jurisdictions adopt twenty-five years or thirty years.
- c. **Exceptions to closed access period.** Archival legislation may allow exceptions to the general closed access periods.
- d. **Access to non-current and non-public records.** These rights can be conferred either under archival legislation or freedom of information legislation or both.

e. *Exceptions to the right of access.* Legislation that creates rights of access to public records commonly provides that records containing certain specified kinds of information may be exempted from mandatory access. These exceptions are restricted to cases in which disclosing the record is prejudicial to the public interest (i.e. security and intelligence records).

f. *Appeal provision.* Modern archival legislation generally confers a right to appeal a decision refusing or restricting records access. The right to appeal is intended to ensure fairness and accountability.

7. Conclusion and Recommendations

The management of public records has been a neglected policy area in Hong Kong. Hong Kong, as a jurisdiction lacking archival legislation, remains a rare exception, not only in Asia but worldwide. The lack of a legislative framework has resulted in a number of structural deficiencies, which, in turn, have led to notable cases of lack of government efficiency, accountability and transparency. This study has attempted to expose not only these deficiencies and the importance of government recordkeeping, but also the specific changes that are needed.

Why does the Hong Kong Government's record system not work?

- The current record system does not oblige government agencies to create or maintain records or to transfer those of continuing long-term value to the archives agency. Consequently, key public records may never come into existence, or may be readily destroyed or may never become accessible to the public.
- The records authority (the GRS and its subordinate offices), which is supposed to play a key role in ensuring an effective records regime across government, is neither empowered nor has the competency to perform such a role. The GRS cannot monitor the recordkeeping of government agencies or impose penalties in cases of non-compliance with guidelines. Moreover, the GRS is neither adequately funded nor supported in developing its capacity and professional expertise.
- The public may not have access to many public records because access is not a statutory right and is subject to numerous subjective exceptions. Furthermore, the denial of records access is not subject to judicial appeal.
- Effective management of electronic records, which are increasingly generated by all branches of government, is not ensured because no specific recordkeeping policies and standards to deal with these types of records have been put in place with mechanisms to ensure compliance.

The enactment of archival legislation would enhance archives and records management. It would support Hong Kong's further development as an information society and knowledge-based economy and reinforce its competitive edge. A statutory based archival system would be beneficial to both the government and civil society.

A legislative framework would establish an effective records system where the rights, entitlements and obligations of both citizens and government are recognised, and, at the same time, where recordkeeping supports and promotes good governance. In particular, the better management of public records would offer specific advantages to multiple stakeholders who rely on recorded information to perform their activities, from civil servants to journalists, historians, students, researchers, academics, artists, and consultants, among others. The government, in turn, would increase its efficiency and transparency, and win greater support and legitimacy from the public.

In order to achieve the above, the archival legislation should address several core areas:

Recordkeeping obligations. Records legislation is needed to impose recordkeeping obligations on all government agencies, including obligations to create and properly manage their records, transfer them to the archives under agreed disposal authorities, and comply with records management standards.

Empowerment of the archival authority. The archival authority must be given a clear legislative mandate and statutory status to pursue its mission and role efficiently and effectively. In particular, it requires stronger monitoring and regulatory powers with an appropriate level of resources and professional expertise to develop and update record standards and guidance, and ensure compliance.

Public access right. A statutory right of access to public records should be clearly defined, the grounds for exceptions to public access to be narrowly drawn and made transparent, and a mechanism of review established for cases where access is denied by the Administration.

Electronic records management. Archival legislation is required to ensure that all branches of government comply with government recordkeeping policies and standards in respect of the electronic records currently held and being generated by government agencies.

Ultimately, effective records management should no longer be a matter for discretion by the government – as it is today – but a legal obligation to be enforced and monitored.

Recommendations

Archival legislation should be introduced to replace the current archival administrative arrangements. This new legislation should:

- Establish that public records are held in trust by the government on behalf of the Hong Kong people who are their ultimate owners.
- Provide a government-wide framework for efficient and effective management of public records, setting out the principles that govern recordkeeping practices.
- Establish a statutory archival authority responsible for record policy and records management standards and practices.
- Provide a definition of public records inclusive of all record formats and the records of statutory bodies.
- Provide for mandatory compliance with archival legislation and records management standards by all public sector agencies with clearly defined exceptions as appropriate.
- Make the government responsible for the authenticity, reliability, accessibility, usability and preservation of government records and archives in electronic form as long as required.
- Support and protect creators and keepers of public records against abuse of administrative or political power.
- Give autonomy and protection to the chief executive or government archivist of the archival authority analogous to that of the Director of Audit or the Ombudsman.
- Confer on the public a right of access to public records after a prescribed period(s) of record closure, taking into consideration the nature and security grading of the records and other legal requirements.
- Establish an appeal mechanism to address denial of access to records by the Administration.

Annex A Glossary⁸³

Access

Right, opportunity, or means of finding, using, or retrieving information.⁸⁴

Accountability

The principle that individuals, organisations and the community are required to account to others for their actions. Organisations and their employees must be able to account to appropriate regulatory authorities, to shareholders or members, and to the public to meet statutory obligations, audit requirements, relevant standards and codes of practice, and community expectations.

Appraisal

The process of evaluating business activities to determine which records need to be captured and how long the records need to be kept to meet business needs, the requirements of organisational accountability and community expectations.

Archives

The word 'archives' may be used to refer to:

- (1) records appraised to have enduring value which are permanently preserved in designated repositories.
- (2) the government agency responsible for administering the records.
- (3) the place of deposit of records of continuing or permanent value, or a building dedicated to their care and use.⁸⁵

Classification

The process of devising and applying schemes based on the business activities that generate records, whereby they are categorised in systematic and consistent ways to facilitate their capture, retrieval, maintenance and disposal. Classification includes determining document or file naming conventions, user permissions and security restrictions on records.

Create

The act of making a record of a document or information originating in or received by an organisation.

Disposal

A range of processes associated with implementing appraisal decisions. These include the retention, deletion or destruction of records in or from recordkeeping systems. They may also include the migration or transmission of records between record-keeping systems, and the transfer of custody or ownership of records.

Full and accurate records

Full and accurate records must be:

- *compliant*: complying with the recordkeeping requirements arising from the regulatory and accountability environment in which the organisation operates;
- *adequate*: for the purposes for which they are kept;

⁸³ The following definitions were taken from the glossary contained in *The DIRKS Manual: A Strategic Approach to Managing Business Information*, Commonwealth of Australia 2001, last revised in July 2003 (Appendix 14), unless otherwise specified. The Glossary is available online at <http://www.naa.gov.au/recordkeeping/dirks/dirksman/glossary.html>.

⁸⁴ International Standard ISO15489 – 2001, *Records Management*, Part 1, Section 3 Terms and Definitions, Clause 3.1.

⁸⁵ Dagmar Parer, see note 51.

- *complete*: containing not only the content, but also the structural and contextual information necessary to document a transaction;
- *meaningful*: containing information and/or linkages that ensure the business context in which the record was created and used is apparent;
- *comprehensive*: documenting the complete range of the organisation's business for which evidence is required;
- *accurate*: reflecting accurately the transactions that they document;
- *authentic*: enabling proof that they are what they purport to be and that their purported creators did indeed create them; and
- *involute*: securely maintained to prevent unauthorised access, alteration or removal.

Maintain

Retaining records in identifiable recordkeeping systems over time in accordance with appraisal decisions. Records that are required to be maintained should remain accessible, their integrity should be protected and, where necessary, they should meet the conditions or requirements identified in order to satisfy business needs, organisational accountability and community expectations. This may include migrating records across successive systems and other preservation strategies.

Preservation

A broad term covering the range of activities carried out to make sure that records can be retained and remain accessible for as long as they are needed. This includes environmental control, security, storage, handling, migration strategies and disaster preparedness.

Public Record

A record created or received by a government agency or public body in the conduct of its affairs except copies of records created only for convenience or reference.⁸⁶

Record

Information created, received, and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or in the transaction of business. Recorded information, in any form, including data in computer systems, created or received and maintained by an organisation or person in the transaction of business or the conduct of affairs and kept as evidence of such activity. Record means any document or other source of information compiled, or recorded or stored in written form or on film or by electronic process, or in any other manner or by any other means.⁸⁷

Active Record: a document in current use for administrative or legal purposes

Inactive Record: a document no longer used for administrative or legal purposes.⁸⁸

Recordkeeping

Making and maintaining complete, accurate and reliable evidence of business transactions in the form of recorded information. Recordkeeping includes the following:

- The creation of records in the course of business activity and the means to ensure the creation of adequate records.
- The design, establishment and operation of recordkeeping systems.
- The management of records used in business (traditionally regarded as the domain of records management) and as archives (traditionally regarded as the domain of archives administration).

⁸⁶ The scope of public records may vary in the archives laws of different jurisdictions.

⁸⁷ International Standard ISO 15489, *Records Management*, Part 3 Terms and Definitions, Clause 3.15; Australian Standard AS 4390–1996, *Records Management*, Part 1: General, Clause 4.21.

⁸⁸ Quebec Archives Act (R.S.Q., c. A-21.1) (Canada).

Standards

Records management and recordkeeping standards are authoritative standards to which an organisation is subject or which it chooses to adopt. Standards provide benchmarks for measuring performance and describe best practices in any or all aspects of recordkeeping. Thus standards may function to specify minimum performance levels or describe best practice.

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Annex B Comparative Archival Regulations Chart⁸⁹

Country	Name of the Law	Enactment	Last Amended	Scope or additional remarks
<i>Common Law Countries</i>				
Australia	Freedom of Information Act (No. 3 of 1982)	1982	2006	An Act to give to members of the public rights of access to official documents of the Government of the Commonwealth and of its agencies.
Australia	Archives Act 1983 (No. 79 of 1983)	1983	2006	An Act relating to the preservation and use of archival resources, and for related purposes.
Australia	Privacy Act (No. 119 of 1988)	1988	2006	An Act to make provision to protect the privacy of individuals, and for related purposes.
Australia	Australian Electronic Transactions Act	1999		An Act aiming to remove any existing legal impediments to the use of electronic transactions, and for related purposes.
Canada	Order-in-council	1872		An Order marking the beginning of a federal archives.
Canada	Act of Parliament	1912		An Act making the archives a separate department (the Public Archives).
Canada	Access to Information Act	1985	2005	An Act to extend the present laws of Canada that provide access to information under the control of the Government of Canada, and for related purposes.
Canada	Privacy Act	1983	2005	An Act to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information.
Canada	National Archives of Canada Act (amended by Bill C-36)	1985	2003	An Act creating the National Archives of Canada.
Canada	Canadian Personal Information Protection and Electronic Documents Act	2000		An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions, and for related purposes.
Canada	Bill C-36: Library and Archives of Canada Act	2003		An Act to establish Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence, and for related purposes.
Ireland	State Paper Office (repealed by National Archives Act)	1702	1986	An Act to maintain the records of the Lord Lieutenant and his Chief Secretary.
Ireland	Public Records Act (repealed by National Archives Act)	1867	1986	An Act establishing the Public Records Office, and the preservation of public records.

⁸⁹ This chart presents a partial list of countries which have enacted archival regulations. It is not intended to be a full account of all archival regulations worldwide but a representative sample.

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Country	Name of the Law	Enactment	Last Amended	Scope or additional remarks
Ireland	National Archives Act (No. 11 of 1986)	1986		An Act abolishing the Public Record and State Paper Offices and transferring their functions and holdings to the newly established National Archives. Also an Act relating to preservation and use of archival resources, and for related purposes.
Ireland	Freedom of Information Act (No. 13 of 1997)	1997	2003	An Act enabling individuals to access information held by public bodies to the greatest possible extent consistent with public interest and the right to privacy of individuals, and for related purposes.
Ireland	E-Commerce Act	2000		An Act granting legal recognition to e-signatures, e-writings and e-contracts, and for related purposes.
Jamaica	Archives Act	1982		
New Zealand	Archives Act (repealed by Public Records Act)	1957	2005	An Act which provides for the custody and preservation of the public archives of New Zealand, and for related purposes.
New Zealand	Local Government Act (some provisions repealed by Public Records Act)	1974	2005	An Act relating to the custody, preservation, use, and destruction of local archives, and for related purposes.
New Zealand	The Official Information Act (No. 156)	1982	2003	An Act to extend the right of individuals to access information in possession of the Government, and preserve personal privacy, and for related purposes.
New Zealand	Local Government Official Information and Meetings Act (No. 174)	1987	2004	An Act to make official information more freely available, and for related purposes.
New Zealand	Privacy Act	1993	2002	An Act which guides how personal information can be collected, used, stored and disclosed.
New Zealand		2000		Archives New Zealand created by separation of National Archives from Department of Internal Affairs.
New Zealand	Electronic Transactions Act	2002		An Act to give electronic communication the same legal weight, and for related purposes.
New Zealand	Public Records Act	2005		An Act replacing the Archives Act and the document and archives provisions in the Local Government Act, and for related purposes.
Macau		1952		Creation of Macau General Archives (now Macau Historical Archives).
Macau		1979		Restructured.
Macau		1986		Absorbed by Cultural Affairs Bureau of Macau.
Malaysia		1957	1963	Creation of the Public Record Office (name changed to National Archives of Malaysia in 1963).
Malaysia	National Archives Act (in 2003, National Archives Act No. 629/2003 replaced Act No. 44/1966)	1966	2003	An Act regarding preservation and use of records, and for related purposes.
Malaysia	National Library Act (repealed)	1972	1977	An Act establishing the National Library as part of the National Archives.
Malaysia		1987		Placement of NAM under Minister of Arts, Culture, and Tourism.

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Country	Name of the Law	Enactment	Last Amended	Scope or additional remarks
Singapore	National Archives and Record Centre Act, Cap. 193 (repealed by the National Heritage Board Act)	1968	1993	An Act establishing a national archives, the National Archives and Record Centre, and for related purposes.
Singapore	National Heritage Board Act	1993	2004	An Act establishing the National Archives of Singapore, and relating to preservation and use of records.
Singapore	Electronic Transactions Act, Cap. 88	1998	1999	An Act to create the legal framework for electronic commerce transactions.
South Africa		1919		Origins of National Archives and Records Service.
South Africa	Heraldry Act (Act No. 18 of 1962)	1962	2001	An Act that provides heraldry legal status.
South Africa	National Archives and Records Service Act of South Africa (No. 43 of 1996)	1996	2001	An Act providing for a National Archives, and relating to preservation and usage.
South Africa	Promotion of Access to Information Act	2000	2002	An Act that gives the individual the right to access public or private documents required for the protection or exercise of any rights, and for related purposes.
South Africa		2002		NARS becomes a programme of the Department of Arts and Culture.
United Kingdom	Public Records Act (repealed by 1958 Public Records Act)	1838	1898	An Act to provide proper accommodation for the public records of Great Britain and to facilitate their free use.
United Kingdom	The Royal Commission on Historical Manuscripts	1869	2003	A Commission appointed to inquire into the availability of papers and manuscripts in private hands that might be useful for the study of history, constitutional law, science, and general literature, and to bring them to the attention of scholars.
United Kingdom	Order-in-council	1852		An Order that brought departmental records also under the charge and superintendence of the Master of the Rolls.
United Kingdom	Public Records Act (repealed Public Records Acts 1838-1898)	1958	2000	An Act regarding preservation and use of records.
United Kingdom	Data Protection Act	1998	2000	An Act that gives individuals the right to access personal information held by organisations, and governs how organisations use the personal information they hold, and for related purposes.
United Kingdom	Freedom of Information Act (replaced access provisions of Public Records Acts 1958- 67)	2000	2005	An Act allowing any organisation or individual to request information held by a public authority, and for related purposes.
United Kingdom		2003		Creation of National Archives by merger of Public Records Office and Historical Manuscripts Commission.
United States		1889		Public Archives Commission established.
United States	National Archives Act (48 Stat. 1122-124)	1935	2001	An Act to establish a National Archives and Records Administration as an independent agency, and for other purposes.

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Country	Name of the Law	Enactment	Last Amended	Scope or additional remarks
United States	Federal Property and Administrative Services Act (63 Stat. 378 Sec. 104)	1949	2000	An Act which transferred the National Archives to the General Services Agency, and changed the name to the National Archives and Records Service (NARS) to reflect its responsibility for current records as well as archives. The Federal Records Act of 1950 clarified this records responsibility.
United States	Federal Records Act	1950	2002	An Act to provide the National Archives a publication function, and to establish the framework for records management programs in Federal Agencies.
United States	Presidential Recordings and Material Preservation Act	1974		An Act that gave the government custody over the Nixon tape recordings, documents, and records.
United States	Presidential Records Act (44 U.S.C. §2201-2207)	1978	2002	An Act transferring ownership, possession, and control of Presidential records to the United States.
United States	National Archives and Records Administration Act (98 Stat. 2280)	1984		An Act relating to preservation and use of records. The Act granted the National Archives its independence and resulted in a name change to the National Archives and Record Administration (NARA).
United States	Freedom of Information Act	1966	2002	An Act relating to access to government records and public organizations' public solicitation of information, and for related purposes.
United States	Privacy Act (No. 93-579, 88 Stat. 1897)	1974	2004	An Act regulating government control of documents which concern a citizen, and for related purposes.
United States	Electronic Freedom of Information Act	1996		An Act to provide for public access to information in an electronic format, and for other purposes.
United States	USA Patriot Act (section 215)	2001	2005	An Act to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.
United States	E-Government Act	2002		An Act to enhance the management and promotion of electronic Government services and processes, and for related purposes.
<i>Europe</i>				
Austria	Bundesarchivgesetz	1897		
Belarus	Law on National Archival Holdings and Archives in the Belarus Republic			
Belgium	Legal Framework	1957		
Bulgaria	General Department of Archives- Legislation			
Croatia	Archive Law	1997		
Croatia	Law on Archive Records and Archives			
Czech Republic	Archive Legislation			

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Country	Name of the Law	Enactment	Last Amended	Scope or additional remarks
Denmark	Lovgivning (No. 740)	2000		
Estonia	Archives Act	1998		
Finland	Act on the Archiving of Films (No. 576)	1984		An Act to preserve the cultural heritage recorded in cinematic form and to promote knowledge about and research into cinema, films and material relating thereto.
Finland	Decree on the Finnish Art Archives (No. 228)	1997		An Act regarding the function, purpose, and scope of the Finnish Art Archive.
France	Code du patrimoine (No. 79-18)	1979		
France	Loi sur la société de l'information			
France	Textes normatifs et réglementaires relatifs aux archives	1979		
Georgia	Archival Legislation	1995		An Act relating to the functions of preservation and use of important official government documents and records.
Germany	Bundesarchivgesetz			
Hungary	Act LXVI of 1995 on Public Records, Public Archives, and the Protection of Private Archives	1995		An Act regarding the basic rules about protection, continuous acquisition and use of archives.
Iceland	The Act on the National Archives of Iceland (No. 66)	1985		
Latvia	Law on Archives	1991	1993	An Act regarding the formation, preservation, use and management of records
Liechtenstein	Archivgesetz	1997		
Lithuania	Law on Archives (No. I-1115)	1995	2004	An Act regarding the management, accumulation, and right of access of records.
Luxembourg	Règlement grand-ducal du 15 janvier 2001 sur la consultation des fonds d'archives aux Archives Nationales	2001		
Malta	National Archives Act (repealed)	1990	2005	

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Country	Name of the Law	Enactment	Last Amended	Scope or additional remarks
Malta	National Archives Act	2005		An Act to regulate the National Archives, and to make provisions for the appointment of a National Archivist and for other dispositions ancillary thereto.
Norway	Arkivarbeid- Lov og Reglar			
Norway	Arkivarbeid	1992	1999	
Portugal	Law-decree (No. 60/97)	1997		To define and execute a national archival policy, which prior to this date was nonexistent.
Romania	National Archives Law	1996		
Russia	Basis of the Russian Legislation on the Archival Funds of the Russian Federation and on Archives	1993		
Russia	Regulations of Archival Funds of the Russian Federation (No. 552)	1994		
Russia	Regulations of the Federal Archival Service of the Russian Federation (No. 1562)	1998		Includes chapters on Russian Federal Archival Service (Rosarkhiv), regional bodies of archival management, archival funds, and use of archival information resources.
Russia	Regulations on State Registration of Documents of the Russian Archival Funds (No. 11)	1997		
Russia	Regulations on the Registration of Archival Documents during the Privatisation of State (No. 54)	1996		
Slovakia	Archival Legislation			
Slovenia	Law on Archival Materials and Archives (No. 20/97)	1997		
Spain	Decree of 22 November 1901 - Rules on Archives of the State	1901		
Spain	Law 16/1985 of 25 June, Spanish Cultural Heritage (art 58)	1985		Creation of the Superior Classifying Commission of Administrative Documents.
Spain	Royal Decree 139/2000	2000		Composition, functioning and competencies of the Superior Classifying Commission.

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Country	Name of the Law	Enactment	Last Amended	Scope or additional remarks
Spain	Royal Decree 1164/2002	2002		Preservation of documents with historical value. Provisions on the destruction of other documents of the General Administration of State and governmental bodies, and the preservation of administrative documents in a format different to the original.
Spain	Royal Decree 937/2003	2003		Modernization of judicial records.
Switzerland	Bundesgesetz über die Archivierung			
<i>Latin America</i>				
Argentina	Law 15930	1961		Creation and functioning of the National Archives. Provisions on rights, obligations and penalties regarding archival practices.
Argentina	Decree 1571	1981		Periods of time during which specified records are to be kept by the National Archives and other governmental bodies.
Argentina	Decree 232/79	1979		Procedures for the identification and destruction of useless documents. Promotion of consistent practices among different governmental bodies.
Brazil	Directive AN/N 1 of 18 April 1997	1997		Procedures for the transfer of records to the National Archives.
Chile	Law 7217 of 1927	1927		Creation and functioning of the National Archives. The National Archives shall be in charge of gathering, preserving and classifying the records of the State Departments and all documents and manuscripts related to national history.
Chile	Decree with force of Law 5200 of 1929	1929		Promotion of consistent archival practices among different governmental bodies and public libraries.
Chile	Superior Decree 6234	1929		Provisions on certification services provided by the National Archives.
Chile	Superior Decree 1563 of 1947	1947		Rules on the usage of the National Archives by researchers and general users.
Colombia	Law 594 of 2000 - General Archives Law and related provisions	2000		Rules and guidelines for the archival practices of the State.
Cuba	Decree 221 on the Archives of the Republic of Cuba	2001		Rules and guidelines for the archival practices of the State.
Ecuador	Law on the General Archival System	1934		Rules on national archival practices.
El Salvador	Archivo General de la Nacion- Legislacion			
Paraguay	Law 1099/97	1997		Mandates all governmental branches and agencies to keep records of their activities for a period of 10 years. After that period, the records are to be sent to the National Archives.

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Country	Name of the Law	Enactment	Last Amended	Scope or additional remarks
Venezuela	National Archives Law	1945		Creation and functioning of the National Archives. Rules on archival practices and ownership of records.
<i>Asia & Middle East</i>				
Algeria	Law No 88-09, Legal texts	1988	2001	
Bangladesh	National Archives Ordinance	1983		Creation of the National Archives and regional archives.
Brunei	National Archives Act	1981	1991	
China	Archives Law of the People's Republic of China	1987	1996	An Act to strengthen the management, collection, and arrangement of archives and effectively promote and use archives in the service of socialist modernization.
India	Public Records Act	1993		An Act regarding the management, administration, preservation of Public Records of the Union Government, Union Territories, Public Sector Undertakings, Statutory bodies and Corporations, Commissions and Committees constituted by the Union Government or Union Territory Administrations.
India	Public Records Rules	1997		Rules on the functioning of the Public Records Act system.
Indonesia	Legal texts			
Japan	Public Archives Law (No. 115)	1987	1999	An Act relating to necessary matters with regard to public archives.
Japan	National Archives Law	1999	2000	An Act which provides the title, purpose and scope of operations of the National Archives- Independent Administrative Institution and other matters relating to the proper preservation and use of records.
Republic of Korea	Public Records Management Act	2000		
Lebanon	Decree No. 832	1978		An Act creating a public archives named the Centre of National Archives.
Morocco	General Library and Archives- Legal statute	1926		
Pakistan	The Archival Material (Preservation and Export Control Act)	1975		
Pakistan	The National Archives Act	1993		Under this Act, permanent records of Ministries, Divisions and Federal Government Departments lying with them since 1947 were transferred to the National Archives.

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Country	Name of the Law	Enactment	Last Amended	Scope or additional remarks
Sri Lanka	National Archives Law (No. 48)	1973		Creation of the Department of National Archives.
Taiwan	Archives Act	1999	2001	This Act was enacted to refine the management of archives by the government, to promote public awareness and use of archives, and to optimize the functions of the archives.
Taiwan	The Regulations for Transfer of National Archives	2001		
Taiwan	The Retention Period and Destruction Regulations for Agency Records	2001		
Taiwan	The Enforcement Rules of the Archives Act	2001		
Taiwan	The Management Regulations for Classified Archives	2001		
Taiwan	The Implementation Regulations for Archives on Electronic Storage	2001		
Tunisia	Law No. 88-95, Legal Texts	1988		
<i>Africa</i>				
Ethiopia	The Ethiopian National Archives and Library Proclamation (No. 179/1999)	1999		
Kenya	The Public Archives and Documentation Service Act	1967	1991	An Act of Parliament to establish the Kenya National Archives and Documentation Service and to provide for the preservation of public archives and public records and for connected purposes.
Malawi	Law on Printed Publications	1948		An Act to make provision for the Registration of Newspapers, the Printing and Publication of Books and the Preservation of Printed Works Published in Malawi.
Mozambique	Lei do Sistema Nacional de Arquivos (No. 33/92)	1992		
Uganda	National Records and Archives Bill	2000		An Act to provide for the rationalised management of all Government and other public records and archives under one single authority, for the preservation, utilisation and disposal of such records and archives, for the repeal of the Records (Disposal) Act, and for other connected matters.



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