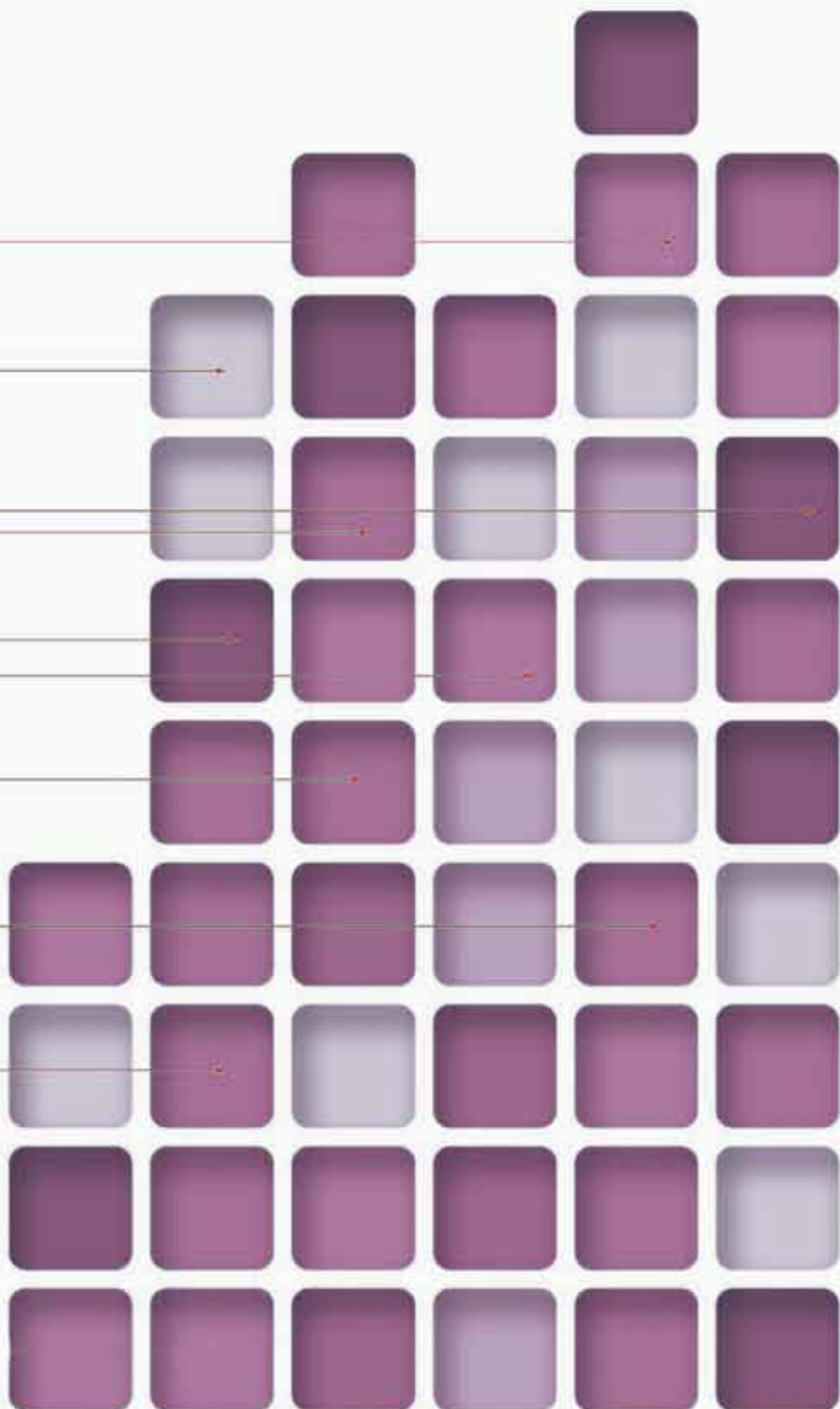


# The Memory Hole:

## Why Hong Kong Needs an Archives Law

November 2011

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Civic Exchange is an independent public policy think tank that helps improve policy and decision-making through research and analysis. It is a company with limited liability and a registered charity in Hong Kong.

# PREFACE

This is Civic Exchange's second major publication on public records and the need for archival legislation in Hong Kong. After Civic Exchange published the HKSAR's first ever report on the subject in 2007 and held the city's first forum on the subject in 2009, the topic has gained support among many stakeholders in the education, research and academic sectors, as well as among community groups.

However, there remains only slight interest within political circles, as could be seen from the tepid motion debate in the Legislative Council on 16 November 2011. Government officials could not find the will and time to put administrative practices into legislation – they have insisted that the current system works well. This is plainly not the case. There have been too many incidents where matters of public interest could have been settled had the relevant government departments and bodies been able to produce records. Those incidents attest to poor recordkeeping, and they should have alerted senior officials to the need to revamp Hong Kong's public sector recordkeeping and archival system. Perhaps pressure will grow with the damning report by the Audit Commission's report on *Records management work of the Government Records Service* dated 25 October 2011 although only just released.

This report not only updates the previous one but also shows how the HKSAR Government is willing to let its administrative standards slip. The HKSAR Government generally consults international best practice when preparing its own approaches, and yet, curiously, it has chosen not to follow that approach in managing public records. We hope this report will help all stakeholders to see this gap and that the next administration starting on 1 July 2012 will devise a new policy to legislate an archives law.

We are grateful to Nick Frisch for the time he spent helping Civic Exchange on the subject, the many professional archivists and experts for sharing their experience, the Government Records Service, Chief Executive's Office, Central Policy Unit, and Secretariat for Civil Service Discipline for responding to our questions, Pauline Poon for translating the report into Chinese, Andrew Laub and Justin Brown for assisting in legal translation, Cissy Lui for checking the footnotes, Michelle Wong for the layout of the report, and our Chief Operating Officer, Yan-yan Yip, for shepherding this project to fruition.

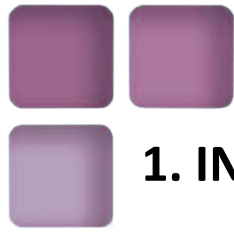
Christine Loh  
Chief Executive Officer

24 November 2011

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# 1. INTRODUCTION

## 1.1 Records are a valuable resource<sup>1</sup>

The value of records is that they provide evidence of business functions and activities. They keep track of business operations and transactions, make people accountable for decisions made and money spent, meet service delivery and information requirements, and provide a historical record for researchers and posterity.

Records are a vital resource, like manpower, money and property, without which no organisation can function properly. For records to maintain their value, they must be managed in ways that ensure authenticity, accuracy, security, timely access and continuous usability in compliance with laws, regulations, policies and standard practices. In short, as a resource, records require constant managerial attention and management with professional expertise.

## 1.2 Public records should be protected by law

The importance of public records lies in the fact that they are public property held in trust for the citizens whom the government serves and on whose behalf government performs its functions and duties. Because records document the business of government, including the protection of rights, privileges and property of individual citizens, they constitute a form of public property of higher value than public buildings, equipment or even money, all of which usually can be replaced. It is this unique value and the irreplaceable nature of records which dictates that they must not be altered, defaced, mutilated or removed from public custody any more than public funds may be embezzled or misappropriated. Given this sanctity uncharacteristic of other kinds of public property, it is obvious that public records require the protection of the law.

Today, public records have emerged internationally as an essential tool for citizens and governments alike. With the management of and access to public records legally protected by law, government decisions and delivery of public services become more transparent. Citizens can keep their government accountable and ensure the wise use of public funds. Governments with archives laws are in a position to monitor policy implementation more reliably and accurately; moreover, such laws ensure that government documents, and the governments themselves, enjoy the trust of their people as well as that of courts, corporations, and public bodies, both domestically and abroad.

In many jurisdictions around the world where there is an archives law in force, public servants are legally obliged to:

- Create accurate and adequate records of official business and transactions;
- Keep and manage such records on the people's behalf; and
- Provide records that have completed their business functions and purposes to the archival authority for appraisal and transfer those of enduring value to the archival authority for permanent retention and public access.



Regardless of some technical differences, archives laws in most jurisdictions share the same basic objectives: enhancing efficiency, accountability, probity, rule of law, heritage preservation, and understanding of history by future generations.

In countries and territories such as Singapore, Australia, Canada, the United States, the United Kingdom, China<sup>2</sup> and Macau<sup>3</sup> where there is an archives law, government officials who destroy or mutilate official records can be prosecuted in court and fined or imprisoned. Such sanctions provide an incentive for public servants to maintain the integrity of public records, with concomitant improvements in accountability, rule of law, and public trust in government.

### 1.3 Why Hong Kong needs archives legislation

Hong Kong people enjoy a good standard of public services that is above the global average, but in this one crucial area of managing public records, the Hong Kong Special Administrative Region Government (HKSARG) serves its public worse than many other governments. Despite the many obvious merits of having an archives law, officials of the HKSARG have persistently denied such a need.

Hong Kong's public servants' handling of records is governed by directives, guidelines and publications, some of which were made "mandatory" in April 2009. Not only are these "mandatory requirements" less comprehensive than archives laws in other jurisdictions; as a management mechanism, they are vague and carry no weight on those public servants who, for various reasons, choose not to comply. The "mandatory requirements" also fall short of HKSARG's own overall standards of efficiency and performance.

Archives laws in most jurisdictions protect the integrity of public records of the entire public sector. In Hong Kong, none of the records from statutory public bodies, whether the Hospital Authority, Airport Authority or Housing Authority, are covered by the government's mandatory requirements. These three authorities are among some 200 statutory public bodies subsidised by public funding that discharge many governance functions and public services, yet they are left alone in managing their records in whatever ways they desire.

Four years have elapsed since Civic Exchange published in March 2007 its first report on the management of public records in Hong Kong.<sup>4</sup> From then to now, no genuine attempt has been made by the Administration to improve the system. Hong Kong is still one of the few jurisdictions in the developed world that has not enacted archival legislation to ensure proper management and preservation of public records. Hong Kong still has no adequate central archives. No duly certified professional archivists are empowered with the ultimate responsibility for protecting and ensuring the authenticity, integrity and continuous usability of Hong Kong's public records. This is not for lack of expertise or resources, but rather the Administration's seeming ignorance of, or lack of respect for, the importance of public records and thus the need for an archives law.

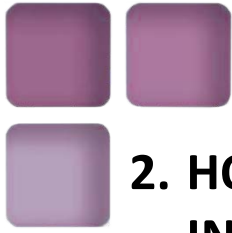
Hong Kong's lack of a legally-mandated archives and records management system, in contrast with international practice, has resulted in numerous incidents where, had records been properly created and kept, important questions of public accountability could have been addressed. Inadequate identification and preservation of public records as archives has also deprived Hong Kong people of impartial official documentation relating to their history, heritage and civic identity. In the absence of an archives law,

students and historians researching Hong Kong will continue to face unreliable and incomplete documentary evidence. In many cases, historians researching Hong Kong history find the records in the National Archives in London to be far more comprehensive and reliable than those in Hong Kong.<sup>5</sup>

The issue of archives legislation is not only relevant to specialists or researchers. Government actions involving land and housing, public health, infrastructure, immigration and financial misappropriation frequently attract interest and controversy in Hong Kong. This has been true for decades but both the frequency and intensity of such controversies have increased in recent years. Usually, the proximate cause of public dissatisfaction is tangible: a piece of land, a large sum of public money, or a serious medical error. In many cases the root cause of these unresolved controversies can be traced to incomplete or no official records to verify the truth as relevant documents have gone missing or are altered, or were not created in the first place. Without reliable evidence, what has actually happened cannot be established, and public confidence in the government erodes. Both citizens and government alike are badly served by the status quo.

The lack of legislation to protect the integrity of public records and the efficient use of this valuable resource contravenes the government's objectives to enhance competitiveness, openness, and accountability as well as the branding of Hong Kong as a "world city" that values and promotes the rule of law, knowledge, communication, culture and heritage.

The litany of poor records and archival practices can now be seen from the HKSAR's own internal assessment. The Audit Commission's report on *Records management of the Government Records Services* dated 25 October 2011, although publicly released only on 16 November 2011, provides ample evidence of widespread problems and supports the case for archival legislation.<sup>6</sup>



## 2. HOW ARE PUBLIC RECORDS MANAGED IN HONG KONG?

### 2.1 Archival services began under “Pressure”

In July 1989, the Government Records Service (GRS) was established as the central agency in the Hong Kong Government for the administration of government records throughout their life cycle,<sup>7</sup> from creation, maintenance and use to their final disposition. However, the history of centralised records administration goes back to the early 1970s when the Hong Kong Government was “compelled” to recognise the importance of archival records and established the Public Records Office (PRO), the first central agency in the Hong Kong Government to deal with records.

What triggered this endeavour was the amendment made to the *Public Records Act* of the United Kingdom in 1967 which reduced the closure period for archival records from fifty to thirty years. As most of the Hong Kong Government’s records had been destroyed during World War II, in following the 30-year rule introduced by this amendment, records created by the Hong Kong Government since 1945 would be open for public access in 1975. It was seen as potentially embarrassing to the Administration if no archival records or archival facilities were available to entertain requests from the public for accessing such records.

### 2.2 The setting up of the Public Records Office (PRO)

In 1971, the Administration hired Ian Arthur Diamond, an Australian archivist, to study the records situation and develop an archival system for Hong Kong. Diamond’s recommendations were endorsed by the Executive Council, and led to the establishment of the PRO<sup>8</sup> and the introduction of a framework for public access to archival records as set out in the *Public Records (Access) Rules*.<sup>9</sup> It appears that these were only intended as initial steps as Diamond’s recommendations included also that a comprehensive records law with management practices to international standards should be put in place as a matter of course. In a lecture for the Royal Asiatic Society (Hong Kong Branch) in 1974, Diamond regarded the passage of a law as the ultimate conclusion:

In due course it will be appropriate to enact a Public Records Ordinance to provide a legal basis for the P.R.O. and its activities and to settle its relations with other government offices and the public. The character of this legislation, when it is passed, will be important in determining the future development of the Office and the effectiveness of its operations.<sup>10</sup>

Diamond’s rationale in 1974 holds true for Hong Kong today:

In the interests of efficiency it is desirable that departments should develop procedures for the elimination of valueless documents. The trouble is that in many cases these have been devised with such narrow attention ... that much material of importance ... has been destroyed with the rubbish.

... Hong Kong's officialdom has [not] been remiss. Administrators ... are not equipped to conserve records [and] their efforts in Hong Kong must have been defeated by lack of storage space and of staff to cope.

Now that the P.R.O. has been established, such reduction as there has been of government's archival resources should come to an end. How soon it does so will depend on how rapidly and effectively the P.R.O. is enabled to develop its services. Departments have already been instructed that in future no records are to be destroyed without P.R.O. sanction; but this will become a dead letter if we fail to give them prompt assistance in the appraisal of their records and ready accommodation for those which are marked for permanent retention.

... The establishment of institutions which relieve departments of the burden of accommodating and administering great masses of non-current records would go far to obviate premature or unauthorised destruction of them.<sup>11</sup>

As shown in the ExCo Papers of 1971, the Administration supported this view:

It is envisaged that initially the Public Records Office would be for administrative purposes [and] 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.<sup>12</sup>

It is unclear why the recognition of the need for archives legislation faded from the agenda. Possibly, it was the lack of popular awareness of, and support for, the law. Bureaucrats are also inclined not to act, particularly in introducing new laws that bind themselves, if they are not pressured.

### 2.3 Public records in the spotlight

The issue of public records, however, regained attention with the *Sino-British Joint Declaration* of 1984 and the impending transfer of sovereignty of Hong Kong to China. In 1986, a Government Records Co-ordination Unit (GRCU) was created in the Hong Kong Government to microfilm important records, especially security graded records, for transfer back to London. The Chinese Government, meanwhile, sought a smooth handover of colonial records to the new HKSARG.<sup>13</sup>

In 1987, amid this renewed interest in public records, Australian archivist Don Brech was appointed as Hong Kong's Government Records Co-ordinator to head the GRCU. In 1989, Brech submitted a proposal to improve government records management, identifying the main problems at the time as:

- Lack of records legislation;
- The limited role and powers of the PRO;
- Absence of clear and comprehensive government policy on records management; and
- Government inaction in adapting to emerging technologies<sup>14</sup>.

Brech's proposal was partially implemented with the establishment of the GRS in 1989. The newly established agency executed government archives and records management functions through its subordinate offices which included the PRO (the original government archives established in 1972), the GRCU and a new Records Management Office (RMO).

At the beginning, the GRS and its constituent offices were managed by archivists (Archivist grade staff). Since the mid 1990s, the GRS has gone through a de-professionalisation

process. Staff from the Executive Officer (EO) grade with little experience in records management and no training or understanding of archives and records management have been deployed to GRS to replace the archivists in senior and key professional positions.

Despite its titular role as Hong Kong's lead records agency, the GRS is not an independent statutory body and ranks as a low-level administrative unit. Except for a brief period when it was placed under the Constitutional Affairs Branch, the GRS has been operating under the Administration Wing of the Chief Secretary for Administration's Office, or its predecessor.

## 2.4 A service-wide approach to improving records management

In 1994, the Director of Administration formed and led a partnership on records management between the GRS and the Efficiency Unit. Their jointly-launched Records Management Strategy (RMS) was a coordinated effort to improve the quality and efficiency of recordkeeping across the entire bureaucracy. This objective was to be achieved primarily through:

- Controlling the excessive growth in the volume of government records;
- Systematic and consistent records disposal;
- Introduction and standardisation of modern information technology and equipment; and
- Providing records management guidelines, standards, training and consultancy services to all government agencies as needed.

In the same year, the subject of records legislation was raised again due to the sudden decision by the Administration to relocate the PRO from Central to an industrial area in Tuen Mun. During discussions about the relocation of the PRO,<sup>15</sup> the Legislative Council (LegCo) Panel on Information Policy identified a number of problems with government records management whose solutions were considered to be well within the capabilities of Hong Kong's budget and judicial system:

There were deficiencies and restriction[s] 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.

***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 a 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." [emphasis added]<sup>16</sup>

In its response, the Administration acknowledged that there was

no statutory responsibility for the Heads of branches and departments to hand over their records to [the] Government Records Service ... Under [the] present system, [GRS] 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 [GRS]. Also, there was no policing system to ensure that records would not be destroyed by branches and departments without the knowledge of [GRS].<sup>17</sup>

Despite the inadequacies acknowledged, the Administration declared that “the need for legislative protection of records was not apparent at the moment.”<sup>18</sup> Even though the Administration agreed to revisit the issue in due course, it was not pursued.

## 2.5 Addressing the electronic records problem

Since the early 1990s, an increasing proportion of government business has been transacted using electronic rather than paper records, and today, more and more government records, like e-mails, are “born digital”.

Recognising the challenge presented, in 2000, GRS, under the auspices of the Director of Administration, initiated the formation of a Working Group for Electronic Records Management (ERM). The ERM Working Group comprised members from GRS, the Efficiency Unit and the then Information and Technology Services Department with the assistance of a records consultant from overseas. It was tasked with studying the various issues relating to the management of electronic records in different environments and to draw up preliminary ERM guidelines. The most important item on the agenda was to recommend a strategy for the development of standards and implementation of an electronic recordkeeping system (ERKS) for service-wide application.

The ERM Working Group was dissolved in late 2001 and a records manager from Canada was employed on contract terms between late 2002 and 2005 to head GRS. That led to a major reorganisation effort in 2003 with a view to better managing the fast-growing body of electronic records. At the expense of the PRO, substantial resources were diverted to a newly-created Record Systems Development Office (RSDO) within the GRS, whose mandate is “meeting ... demand [for] management of electronic records to support e-Government initiatives, new technologies and practices”.<sup>19</sup> In the eight years since the RSDO was established in 2003, this demand remains unmet.

Despite a number of pilot runs, numerous technology initiatives, several consultancy studies and ample training opportunities given to officers in RSDO, the government’s ERM policy is still “print-and-file”, which was recommended by the ERM Working Group in 2001 only as a stop-gap measure pending the development and implementation of a proper ERKS. Today government electronic mail must still be printed on paper and filed in manual systems, an approach that is both environmentally hostile, with many tons of paper being unnecessarily consumed, and inefficient in terms of records management as many types of electronic records cannot be fully captured and preserved in paper format.

## 2.6 Managing records by administrative guidelines

Under the Records Management Strategy, an RMS team headed by an archivist was formed between 1996 and 1999 to compile guidelines and promote best practice for the proper management of records. A series of GRS Records Management Publications were produced as a result for training and service-wide application, which are still being used

today with minimal updating. The *Records Management Manual (RMM)* proposed by the Archivist of RMS was subsequently prepared. It was issued by the Director of Administration in 2001.

In 2006, the Administration introduced *General Circular No. 5/2006, Management of Government Records*. It is a twelve-page document based entirely on the GRS Records Management Publications and particularly the *RMM*. According to this *2006 Circular*, bureaux and departments (B/Ds) were asked to:

- Recognise that “records are valuable resources of the Government to support evidence-based decision-making, meet operation and regulatory requirements, and are essential for an open and accountable government. Good records management enhances operational efficiency and effectiveness while minimising costs”;
- Appoint a Departmental Records Manager; and
- Seek GRS assistance in following the guidelines as detailed in the *RMM*.

In April 2009, the Administration issued *General Circular No. 2/2009, Mandatory Records Management Requirements*. While the content of the two Circulars are similar, the 2009 document differs from the previous rules in two key respects in:

- Making some records management procedures “Mandatory Requirements”; and
- Requiring Departmental Records Managers to be of a certain rank.

These changes, however, do not represent a committed effort to address the deficiencies in records management practices across the civil service. There is no mechanism for enforcement of the mandatory requirements or authority for the GRS to monitor and require their implementation. Further, Departmental Records Managers are from a fairly junior rank of the bureaucracy and not required to be qualified or experienced records managers.

With regard to enforceability, the Secretariat for Civil Service Discipline has explained that:

... government officers have to strictly follow these guidelines and regulations in discharging their duties no matter they are specified as “mandatory” or not ...

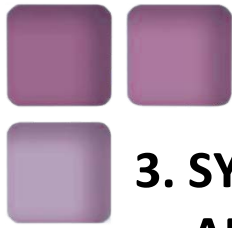
[SCSD personnel] cannot recall any instances in which the guidelines and regulations set out in circulars and memos were upgraded to “mandatory” with concomitant increase in disciplinary proceedings. For the [above-mentioned] reason ... there is no need to adopt such a mechanism to step up compliance.<sup>20</sup>

Thus it seems that making the records management guidelines into “mandatory” requirements has made no fundamental difference. While internal civil service disciplinary mechanisms do theoretically exist to punish records misfeasance, neither the GRS, the Civil Service Bureau, nor the Independent Commission Against Corruption (ICAC)<sup>21</sup> were able to confirm if any government official had been disciplined for a violation of the guidelines or the “Mandatory Requirements”.

The Secretariat on Civil Service Discipline stated explicitly that no government official has ever been disciplined for violating the “Mandatory Requirements”.<sup>22</sup> It was not until late September 2011 that GRS responded that one civil servant had been disciplined for records destruction though cases of missing public records have been repeatedly reported in the news.

The lack of an enforcement provision in the records management guidelines or the mandatory requirements is a failure to signal what most jurisdictions communicate clearly through legislation: public records are held by the government on the public's behalf and must be treated as a valuable asset in an accountable and transparent manner.





### 3. SYSTEM FAILURE: MANAGEMENT BY ADMINISTRATIVE RULES

#### 3.1 Ineffective records management based on guidelines

In lieu of a law, the HKSARG has been using a number of administrative directives, guidelines and publications to manage public records such as the *Handbook on RMM*, *Practical Guide*, *Checklist*, *Guideline on the Management of Electronic Mail* and other management publications.<sup>23</sup> The most important of these is the *RMM*, written by the Archivist of the PRO and issued by the Director of Administration in 2001.

The *RMM* was originally intended to be a regulation of mandatory nature covering the different aspects of archives and records management across the civil service. It was mentioned as a policy objective by Tung Chee Hwa's Administration in 1999. However the Director of Administration backed down after the draft was written and changed its status to a set of advisory guidelines. The Manual was published with little promotion and has not been updated since.<sup>24</sup>

In Civic Exchange's first report on the subject of managing public records, it was emphasised that a major fault with Hong Kong's record system, among others, was that the management guidelines issued to B/Ds lacked the force of law. B/Ds were not obliged to comply with the guidelines.<sup>25</sup> This approach to the management of one of government's vital resources has proven to be ineffective, as demonstrated through the many cases of non-compliances by B/Ds. For example, B/Ds are not always aware that prior approval from the GRS Director is required for the destruction of records. Those who do know can choose to ignore such a requirement without consequences, resulting in many instances of unauthorised destruction.<sup>26</sup>

The situation remains largely unchanged as reflected in a series of reported incidents where public records were found to be missing or not created.<sup>27</sup> In May 2010, in response to a question by the LegCo, the Administration still maintained that "The present records management system based on administrative arrangements is functioning effectively..."<sup>28</sup>

At its best, today's mix of administrative guidelines and rules provides only a weak framework for archives and records management. The system continues to require, in the words of the 1994 Information Panel of the LegCo, "a high degree of self-discipline and motivation" on the part of B/Ds which is often lacking.

#### 3.2 Guidelines nullified by disparate legislation

Whilst many jurisdictions establish a regulatory framework for archives and records management supplemented by guidelines, handbooks, manuals, and checklists, one crucial distinction is their authority is derived from law.<sup>29</sup> The HKSARG's administrative guidelines and rules are without any legal status. They are subordinate to a number of records-related laws and regulations that govern the creation, use and disposal of

different kinds of records and information. For example, the *Personal Data (Privacy) Ordinance*<sup>30</sup> has a crippling effect on Hong Kong's archival operations since it restricts the disclosure or transfer of personal data without the consent of the data subject to safeguard the privacy of a living individual. As a result, government agencies cannot legally transfer records of enduring value to the PRO if they contain personal data.

The *Personal Data (Privacy) Ordinance* also provides that personal data must be erased when the data are no longer required for the purpose or a related purpose for which they are used or a related purpose, which threatens the very existence of records. Although records of public interest, including historical interest, are exempted from the provision, it is unclear who can determine what falls under the exempted categories. The Census and Statistics Ordinance mandates the destruction of raw statistical data contained in census returns that are of great archival value and frequently demanded by genealogists and researchers. In these circumstances, it is difficult to understand why the Administration still asserts that "the present archives and records management system based on administrative arrangement is functioning effectively".<sup>31</sup>

It is obvious that archives legislation is required to remove legislative obstructions to the retention of records of archival value. It is equally if not more important to have laws that ensure the proper creation and management of public records as well as provide a statutory right for their continuous access by the public whilst balancing the need for the protection of privacy, confidentiality and various security concerns.

### 3.3 Promulgation of the "Mandatory Requirements": General Circular of 2009

Between 2007 and 2010, numerous questions were raised by the LegCo and the media about the management of public records. Although the Administration still held that archives legislation is "not the only way to improve the management of government and archival records",<sup>32</sup> as a response to the mounting pressure and criticism, it issued *General Circular No. 2/2009, Mandatory Records Management Requirements* (hereafter cited as the *2009 Circular*)<sup>33</sup>, designating a set of "mandatory" management guidelines with the claim that "the set of mandatory records management requirements is binding on all government employees".

It should be noted that the *2009 Circular*, which is based on the *2006 Circular* entitled *Management of Government Records*, is not binding by itself but only some of the specified requirements within it. The latter, however, do not constitute comprehensive requirements for managing records throughout their life cycle and fail to address many existing problems. For example, the *2009 Circular* does not touch upon the need for creating proper, complete and adequate records which is fundamental in any records management programme (as set out in para. 101.a of the *RMM*).<sup>34</sup> It fails to specify the records management authority and responsibility of the Heads of B/Ds and of GRS (paras. 209 and 220 respectively of the *RMM*). It is silent about who has the final say over what records should be destroyed or retained when there are conflicting views between B/Ds and GRS. There is no prescribed deadline by which B/Ds must hand over their records to the PRO for appraisal of archival value (para. 637 of the *RMM*) thus giving B/Ds the flexibility to keep any records as long as they desire. There is no mention of providing access to the archival records preserved at the PRO by members of the public (paras. 460-472 of the *RMM*).

### 3.4 Vagueness of requirements

These “mandatory” requirements are far from specific. For example, the *2009 Circular* asks B/Ds to “accord appropriate priority and resources to implement a proper records management program throughout their organisations” (para. 1) and to “cooperate with the Government Records Service ... to ensure proper preservation of records ... with archival value.” (para. 2). However, no criteria are provided as to what is considered “appropriate” or “proper”. Nor is there any mention of audit or inspection by GRS to ensure compliance, or the sanctions imposed if B/Ds do not follow these requirements. It is uncertain, therefore, whether or not the requirements promulgated by the *2009 Circular* are “mandatory” in effect.

### 3.5 Departmental records managers unqualified

The *2009 Circular* requires that B/Ds should designate a Department Records Manager (DRM) who, “as a general guideline,” must be at the rank of Senior Executive Officer or above (para. 5). In practice, most of the DRMs nominated belong to middle management or are relatively junior officers who wear many ‘hats’ (such as being the Assistant Departmental Secretary and Green Manager, etc). It is hard for them to say “no” to their superiors or to give instructions on records management.

There is no requirement for the DRMs to have any understanding of or experience in records management even though their duties involve many professional records management tasks, such as vetting and approving the design of recordkeeping systems, introducing records-related technology, identifying and protecting vital records, and approving new records classification schemes. These DRMs are not professionally trained records managers and inevitably lack the requisite expertise and knowledge to perform the records management duties laid down in the *2009 Circular*.

### 3.6 Management of electronic mail and other electronic records

Increasingly, government B/Ds create, use and manage information electronically in the performance of their functions. Public officers are now using computers to send email, create spreadsheets, publish web pages, and manage databases. Electronic records, therefore, include not only emails but many other kinds of e-records that are maintained in more structured electronic systems and on websites. The *2009 Circular*, however, is silent about any mandatory requirements for the management of these records.

As regards the management of email, paragraph 7 of the *2009 Circular* still asks B/Ds to adopt the “print-and-file” approach, as provided in the Guideline on the *Management of Electronic Mail (Email Guideline)* compiled by the ERM Working Group in 2001. The approach was intended to be a temporary measure until a proper ERKS was developed with more permanent procedures implemented. The “print-and-file” approach necessitates tonnes of paper needlessly wasted when public servants print their emails en masse and file them manually.

It must be mentioned that in about 18 months, the ERM Working Group set up in 2000 and disbanded in 2002 had prepared not just the above *Email Guideline* but also a set of functional requirements for an ERKS to be introduced service-wide and recommended a strategy for the development of the ERKS with a roadmap and a timetable. It was never anticipated that the *Email Guideline* and the functional requirements for the ERKS would form the core basis of the electronic records management endeavour of the government

in the following 10 years without any major change or concrete accomplishment.

One of the central questions remaining is whether or not the GRS is keeping abreast of the millions of e-records and making sure that they are not destroyed or lost in computer systems. When asked if the GRS “has compiled statistics on the quantity of official electronic mails and documents printed and filed by various government departments ... and the quantity of paper used for that purpose”, its spokesman simply replied that they did not “have readily available information.” Yet these are essential data for assessing the effectiveness of the Administration’s policy and practice in managing electronic records.<sup>35</sup>

### 3.7 New records classification scheme

The *2009 Circular* requires B/Ds who have not yet adopted the GRS’ standard classification scheme for administrative records that are commonly found in all B/Ds to implement the scheme “without further delay”, and in any case by 2012. This records classification scheme was devised, tested and issued in 1994 mainly for subject-based paper records. The scheme without any revision is now hurriedly required for application service-wide. Its effectiveness remains to be seen.

### 3.8 Authority for approval of records disposal schedules<sup>36</sup>

According to the *2009 Circular*, B/Ds are required to “consult” GRS in drawing up records disposal schedules for all records including programme records (i.e. records created or received for core business functions and activities of each B/D) by 2012. There is, however, no mention in the *2009 Circular* on who has the final say in deciding the retention period and the final disposal action in the event of conflicting views between GRS and B/Ds.

Further, when B/Ds do not want to forward records to the PRO for appraisal of archival value or permanent preservation, there is no provision in the *2009 Circular* as to what could be done to resolve the problem (paras. 15 and 16). In fact, a relatively junior officer at the level of Senior Executive Officer in a B/D can endorse and approve a final records disposal schedule without consulting the DRM.

In any event, the Administration should have known in advance that many policy bureaux would move into the new Central Government Complex at Tamar in late 2011. As in any office relocation exercise, massive records would likely be disposed of before or during the exercise. Yet, the deadline for developing records disposal schedules was set after rather than before office relocation. This indicates the very low priority accorded to records by the Administration. Or worse, the removal exercise might indicate an almost total lack of care within the Administration for public records.

### 3.9 Failure to transfer records to the Public Records Office

The *2009 Circular* allows B/Ds to defer the transfer of records to the PRO, whether for appraisal of archival value or preservation and access, even if the requirement to transfer is specified in an agreed disposal schedule between B/Ds and GRS. An officer at the level of Directorate grade may approve such a deferral without consulting GRS (para. 17).

According to official statistics as at 30 September 2011, there are 1,544 Directorate grade staff in the government establishment. Ironically this implies that these 1,544 officers are officially empowered by the *2009 Circular* to act against the “mandatory requirements” for transferring archival records to the PRO for appraisal, preservation and public access

at any time and on any circumstances they desire.<sup>37</sup>

An example which clearly illustrates the failure of the *2009 Circular* is found in the reply of the Secretary for Security, Ambrose Lee, on 17 November 2010 to a LegCo Question raised by Legislator Cyd Ho about public access to records relating to the introduction of the controversial legislation arising from Article 23 of the Basic Law. Mr. Lee replied that 119 files among which 88 of them were classified records had been raised but he also insisted that “we do not have any plan to destroy the afore-said files and do not need to consider whether we would transfer any of them to GRS.”<sup>38</sup>

As GRS maintains no statistics on which B/Ds are fully compliant with the “mandatory” guidelines for records transfer,<sup>39</sup> it is doubtful as to how the mandatory requirements prescribed the *2009 Circular* can safeguard the identification, transfer, preservation of and access to all records of archival value as an archives law does, or if the Administration cares at all.

### 3.10 Improper destruction of records

The validity of any deferment and whether any records have been tampered with, destroyed, lost or damaged cannot be ascertained by the GRS without a right of inspection and audit in relation to the B/Ds. None of this is addressed in the *2009 Circular*. In addition, without a proper mechanism for the investigation of such occurrences, the enforcement of any kind of disciplinary procedure is doomed to fail.

In September 2011, it was widely reported in the mass media that the government had destroyed about 6 million pages of records during the time for preparing office relocation to the Central Government Complex at Tamar. According to figures by the government, less than 0.1% of the records proposed for destruction had found their way to PRO. It is unknown if proper disposal procedures have been followed in such a large records destruction exercise. According to the latest official figures provided to the LegCo in October 2011, 1181.71 linear metres of records (about 3.5 million pages) from the Chief Executive’s Office and 13 policy bureaux were destroyed between April and September 2011,<sup>40</sup> and most of these had rarely or never approached GRS for records disposal in the past. It came as a shock to many legislators and the mass media, and the government refused to disclose what had been destroyed or if they were covered by proper disposal schedules.

What has also been exposed in the media is that the Security Bureau has advised B/Ds to freely destroy documents in any files<sup>41</sup> and the GRS seems to have done nothing to counter these instructions. This raises three critical issues. First, if B/Ds have indeed followed the instructions of the Security Bureau, they have contravened the mandatory requirements of the *2009 Circular* which requires B/Ds to seek GRS’ approval before destroying any records. Second, it is questionable if GRS has raised any objection to the instructions. In either case, it would simply mean GRS does not have the power to reverse the situation or lacks professional knowledge to understand the seriousness of the issue despite the fact that it exists to protect and preserve archival records and “ensure proper management of government records”. Third, it is doubtful if the Administration is genuine in its repeated claims that it “fully recognises the value and the heritage importance of records”<sup>42</sup> or whether it is simply paying lip service.

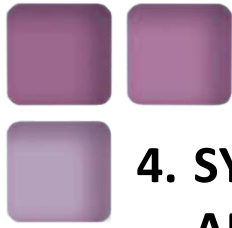
### 3.11 Regular review of records

In paragraph 25 of the *2009 Circular*, B/Ds are asked to review their records management practices regularly in order “to ensure their records management programme is functioning effectively”. Without an audit mechanism or sanctions, there is no incentive to do this. Since the GRS has no statutory authority to oversee and monitor records management practices in the B/Ds, there is no way for the GRS to know if the requirements which are supposed to be “mandatory” have been met.

### 3.12 Non-application of the General Circular of 2009 to publicly funded statutory bodies

Hong Kong’s statutory bodies subsidised by public funding discharge many public functions including policy, governance and services with a direct impact on the public’s welfare. The “mandatory requirements” of the Administration for records management, however, do not apply to these statutory bodies. GRS has no way to make them properly manage their records or preserve those of archival value for public access.

This is not the practice of countries which have archives laws. For instance, Singapore’s archives law applies to “any department, office, institution, agency, commission, board, local authority or statutory body or any other office of the government or branch or subdivision thereof.”<sup>43</sup>



## 4. SYSTEM FAILURE: INCAPACITY OF THE ARCHIVAL AUTHORITY

### 4.1 Inappropriate obligations on bureau and departments

It is considered that the “mandatory requirements” discussed in the previous section have placed inappropriate obligations on government B/Ds whose core functions and expertise are not records management. They are “excessive” in the sense that civil servants who may not have the proper training or priorities are tasked to oversee demanding records functions, including vetting and approving the design of recordkeeping systems and destruction of records. At the same time the requirements are “inadequate” as there is no clearly defined mechanism and penalty for addressing non-compliance.

### 4.2 Government Records Service fails to provide sufficient support to bureaux and departments

It is unreasonable to expect B/Ds, such as the Drainage Services Department or Leisure and Cultural Services Department, to have the expertise or to devote more attention to proper recordkeeping beyond the basics in maintaining day-to-day operations by following the prescribed procedures. It is unrealistic to expect or depend upon a high degree of self-discipline and motivation in ensuring proper management of records unless they are required to and are capable of doing so.

Recordkeeping is the core function and responsibility of the archival authority and it is the reason why most governments give their central archives the needed resources and legal backing to support longer-term archives and records management priorities. A robust archival authority is able to provide professional advice and services as requested by government agencies in support of a corporate culture of good recordkeeping, and, if necessary, assert itself with legal backing to ensure proper practices. Here, the GRS lags far behind its archival counterparts overseas.

The National Archives of Australia has, under the *Archives Act* of 1983, ultimate authority to “impose record-keeping obligations in respect of Commonwealth records”.<sup>44</sup> It is a highly visible arm of the government, and has created a culture of proper records management across the whole government of Australia. Its website, for instance, provides detailed information for government and the public alike, not merely on what practices are legally required but also on the value of records and best practice for documentary heritage preservation.<sup>45</sup> Branch offices, weekend opening hours, and comprehensive public outreach activities clearly reflect the importance of public records as a tool for good governance, social engagement, and civic education. The National Archives of Australia develops, implements and reviews policies, offers records services and monitors compliance of agencies covered by the *Archives Act*.



#### **4.3 Government Records Service debilitates itself as a central professional authority**

When GRS was first created, the heads of its offices, including the PRO, the RMO and the Government Records Coordination Unit were professional archivists. But since the mid-1990s, GRS has gone through a process of de-professionalisation. Executive Officers (EOs) without records or archives management education, training and experience have been brought to GRS to replace the Archivists in the more senior professional positions.

#### **4.4 Professional archivist replaced by generalist to head Government Records Service**

The most harmful personnel change seems to be the position of GRS Director. The incumbent Director and his predecessors are generalists trained to support administrators in house-keeping functions such as the management of personnel, finance and buildings.

The position of GRS Director was originally created as the top professional personnel (Principal Archivist) ranked at Directorate Grade 1 to “plan, lead and guide” all professional archives and records functions and activities of GRS. Most important of all, this top professional is supposed to be the only records and archives policy advisor to the Director of Administration, who is another “generalist”.

This personnel management approach has rendered GRS’ operation ineffective. The generalists in GRS have not written new records management guidelines or publications other than through extracting materials from the publications written by the professional archivists or presenting them in different forms. It is hard not to ask the following questions:

- What is the rationale for the Administration to have the top professional in GRS replaced by a generalist?
- How can the generalist GRS Director carry out his duty and responsibility to advise, monitor, supervise, and train the staff under his leadership in records and archives management if he is not professionally trained?
- How can the GRS Director advise competently the Director of Administration on records and archival policy amidst the rapid and drastic changes brought by new information technologies and other records-related regulatory frameworks?
- How can the GRS Director exercise his role in endorsing records appraisal recommendations from the Archivist of the PRO when he has not been educated and trained in appraisal principles, theories and practices?<sup>46</sup>
- How can the GRS Director effectively serve as the final protector of documentary heritage when he does not know how to identify and preserve such heritage?
- How can the GRS Director without real power and authority guard against unauthorised destruction of records by B/Ds whose heads are all senior ranking officers?
- How can the GRS Director possibly find out if there are cases of non-compliance without the power of inspection and audit?

#### **4.5 Head of Records Management Office replaced by Executive Officer and reduction of archivist staff at Public Records Office**

Another example of human resource management towards de-professionalisation is the replacement of the Archivist of the RMO by a Chief Executive Officer since 1994. Gradually all archivist staff were removed from RMO leaving training, records consultancy and



professional development work of GRS in the hands of the EOs. This means that officers in GRS responsible for conducting records management training courses service-wide are not trained themselves. Furthermore, the number of archivists working for PRO was significantly reduced between 2003 and 2010 with vacant positions either unfilled or filled very slowly. Such personnel redeployment will not necessarily render the records and archives system ineffective, but if the system is as “effective” as the Administration has repeatedly asserted, the Administration should still explain why:

- The EOs fail to produce new records and archives management manuals or guidelines but continue to rely on those prepared by the Archivist staff despite the fact that the information landscape has been transformed and principles and practices of modern records and archives management have undergone rapid and drastic changes in recent years.<sup>47</sup>
- There is a backlog of 59,000 records waiting to be appraised relating to 570 requests from B/Ds for records destruction.<sup>48</sup>
- Another backlog is also accumulating in the access review exercise on classified archival records. According to the GRS’ own directives, when records are 30 years old, they are supposed to be reviewed by their creating B/Ds, and released for public inspection and use.<sup>49</sup> Because of the backlog, the public are being denied their right to timely access.<sup>50</sup>
- A third backlog of 280,000 records pending accessioning, which also hinders public’s right to inspect them.<sup>51</sup>
- In dealing with problems created by the rapid emergence of electronic records, it has taken GRS and its EO staff almost a decade to develop and test a prototype electronic recordkeeping system based largely on the functional requirements developed in 2001 by the ERM Working Group. No timetable has been offered to introduce the ERKS for service-wide application.<sup>52</sup>

#### 4.6 Problems of placing generalists in professional positions

EO grade is one of the largest grades in the HKSARG. They are generalists posted in various B/Ds carrying out general administrative duties to support and facilitate the day-to-day operations and major programme activities of B/Ds. The current minimum entry requirement to become an EO is a university degree and no professional qualifications are required. EOs can be regarded as “jacks of all trades”, confined, of course, to some basic administrative and managerial functions only.

As generalists, EOs have to be subjected to regular career posting, meaning that they will be moved from time to time (usually every 2 to 4 years or longer in some special cases) from one department to another. Therefore, this group of officers is by nature transient and rootless. It is not easy for them to develop the required expertise for the specialised functions and programmes of the B/D where they are serving if they are destined not to stay there long.

In fact between 2001 and 2011, GRS had five Directors and five Chief Executive Officers responsible for the records management function. As these EOs are just staying in GRS for a few years, it is not practicable or reasonable to expect them to perform professional duties as competently as the archivists.<sup>53</sup> It is equally unrealistic to expect them to have a deep appreciation for, or the mission and vision required in, managing and protecting the records resource under their care.

#### 4.7 Government Records Service has no authority over government agencies

The Administration claims that “GRS has adequate authority and autonomy to perform its functions effectively.”<sup>54</sup> If that is the case, why over the past twenty-some years since its establishment, has GRS never conducted any service-wide records audit, especially in B/Ds where there were cases of lost records reported by the press?

If GRS has been such an “effective” authority, why did it see the need to designate a set of existing guidelines as “mandatory” without acknowledging that at least one very important requirement has already long been mandated in a similar manner but without success? This is the requirement mentioned by the founding Archivist of PRO, Ian Diamond, back in 1974 and promulgated in the *Manual of Office Practice* that government agencies must consult the GRS Director before destroying any records.

Before the issue of the “mandatory requirements”, in a reply to the LegCo on 3 December 2008, the Chief Secretary for Administration emphasised that “bureaux and departments are required to seek the prior consent of the GRS Director, ranked at D1 of the Directorate Pay Scale, for any destruction of their records.”<sup>55</sup> In reality, most B/Ds seem to be either oblivious to this requirement or simply choose to ignore it as there is no consequence in non-compliance. This is demonstrated by those recent cases involving destruction and loss of records without the knowledge of GRS such as by the Leisure and Cultural Services Department and the Immigration Department, etc.<sup>56</sup>

GRS’ authority is further undermined by the refusal or perhaps reluctance of B/Ds to return archives borrowed by them from PRO. According to the Audit Commission report of October 2011, five departments had not returned 438 overdue archival records and six B/Ds had reported losses of 391 archival records while on loan to them.<sup>57</sup> This practice, in the first place, contradicts archival conservation principles, i.e. if archival records from PRO can be “checked out” for use by B/Ds, they will be exposed to hazard and danger since they will be used and viewed in ordinary workplaces with little climate control or supervision of records handling.

B/Ds are also very reluctant to transfer records of historical importance to the PRO and GRS can do nothing about it. This accounts for the absence of many important archival records from policy bureaux in PRO’s custody.

There are many instances of dissatisfaction expressed by scholars and researchers doing archival research in PRO where they failed to obtain any archival records useful for their research topics, but located them in the British National Archives at Kew.<sup>58</sup>

Researchers are further frustrated by the conservative archival access policy of PRO. There is no provision in the *Public Records (Access) Rules* for researchers to appeal against government’s decision if they are denied access. Worse still, in many cases users simply do not know what records are or are not available for viewing if the records are not yet processed. Furthermore, since 1994, the list of classified archival records has not been made accessible as part of PRO’s search tools. From a researcher’s point of view, an archival system like this can hardly be described as satisfactory.

## SUMMARY: STRUCTURAL DEFICIENCIES IN THE CURRENT RECORDS SYSTEM

Bureaux and Departments (B/Ds)
<ol style="list-style-type: none"><li>1. Do not have available to them adequate expertise and policies to ensure good records management.</li><li>2. Have no incentive to implement any recordkeeping standards beyond those necessary for day-to-day administration.</li><li>3. Can ignore, at minimal risk, any outside advice on records management practices.</li></ol>
Government Records Service (GRS)
<ol style="list-style-type: none"><li>1. Does not, at the executive level, possess adequate management expertise to design policy promoting best practice in records management.</li><li>2. Cannot compel bureaux and departments to accept these policies.</li><li>3. Cannot compel bureaux and departments to accept audits examining compliance with these policies.</li><li>4. Has no means to measure or monitor records management within bureaux or departments.</li><li>5. Cannot compel bureaux and departments to hand over records of archival value.</li><li>6. Has no power to take meaningful action if records are reported lost or destroyed.</li><li>7. Has no legal mandate to collect and protect Hong Kong's documentary heritage.</li></ol>
Current guidelines and mandatory requirements
<ol style="list-style-type: none"><li>1. Are not comprehensive, clear, or authoritative.</li><li>2. Do not adequately reflect technological changes.</li><li>3. Do not provide a clear appeal mechanism commensurate with the pivotal importance of records to all aspects of government business, or in line with international standards.</li><li>4. Rely for enforcement on a "high degree of self-discipline and motivation".</li><li>5. Cannot be enforced or tested through the judicial system if violated or contested.</li><li>6. Can be violated without sanction.</li></ol>



## **5. SYSTEM FAILURE: STANDARDS, BENCHMARKS, BEST PRACTICE NOT FOLLOWED**

### **5.1 Guardian of records and archives – the role of an archivist**

As pointed out in the previous chapter, it is not B/Ds' core function to manage their archives or records,<sup>59</sup> and they rely on professionals for advice and guidance on standards, benchmarks and best practice. In most jurisdictions, those who are in charge of archives and records functions are given a clear mandate by law to discharge their duties no matter where they are placed in the hierarchy of the bureaucracy.

In China, the State Archives Administration is directly placed under the State Council and the Head of the Archives (Director General of State Archives Administration) is a senior official equivalent to a deputy minister. Thus, the Chief Archivist's position (i.e. the Director General) is on a par with the heads of audit and regulatory bodies, and his responsibility is to uphold the integrity of public records and sustain public trust. The national archives in many countries and jurisdictions are empowered to pursue any inquiry that will uphold records-related probity, efficiency and law.

Governments with modern archives laws typically give archivists the power to inspect or audit records management practices throughout the bureaucracy (subject to legally specified exceptions). In turn, offices and departments rely on professional expertise in devising legally compliant safeguards and schedules for the appraisal and disposal of records. Under such laws, any destruction of records requires either direct approval of the archival authority, or must otherwise follow system-wide protocols authorised and monitored by the archival authority. Ultimately, the archivists are the last line of defence in protecting valuable records from destruction.

### **5.2 Standards and best practice of the profession**

As a professional discipline, a global community of archivists has developed technical standards and best practice for records and archives management; spanning paper, electronic, and all other formats.<sup>60</sup> As in other management sectors, they emphasise key performance indicators, carefully measuring the quantity of records acquired, the ways they are processed and preserved, how many users are served and how, the retrieval time of records, the costs, and the new initiatives in promoting public access, etc. As with any other complex management task in the public or private sectors, general management skills must be married to specialised subject expertise to produce the most cost-effective outcomes for taxpayers, private-sector partners, and other parties interacting with the government.

However, the HKSARG's archives and records policy, in many aspects, falls short when measured against the standards and practices of some private sector businesses, international practices, and it cannot even compare to the many bureaux and departments of the HKSARG.

### 5.3 Private sector standards and regulatory framework

The destruction of any document with intent to impede legal proceedings is a crime in private and public sector alike. Beyond this, many documents produced in the course of some private sector business are subject to strict rules on retention and disposal.

- The *Securities and Futures (Keeping of Records) Rules* variously require retention of records from 2 to 7 years, with clear reference to other laws for additional contingencies.<sup>61</sup>
- The *Companies Ordinance* imposes sanctions such as “imprisonment and a fine” to any person who “conceals, destroys mutilates, or falsifies” or “parts with” a company document, or abets such conduct.<sup>62</sup>
- The *Merchant Shipping (Registration) Ordinance*,<sup>63</sup> the *Electronic Transactions Ordinance*,<sup>64</sup> and the *Trustee Ordinance*,<sup>65</sup> among others, all contain provisions requiring document retention in industry-specialised and sensitive areas of business conduct.

Hong Kong’s public sector is the city’s largest employer, and exercises more influence over the everyday lives of the Hong Kong public than any other, yet its records are not subject to similar strictures.<sup>66</sup>

### 5.4 International standards

“[The Government Records Service] recognises the importance of performing its functions to international standards.”

– *Administration’s response to LegCo, May 2010*<sup>67</sup>

The HKSARG is keenly concerned with Hong Kong’s international competitiveness and frequently studies best practice overseas to provide benchmarks and policy ideas. Typically, these studies survey conditions and policies in jurisdictions like Singapore, South Korea, Taiwan, the United Kingdom, United States, Canada, Australia, and New Zealand; once identified, best practice is often adapted and adopted in Hong Kong.

When the HKSARG genuinely prioritises achieving world-class standards in a given sector, its research and implementation are thorough. In the past several years, for instance, various government B/Ds and LegCo panels have compared Hong Kong to other jurisdictions in numerous policy areas:

- Health Care Financing Policies<sup>68</sup>
- Waterfront Management<sup>69</sup>
- Mitigation Measures Against Road Traffic Noise<sup>70</sup>
- Infant Mortality<sup>71</sup>
- Public-private partnerships<sup>72</sup>
- Prevention of Corruption and Impeachment of Head of State<sup>73</sup>
- The Importance of Community<sup>74</sup>
- Port Benchmarking for Assessing Hong Kong’s Maritime Services and Associated Costs<sup>75</sup>
- Internet domain name registration policies (a 230-page report covering Australia, China, Finland, France, Germany, India, Japan, Republic of Korea, Singapore, Sweden, Taiwan, the UK and the US)<sup>76</sup>
- Building Management in Singapore<sup>77</sup>
- Mechanism for Handling Complaints Against Judges<sup>78</sup>

- Methadone Treatment Programmes<sup>79</sup>
- Urban Planning in New York, London, Paris, Sydney, Tokyo, Singapore, Shanghai and Taipei<sup>80</sup>

Even in tree management, officials pledged that the government's botanical "assessment methodology has made reference to internationally recognised best practice."<sup>81</sup>

## 5.5 Archival situation in other countries

In a reply to a LegCo question raised on benchmarking in ERM, the official reply is the government did not apply any.<sup>82</sup> It is unclear why no such comparison or even study about archives and records management – globally recognised as a core component of good governance – has ever been conducted or publicised within the Hong Kong Government. Some jurisdictional comparisons are instructive.

### 5.5.1 Singapore

The 1993 *National Heritage Board Act*<sup>83</sup> which replaced the *National Archives and Records Centres Act* was enacted to create and authorise the National Heritage Board, which develops and manages the National Archives of Singapore as well as appointing the Director of National Archives. The Heritage Board and Director of the National Archives are empowered to "take necessary measures to classify, identify, preserve and restore public records." The law requires that all "public records which, in the opinion of the Board, are of national or historical significance shall be transferred to the ... National Archives"; should any person "mutilate, excise or otherwise damage any public records," he or she is "liable on conviction to a fine not exceeding [S\$] 5,000 or to imprisonment for a term not exceeding one year or to both."

As a result of painstaking archival maintenance, numerous benefits have accrued to the government and people of Singapore, notably:

- Records are preserved for promoting civic pride, patriotic education, and Singaporean national identity in a multi-ethnic and historically unstable region.
- Records are preserved to enhance Singapore's interests abroad; a 2008 decision from the International Court of Justice awarded sovereignty of disputed islands to Singapore, partially on the basis of documents and expertise provided by the National Archives.<sup>84</sup>
- Records are preserved as an important resource for the Singapore legal system: Part IV (23) of the National Heritage Board Act states that "any copy of a public record which is certified by the Director of National Archives as a true copy of the original document shall be admissible in a court of law."<sup>85</sup> Archival documents have withstood legal challenges in Singaporean courts – for instance, National Archives documents were essential in legal proceedings stemming from the 1986 New World Hotel collapse in Singapore.<sup>86</sup>
- Cost savings to taxpayers through rigorous monitoring of operations via properly documented Key Performance Indicators and efficiency targets; these set government-wide standards and provide an example for the private sector, increasing overall competitiveness. Singapore government

statistics suggest nearly S\$5 million (HK\$30 million) in savings for the fiscal years 2005-2007.<sup>87</sup>

- Recognition of leadership in records management for good governance and accountability. (Former Director of the National Archives of Singapore Mr. Pitt Kuan Wah was frequently invited to speak and consult around the world, especially in Asian locales such as mainland China, Indonesia, Vietnam, Taiwan, and Hong Kong.<sup>88</sup> His assistance and expertise are also gratefully acknowledged in many historical studies and books concerning the Nanyang region).<sup>89</sup>

### 5.5.2 Australia

Australia's *Archives Act* of 1983<sup>90</sup> seeks to "encourage and foster the preservation of all other archival resources relating to Australia"<sup>91</sup> through establishing a "National Archives of Australia" and empowering it to "do all things that are necessary or convenient to be done for or in connection with the performance of its functions".<sup>92</sup> These are: to "establish and control repositories"; "undertake the survey, appraisal, accessioning, arrangement, description and indexing of ... records"; "to encourage, facilitate, publicise and sponsor the use of archival material"; "to develop and foster the co-ordination of activities relating to ... archival resources" and "assist ... in the training of persons responsible for the keeping of current Commonwealth records."

Eight provisions, sketched out over five full pages, clearly delimit which government bodies are covered by the Act.<sup>93</sup>

The head of the Archives, "Director General of the National Archives of Australia ... shall be a person appointed or engaged under the *Public Service Act* 1999",<sup>94</sup> which in turn requires "leadership of the highest quality"<sup>95</sup> and "formal qualifications ... and security ... clearances".<sup>96</sup> The Director-General "may, in writing, determine that a specified ... record or other material is part of the archival resources of" Australia.<sup>97</sup> The most recent incumbent has worked in Australia's archives for over 30 years; the current Acting Director-General has nearly two decades' experience in archival work, and the development of electronic records policy in particular.<sup>98</sup> For implementation, the law provides for the creation of any "regulations ... not inconsistent with this Act, prescribing all matters ... required or permitted by this Act [or] necessary or convenient ... for carrying out or giving effect to this Act."<sup>99</sup>

Penalties are clear: any "destruction or other disposal ... transfer of the custody or ownership ... or ... damage to or alteration" of records, done "with[out] the permission of the Archives or in accordance with a practice or procedure approved by the Archives", is subject to a fine of AUD\$2,200 under current federal law.<sup>100</sup>

For appeals of decisions involving records access, the Act outlines procedures and duties of no fewer than four bodies: the National Archives' internal review mechanism, ultimately arbitrated by "the Director-General or a person authorised by him";<sup>101</sup> the Administrative Appeals Tribunal;<sup>102</sup> the Ombudsman;<sup>103</sup> and the Federal Court of Australia.<sup>104</sup> If necessary, the Australia's Inspector-General of Intelligence and Security can be required to give evidence justifying certain



decisions.<sup>105</sup> In any proceedings, “the Archives has the onus of establishing that a decision given by the Archives was justified.”<sup>106</sup>

Australia’s public records system is also noteworthy for:

- (a) Its robust public outreach, education services, and accessibility. The National Archives website is enormously detailed.<sup>107</sup> Its offices are open on certain weekends and evenings to facilitate public access; to save time, members of the public can submit an advance request to view records.<sup>108</sup> For government personnel, relevant legal, compliance, and other information is easily available.<sup>109</sup> The National Archives also provides competitive grants to promote innovation and develop human capital in archival management.<sup>110</sup>
  - The culture of proper recordkeeping is found across the states in Australia, each of which devotes extensive federal and local resources and attention to records management. For example, The Government of Western Australia Department of Housing and Works has published no fewer than 29 performance measures and 35 targets for records management and retrieval.<sup>111</sup> The Government of South Australia has published an *Across-Government Records Management Strategy*, with 36 pages outlining “strategic goals,” “issues,” “outcomes,” “actions,” and “responsibilities” with reference to “business practices,” “customer focus,” and “intellectual capital”.<sup>112</sup> The Australian Capital Territory makes available online a template for a records disposal schedule outlining “Purpose”, “Scope”, “Authority”, “Guidelines for Use”, “Format of Record”, “Definitions”, and scanable barcodes and identification numbers.<sup>113</sup>
  - The Public Records Office of the state of Victoria publishes a “Strategic Management Guideline” laying out 44 pages of “Key Performance Indicators” in records management.<sup>114</sup>
  - By contrast, the GRS, Hong Kong’s lead records agency, publishes three performance criteria on its website on relatively trivial matters such as the time required for providing a record for consultation, reproduction, and arranging organised visits.<sup>115</sup>
- (b) The Australian archival authority shows great willingness to lead by example and involve the public in building good recordkeeping practices, notably electronic records practices. Annual reports of the National Archives of Australia and National Archives of the Australia Advisory Council are available online. They clearly delineate the duties and involvement of civil servants, politicians, and the public in records management.<sup>116</sup> The National Archives of Australia is also a leading agency in supporting best practice in electronic records management.<sup>117</sup>
- (c) Strong and professional internal control mechanisms are in place; reports mention, and external audits corroborate,<sup>118</sup> strong “corporate governance, including audit, risk management, fraud control, parliamentary and ministerial liaison”.<sup>119</sup>



### 5.5.3 The People's Republic of China

The *Archives Law* of the People's Republic of China was passed by the National People's Congress in 1987 and revised in 1996.<sup>120</sup> The State Council subsequently issued Enforcement Measures for the Archives Law of the People's Republic of China<sup>121</sup> in 1990, and revised it in 1999.

Foregrounding the value of archives and good records practices, the law specifies that “every state organ, unit of the armed forces, political party, public organisation, enterprise, institution and every citizen shall have the obligation to protect archives.”<sup>122</sup> The State Archives Administration<sup>123</sup> is “responsible for archival work throughout the country [and] shall implement a comprehensive plan, organisational coordination, and unified systems, supervision and guidance for archival activities nationwide.”<sup>124</sup>

The National Archives and all subordinate units must provide “unified leadership and administration ... to ensure the integrity and safety of archives and facilitate their use by ... society”.<sup>125</sup> Other government bodies also have specific obligations: “state organs ... must ... regularly hand over records to the archives repositories”.<sup>126</sup> The Law further requires that any records system maintained by any official body “must establish a scientific management system to facilitate the use of records ... equipped with necessary facilities to ensure the records’ safety [and] using advanced technology to achieve fully modernised records management”.<sup>127</sup>

The Law further specifies that “archival personnel ... must possess professional expertise”.<sup>128</sup> The incumbent Director is a trained historian with over 20 years of experience both inside official archives and in liaising with other official bodies to facilitate their records work and regulatory compliance.<sup>129</sup>

“Rules for appraising the value of records for archival preservation ... and procedures ... for destroying records shall be formulated by the National Archives administration ... unauthorised destruction is prohibited.”<sup>130</sup>

Chapter V of the Enforcement Measures for the *Archives Law* awards damages of up to RMB¥100,000 for unauthorised destruction, alteration, or removal of a public record.<sup>131</sup>

Should any records be “considered at risk of serious damage or unsafe because of the adverse conditions under which they are kept or for any other reason, the National Archives administration ... shall have the authority to take any measures needed to ensure the records’ integrity and safety.”<sup>132</sup>

Finally, “archives repositories shall regularly publish catalogues of archived records open to the public ... and simplify procedures for the convenient use of archives.”

Besides these strong legal protections for records grounded in national law, China’s archives and records management system is noteworthy because its mandate is explicitly defined in terms of historical preservation.

#### 5.5.4 United States of America

The *National Archives Act* enacted in 1934 created the National Archives of the United States and the Office of Archivist with presidential appointment and senate confirmation. By this Act, the Archivist is empowered to inspect the records of any government agency and shall have the full cooperation of any and all person in charge of such records in such inspection and transfer of the required records to the Archives.

Today, the Archivist is given the general responsibilities for records management to ensure adequate and proper documentation of the policies and transactions of the Federal Government and proper records disposal. Authorisation by the Archivist is required by law for destruction of federal records. The Archivist is required to establish standards for the identification and selection of archival records and promulgate regulations governing the transfer of records.<sup>133</sup>

Many other records laws in the United States were passed in response to controversies over breaches of public trust such as the Watergate scandal in the early 1970s, which ended in the resignation of President Richard Nixon amidst disclosures of the erasure of tapes of White House deliberations.

As a result, the American judicial system now incorporates some of the world's strongest records management and freedom of information laws at both federal and state levels of government; often, these are grouped together under the rubric of "Sunshine Laws".

The strength of these laws is attributable to the circumstances in which they were enacted; The central role of records in prominent incidents such as Watergate and the Pentagon Papers, have led to the practice among American journalists of routinely invoking the *Freedom of Information Act* as a basic and frequent tool of research.<sup>134</sup>

#### 5.5.5 The Philippines

While the foregoing countries exemplify most of the best practices and global standards in records management today, one more law may prove instructive. The *National Archives of the Philippines Act* of 2007 of the Republic of the Philippines is specific about the qualifications of any chief archivist needed to manage national archives.<sup>135</sup> To be presidentially appointed as Executive Director of the National Archives, a Filipino must have "a master's degree in history, political science, public administration/government management, library science, information management or similar fields of study and ten (10) years of actual experience in records management and archives administration".

### 5.6 Hong Kong Government standards

"The Hong Kong civil service is regarded as among the best in the world. Its sterling performance has been widely recognised and acclaimed both within the region and elsewhere internationally."

– Former Secretary of the Civil Service Bureau Joseph Wong Wing-ping,  
"Showcasing the Achievements of the Hong Kong Civil Service"<sup>136</sup>

The HKSARG prides itself on maintaining high administrative standards and providing the public with efficient services. In many instances, this pride is justified – the administration observes management discipline, “performance pledges”, “benchmarks”, and similar concepts.

The GRS seems to have fallen far behind. Its achievements if any are rarely highlighted or held up as examples, not even as part of Civil Service efforts in “preserving...cultural heritage”.<sup>137</sup> Moreover, the GRS appears to under-perform in several areas critical to good governance.

### 5.6.1 Performance metrics and transparency

“An increasingly prosperous and sophisticated community quite rightly demands greater openness and accountability from the public sector which it pays for – and an official attitude of mind which regards the public as clients not supplicants. ... We have now to go one step further, and seek to engender in our public services a culture that goes beyond the provision of the bare minimum; a culture that recognises the public as the paying customer and treats him or her accordingly.”<sup>138</sup>

– Gov. Christopher Patten,  
*introducing “Performance Pledges” in his Policy Address on 7 October 1992*

The Administration and GRS have both maintained for the past several years that, despite the lack of an archives law, “the current records management system is functioning effectively”.<sup>139</sup> A GRS representative explained that this is a “general assessment” based on the fact that the GRS “did not receive any complaints”.<sup>140</sup> Despite our requests, the GRS has not made available a complete account of its performance targets and standards.

Several management concepts are commonly used by policy B/Ds of the HKSARG to measure and demonstrate to the public their commitment to good service, transparency, and the wise use of public funds in carrying out their core functions. A brief survey suggests the GRS’ relative low level of commitment vis-à-vis other government bodies.

#### (a) “Performance Pledges”

Since 1992, many Hong Kong government offices have published “performance pledges”. The Inland Revenue Department lists 56;<sup>141</sup> the Land Registry lists 30;<sup>142</sup> the Ombudsman lists 20;<sup>143</sup> the Auxiliary Medical Service lists nine;<sup>144</sup> the GRS lists only three on insignificant areas.<sup>145</sup>

#### (b) “Effective Monitoring”

Many B/Ds – such as Leisure and Cultural Services Department,<sup>146</sup> Water Supplies Department<sup>147</sup> and Labour Department<sup>148</sup> – explain their “effective monitoring” practices, in varying levels of detail, to increase public confidence and clearly encourage public feedback. The GRS does not.

#### (c) “Value for money”

The Audit Commission conducts “value for money” audits; subsequently several B/Ds, such as the Rating and Valuation Department,<sup>149</sup> have adopted “value for money”, or other terms for cost-effectiveness, as a concept to demonstrate their

commitment to wise use of public funds. The GRS has never undergone a “value for money” audit until recently with the report tabled in the LegCo on 16 November 2011;<sup>150</sup> moreover, unlike Singapore’s National Archives<sup>151</sup> or many other Hong Kong government bodies, the GRS has not made cost-efficiency information available.

In most jurisdictions, implementing strong records management is considered a worthwhile investment due to strengthened oversight of resource usage and diminished exposure to legal liabilities. GRS has not included this in any of its programme areas.

(d) Performance “Targets”, “Indicators”, and “Measures”

Nearly every government bureau and department uses some version of these terms to define and set benchmarks for improvement and explain to the public their objectives, in line with international best practice in management. The Education Bureau, for instance, uses “key performance measures”;<sup>152</sup> the Environmental Protection Department favours “metrics and indicators”;<sup>153</sup> the Audit Commission publicises its “targets” and “indicators”;<sup>154</sup> the Housing Authority,<sup>155</sup> Immigration Department<sup>156</sup> and Labour Department<sup>157</sup> have favoured “performance standards and targets” – and so on. Beyond its performance pledges, the GRS has not taken the initiative to make such information available.

Some statistics, including “key performance measures”, are in fact available in budget documents,<sup>158</sup> though the GRS has made no apparent effort to bring them to the attention of concerned members of the public.

During the period from 1997-2001, the Administration Wing’s annual report provided several benchmarks and targets for the GRS,<sup>159</sup> but such records are no longer issued.

## 5.6.2 Professional standards and functional competency

“An effective government relies...on a professional and highly efficient civil service. Civic awareness among the public has been increasing, leading to rising demands and expectations on the Government. Our civil servants ... have spared no effort to deliver quality services to the people of Hong Kong[.] Their commitment to serving our people and their spirit of putting people first are for all to see.”

– Donald Tsang, *Chief Executive’s Policy Address 2011*<sup>160</sup>

“Civil servants, particularly the more senior ones, are responsible for developing policy options or proposals and assessing their full implications, including the financial and manpower implications and the possible consequences of adopting or not adopting a particular policy option or course of action, based on intellectual rigour, objective research, professional knowledge and expertise.”

– *The Civil Service Code*<sup>161</sup>

“GRS fully appreciates the importance of appropriate manpower deployment to the development of its work. To discharge its various duties effectively, GRS is now staffed by the Archivist, Curator and Executive grades at officer level. GRS will deploy its manpower in accordance with the expertise of different grade staff and nature of the jobs. In general, the staffing complement is appropriate, but we will review the situation from time to time to make the necessary arrangements.”<sup>162</sup>

"The Government's recruitment policy is to select the most suitable persons for the specified civil service vacancies through an open, fair and competitive process."  
– Government Statement to LegCo, June 2010<sup>163</sup>

Hong Kong thrives through ensuring that international-quality expertise guides all critical functions of government. Certified expertise is often legally mandated. Various laws delineate strict certification, experience and registration requirements for judges,<sup>164</sup> magistrates,<sup>165</sup> coroners,<sup>166</sup> social workers,<sup>167</sup> adjudicators for specialised tribunals (concerning issues like copyright<sup>168</sup> and labour disputes<sup>169</sup>), and other sensitive posts. As noted above, China and the Philippines are the two among many countries that impose similar requirements for the government's leading archivist.

Even in cases where certification is not mandated by law, precedent and standards usually require highly qualified professionals for technically complex management tasks. This is especially true for highly technical disciplines that affect operations across the entire government, and often the broader public as well.

Specialised civil service ranks exist to recognise relevant expertise and are used to fill these sensitive and technically demanding executive positions. The Director of the Hong Kong Observatory, for example, is a Senior Scientific Officer. The Director of the Health Department is a Medical Officer. The Water Supplies and Highways departments are led by officials from the Principal Government Engineer grade. Recognising and cultivating such specialised expertise within the civil service administrative framework benefits all government workers and ultimately citizens as well; talent can be hired, cultivated, and shared with other government departments through training programmes or secondment.

Archives administration and records management are both technically demanding and fundamental to governance. While the Civil Service Bureau does recognise several ranks within the Archivist grade, the professional requirements for these posts are, however,:

- Less stringent than international standards for comparable positions, and
- Out of line with high professional standards for other specialised civil service positions of the HKSARG such as Medical Officer, Engineers or Architects (this is also reflected in the rank and salary structure of the Archivist grade).

Not only is the requirement for professionalism lagging behind, the leadership structure of the GRS does not privilege archival expertise compared to most of its archival counterparts worldwide. As noted above, the Director of the GRS is not of the Archivist grade, but rather a general administrator of EO rank. This is atypical for directors of bureaux or departments whose core function underpins operations across government and is crucial to setting and measuring progress towards both short- and long-term objectives.<sup>170</sup>

This structurally-embedded lack of professionalism affects both the GRS' internal management and its effectiveness as providing professional direction, advice and

guidance for B/Ds, other public organisations and the public. Archives and records management policy across the entire government is not guided by a qualified expert; officers from B/Ds who are appointed as Department Records Managers or otherwise tasked with sensitive records roles cannot be assured of adequate professional training or monitoring.

As with the standards and targets mentioned above, it appears to be the case that the level of archives and records management expertise within the HKSARG is declining.

### 5.6.3 Public accessibility

Most Hong Kong government services with a direct public interface are made reasonably accessible to the public outside of normal working hours, so that citizens may take personal time to utilise such resources. Public records are maintained on citizens' behalf, and archives are maintained as a public service. Citizens' access to records and archives services should be commensurate with the archives' status as a public resource.

Despite the unique records it holds, GRS, in contrast to the public libraries, does not offer any services to the public outside regular working hours. This was not the case before implementation of the "five-day week in the government" scheme in 2006-7 as the PRO used to open to the public on Saturdays.<sup>171</sup> The Administration had promised to "minimise the impact of the five-day week initiative on the community"<sup>172</sup> and, in lieu of counter services, suggested that the public instead use "Internet access to finding aids and selected archival images."<sup>173</sup> However, the GRS website has not been improved to include new digitised records for years. Remote online access to digitised archival records has not yet been a robust or realistic alternative. Office hours of PRO have only been extended from 5:30 pm to 5:45 pm since the implementation of the 5-day work scheme.

GRS' current operation falls behind numerous government bodies which have a direct public interface and continue to offer weekend and evening hours to facilitate public access:

- The government's official Waste Electrical and Electronic Equipment Collection Points are usually open on Saturdays, and in some cases Sundays.<sup>174</sup>
- The Department of Health's Chest Clinics offer Saturday service hours.<sup>175</sup>
- Various Registries and Accounts Offices in the judiciary offer Saturday service hours,<sup>176</sup> as does the Legal Aid Department.<sup>177</sup>
- Correctional institutions offer weekend visiting hours.<sup>178</sup>

#### (a) Avoidance of conflict of interest

"Civil servants who by [their] actions bring the Government into disrepute are liable to punishments depending upon the gravity of their actions."<sup>179</sup>

– Administration Response to LegCo Panel on Public Service, December 2008

"Principal officials shall...ensure that no actual or potential conflict arises between their public duties and their private interests .... avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest [and] not bring ... the public service [or] the Government into disrepute."  
– *Code for Principal Officials under the Accountability System*<sup>180</sup>

Current public records management practices pose an unacceptably high risk of exposure to conflict of interest situations for government officials. This is a rare lapse in the HKSARG's "safeguards regarding prevention of conflict of interests,"<sup>181</sup> which are carefully constructed to minimise "common areas in which a conflict of interest may arise."<sup>182</sup>

As records provide an account of government actions, even the possibility of manipulating records without credible threat of sanction creates a situation in which an official "may lower his vigilance and resistance to temptations of corruption and malpractice",<sup>183</sup> in the words of the ICAC's *Ethical Leadership in Action* handbook.

The temptation runs both ways: easy concealment incentivises misconduct, while misconduct incentivises records tampering. The situation also gives undue leverage to officials who may, in their official capacity, control records containing evidence of others' misconduct; if the latter official is already in the habit of misusing his office, he may attempt collusion with the former official to escape accountability.

The *Supervisory Policy Manual* of the Hong Kong Monetary Authority, for instance, specifies "procedures [to establish] fitness and propriety of relevant individuals at the time of appointment or recruitment". These include "checking public records for evidence of public reprimands, disciplinary actions, personal bankruptcy and judgment debts".<sup>184</sup> The lack of protection for such documents creates clear perverse incentives for anyone mentioned in them or in possession of them.

Likewise, documentation of tenders – considered a high-risk area for conflict of interest situations – is not sufficiently protected.

In some jurisdictions, such as the United States, archives and records laws in different states have been passed in response to public and media dissatisfaction with officials' destroying public records without consequence. In Hong Kong, this is a particularly salient issue as there have been many recent instances of controversy over government actions where records, or the absence thereof, are involved.

#### (b) Heritage conservation

"We intend to do more to promote our heritage to help develop tourism [and] foster a sense of belonging and identity . . ."  
– *Chief Executive Tung Chee Hwa, 1998 Policy Address*<sup>185</sup>

In numerous public statements, government officials have stressed the need for the conservation of tangible heritage. While these statements typically stress built heritage, records also constitute tangible heritage and are an integral part of any integrated heritage preservation scheme. Yet, similar

focus on and attention to the preservation of records are not applied despite their clear importance in establishing history and identity.

(c) Strategic vision

“Overall, Hong Kong people hope that Hong Kong in 2020 will have an enhanced international presence with ... an appreciation of Hong Kong’s tradition and heritage.”

– *Brand Hong Kong research report*<sup>186</sup>

Hong Kong’s livelihood ultimately depends on the quality and creativity of its human capital. In a recent survey undertaken as part of the “Brand Hong Kong” project, heritage and culture were considered among the areas most in need of development.<sup>187</sup> The integrity of records for both governance and heritage purposes will be integral to Hong Kong’s efforts to be “Asia’s world city”.

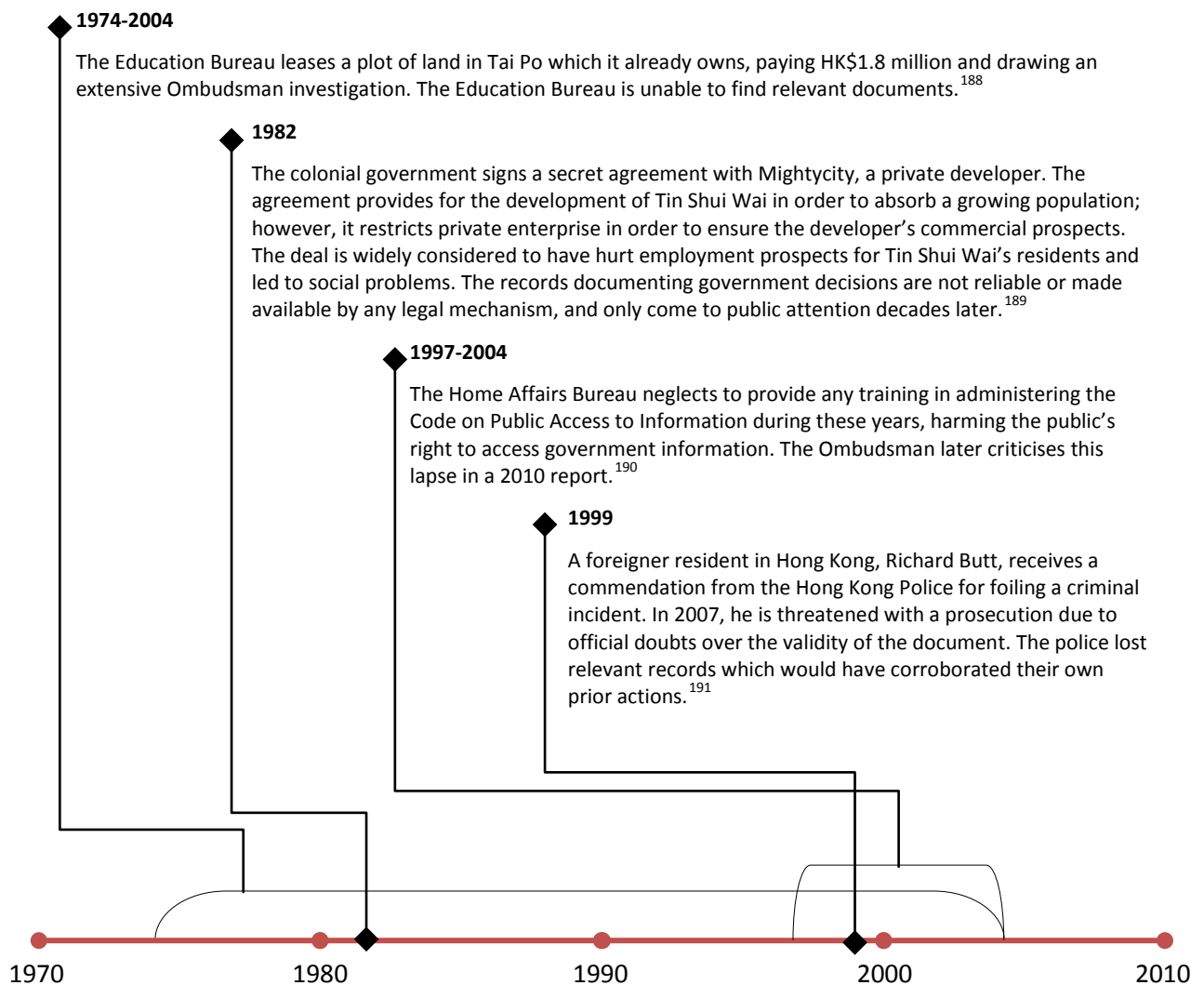
In summary, the Administration’s assertion of the existing public records system being “functioning effectively” is questionable for it is neither grounded in fact, nor based on any kind of systematic study or comprehensive effort to assess or improve the system according to the government’s normal standards and procedures, not to mention international best practice.

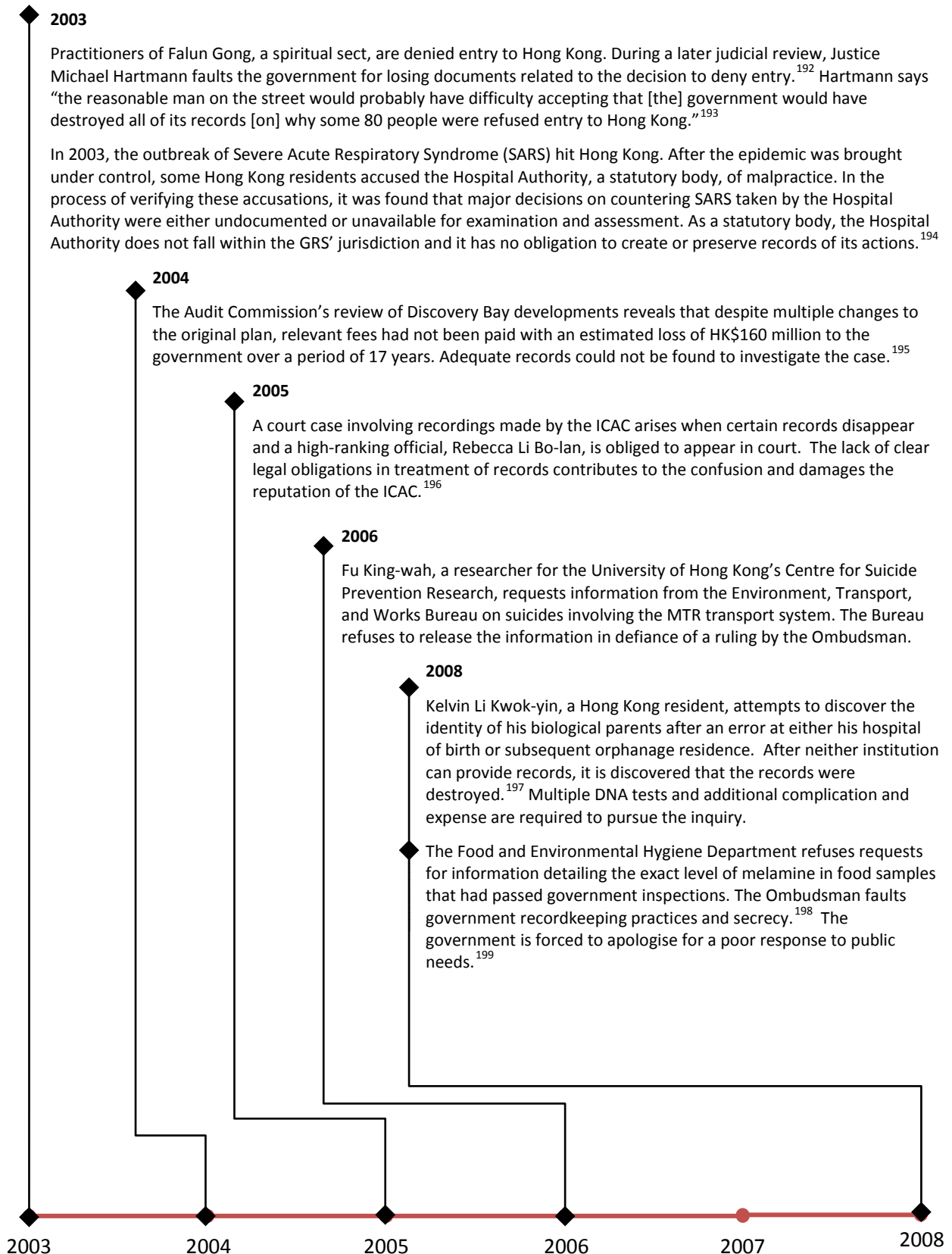


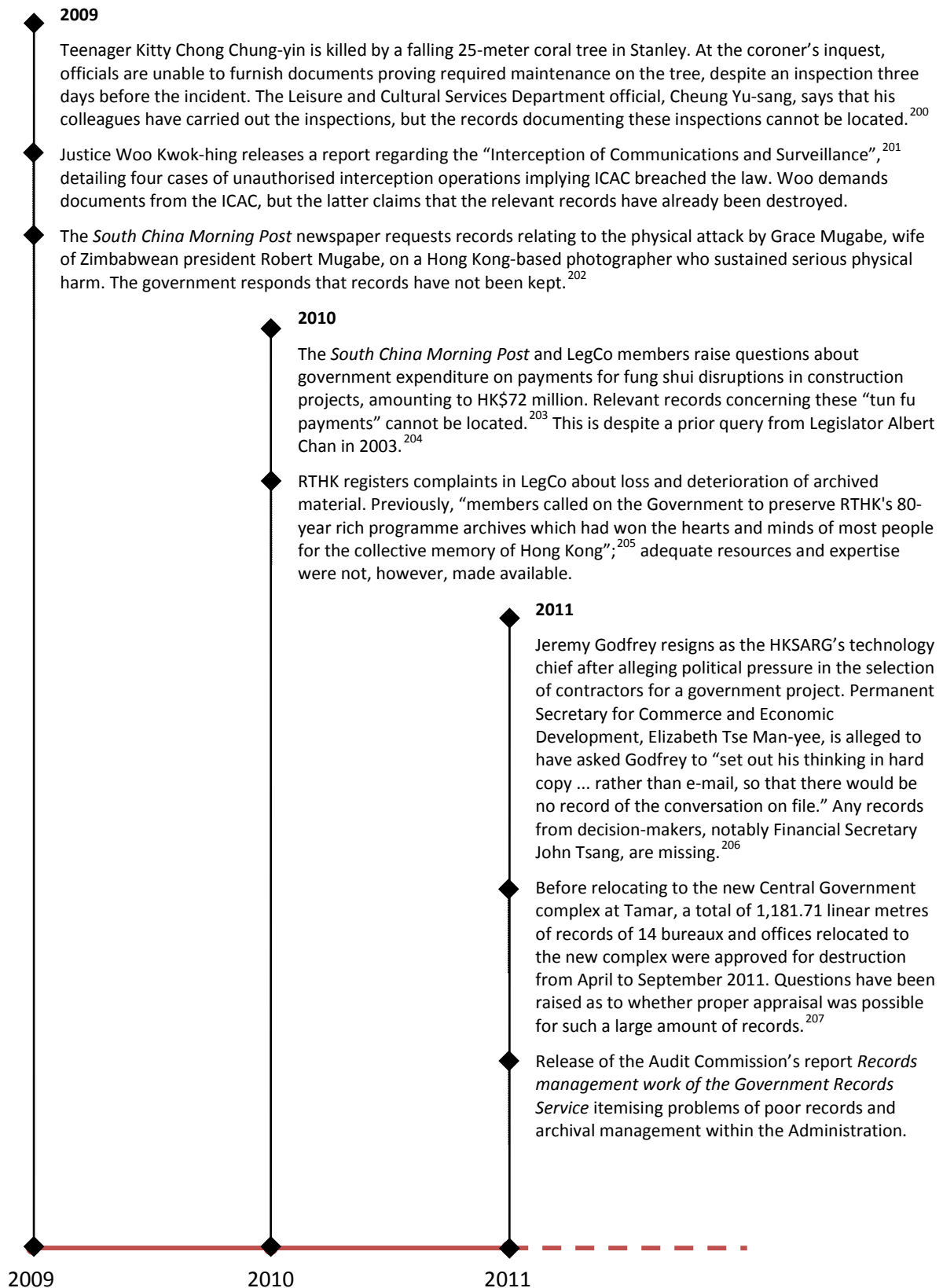


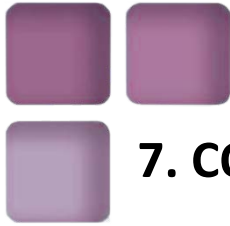
## 6. CASES OF RECORDS MISMANAGEMENT IN HONG KONG

Over several decades, Hong Kong has experienced incidents of public controversy involving government decision-making and inadequate or unavailable public records. Often, these have eroded confidence in the rule of law and public records integrity. Some recent cases are cited below.









## 7. CONCLUSIONS AND RECOMMENDATIONS

### 7.1 Summary conclusion

The management of public records has been a neglected policy area in Hong Kong, and a rare exception in the world. 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 show not only these deficiencies and the importance of government recordkeeping, but also the specific changes that are needed. Four years have elapsed since Civic Exchange published its first report on public records management, and none of the identified records problems have been addressed. Thus, the same conclusions and recommendations drawn in 2007 still apply almost in their entirety.

#### 7.1.1 Why does the Hong Kong Government's records 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. Although some government resources are being devoted to electronic information management, these are being allocated by other agencies and through other policy frameworks which do not prioritise records integrity.

The enactment of records legislation would enhance records management and archival preservation. It would support Hong Kong's further development as an information

society and knowledge-based economy and reinforce its competitive edge. A statutory records 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.

## **7.2 What needs to be done?**

### **7.2.1 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.

### **7.2.2 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.

### **7.2.3 Public access right**

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

### **7.2.4 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.

### 7.3 Recommendations

Records 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 records 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 legally enforceable compliance with records 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.

Even though a motion debate supporting archival legislation on 16 November 2011 in the LegCo failed (see Annex 2 for details), the Audit Commission's *Records management work of the Government Records Service* is harder for the Administration to ignore. Moreover, the public has become more aware of the issues and the Administration can expect pressure to do reform its records and archival systems. For example, an Archives Action Group (AAG) comprising legislators, retired judges, lawyers, archives and records professionals, historians and scholars was formed in 2008 to study and advocate archives legislation. AAG drafted a Public Records Bill and presented it to the government but little response has been received. The Draft Bill is attached as Annex 3.

## ENDNOTES

- 1 "Archives" and "records" mean different things but are sometimes used interchangeably. "Archives" means a record of enduring (historical) value in the custody of the archival agency. "Records" are documents of any formats (paper, film, microfilm, photograph, disc, etc.) created as a result of official business or transaction and are subsequently managed and preserves as evidence of that particular business or transaction.
- 2 "Archives Law of the People's Republic of China", 30 December 2007, <http://www.saac.gov.cn/articleaction.do?method=view&id=ff808081172649a8011729fc01ca0019>, accessed 5 November 2011.
- 3 Macau's archival law in English: <http://www.archives.gov.mo/en/Background/Legislation.aspx?p=2>; Chinese: <http://www.archives.gov.mo/cn/Background/legislation.aspx>; and Portuguese: <http://www.archives.gov.mo/pt/Background/scope.aspx>
- 4 Christine Loh, Marcos Van Rafelghem, Jamie Graham, *Managing Public Records for Good Governance and Preservation of Collective Memory: The Case for Archival Legislation*, Hong Kong: Civic Exchange, March 2007.
- 5 In the UK, there was the 'thirty-year rule', which was changed to twenty years in 2011, and the Freedom of Information Act governing the release of public records. Historians working on Hong Kong history are able to look through the British archival records on Hong Kong from year to year to find new archival materials for research.
- 6 See Audit Commission, "Administration Wing of the Chief Secretary for Administration's Office: Records management work of the Government Records Service", 25 October 2011.
- 7 Life cycle of records: records professionals use this term to describe the process that records go through: they are created, actively used, they become less frequently used (a phase called the semi-current or non-current); and they eventually are either destroyed or identified for permanent preservation because of their historical value (such identified records are called "archives").
- 8 "Public Records Office", *Memorandum for the Executive Council (XCR(71)206)*, 28 September 1971.
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- 12 See note 8.
- 13 Civic Exchange's correspondence with Don Brech, former Government Records Co-ordinator, and Principal Consultant of Records Management International Ltd, Spring-Summer 2011.
- 14 Interview with Don Brech held on 3 August 2006 by Civic Exchange.
- 15 In 1994, to make room for the expansion of the ICAC, PRO was asked to leave its premises in Central and relocate to a factory building which had been used as a closed camp for Vietnamese refugees in Tuen Mun. The news of the move alarmed some members of the public. The Royal Asiatic Society, Hong Kong Branch took the lead to express concern, fearing that the security of the community's documentary heritage would be put at risk by having it stored in a polluted industrial neighborhood. Amidst public pressure, the administration in 1997 decided to have the archives relocated to its present premises in Kwun Tong.
- 16 LegCo Panel on Information Policy, "Notes of Meeting on 7 March 1994" (LegCo Paper No. 2239/93-94).
- 17 Ibid., pp. 3-4.
- 18 Ibid., p. 5.

- 19 Government Records Service, "About Us: Record Systems Development Office", 25 August 2011, [http://www.grs.gov.hk/ws/english/org\\_rsd.htm](http://www.grs.gov.hk/ws/english/org_rsd.htm), accessed 30 October 2011.
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- 21 The ICAC usually prosecutes criminal cases relating to corruption; however, the body also "refers cases of misconduct or malpractice of civil servants to government departments for disciplinary or administrative action". See [http://www.icac.org.hk/en/useful\\_information/p2/index.html](http://www.icac.org.hk/en/useful_information/p2/index.html).
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- 24 The *RMM* was proposed and written by Sarah Choy, Archivist of RMS and later of PRO. It was meant and approved to be a mandatory regulation such as the Civil Service Regulations and the Supplies and Procurement Regulations binding all government employees. The Director of Administration Andrew Wong, however, backed down and issued the publication as another set of "advisory" guidelines.
- 25 Even nine years after the issue of *RMM*, many B/Ds still had not implemented certain key *RMM* provisions which have become mandatory requirements since April 2009. See note 6.
- 26 Interview with Simon Chu, former Director of GRS, May 2011.
- 27 See paras. 4.1, 4.2 and 4.3 of Civic Exchange's 2007 report. See note 4. Also, the Audit Commission report revealed that four departments had cases of loss or unauthorized of destruction of records. See note 6.
- 28 Administration's reply to LegCo Panel on Constitutional Affairs on 17 May 2010.
- 29 For example, see the regulation-making powers granted by Australia's 1983 Archives Act: <http://www.comlaw.gov.au/Details/C2010C00722/Html/Text#param90>, accessed 2 November 2011.
- 30 A more detailed account of these conflicts is available in Civic Exchange's 2007 report. See note 4.
- 31 Administration's reply to LegCo Panel on Constitutional Affairs on 17 May 2010.
- 32 "LCQ18: Government records management", *Press Releases*, 19 October 2011, <http://www.info.gov.hk/gia/general/201110/19/P201110190200.htm>, accessed 2 November 2011.
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- 34 The Audit Commission report pointed out that none of the *RMM* provisions on the creation of records are set as mandatory requirements. See note 6.
- 35 Administration's written reply to enquiry from Hon Samson Tam Wai-ho on 6 July 2011.
- 36 A "timetable" according to which records need to be (i) retained in creating B/Ds for a certain period of time, (ii) destroyed or (iii) transferred to the archives (i.e. PRO) for permanent preservation if appraised to have historical value. In jurisdictions where there is an archives law, all retention and disposal decisions have to be authorised by the Head of the Archives.
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- 48 The number of outstanding appraisals increased from 18,000 in 2007 to 59,000 in June 2011. Six of the requests for appraisals had been outstanding for six years or more. See Audit Commission, “Administration Wing of the Chief Secretary for Administration’s Office: Records management work of the Government Records Service”, 25 October 2011.
- 49 Government records are categorized into “general records” and “classified records”. According to the Public Records (Access) Rules, general records will be opened to the public automatically when they are 30 years old. Classified records (which include “Restricted”, “Confidential”, “Secret” and “Top Secret”) have to be reviewed to ascertain their sensitivity before they can be opened for public inspection even when they are already 30 years old. There are a large number of classified records that are already eligible for review and release but still remain unprocessed.
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that the records had been destroyed. More examples of unauthorized records destruction were mentioned in the Audit Commission, “Administration Wing of the Chief Secretary for Administration’s Office: Records management work of the Government Records Service”, 25 October 2011

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22 April 2009

## **General Circular No. 2/2009**

### **Mandatory Records Management Requirements**

(Note: Distribution of this Circular is Scale C. It should be brought to the attention of officers who, because of the functions of their posts, are required to take action on, or to be informed of, the Circular.)

This Circular sets out mandatory requirements on the management of government records. It should be read in conjunction with General Circular No. 5/2006 entitled “Management of Government Records” which contains comprehensive advice on good records management.

### **Introduction of Mandatory Records Management Requirements**

2. Records<sup>1</sup> are valuable resources of the Government to support evidence-based decision-making, meet operational and regulatory requirements and are essential for an open and accountable government. Good records management enhances operational efficiency and effectiveness while minimizing costs. Records management is therefore an important function of bureaux and departments (B/Ds). In addition, the Government is committed to identifying and preserving government records having archival value so as to enhance public awareness of Hong Kong’s documentary heritage. Heads of B/Ds should accord appropriate priority and resources to implement a proper records management programme throughout their organizations. B/Ds should also cooperate with the Government Records Service (GRS) to ensure proper preservation of records and materials with archival value.

3. To promote best practices for the management of government records in B/Ds, we published the **Records Management Manual (RMM)** and the

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<sup>1</sup> A **record** is any recorded information or data in any physical format or media created or received by an organization during its course of official business and kept as evidence of policies, decisions, procedures, functions, activities and transactions.

Guideline on the Management of Electronic Mail in 2001 and a series of records management publications<sup>2</sup>.

4. Since then most B/Ds have already established a records management programme. It is now an opportune time to introduce a number of mandatory and essential records management requirements in order to demonstrate Government's commitment to practise good records management and preserve archival records. Opportunity is also taken to specify the level of responsible officers in important record management activities to ensure that these activities are properly attended to in B/Ds.

### **Designation of Departmental Records Manager**

5. The **Departmental Records Manager (DRM)** of each B/D has a key role to play in records management and a sufficiently senior officer should be designated to take up the responsibility. The normal practice is for the Departmental Secretary to serve as DRM. As a general guideline, an officer not below the rank of Senior Executive Officer or equivalent should be designated as the DRM to ensure that there is adequate attention from senior management on records management. B/Ds with their DRMs assumed by officers below the rank of Senior Executive Officer or equivalent should designate another officer at the appropriate rank as DRM and advise the GRS of the change within two months. The GRS should also be informed of any replacement of their DRM as soon as this takes place, and in any case not later than two weeks after the replacement. A list of major duties of the DRM is at **Appendix I**. As records management is a joint effort, all officers in a B/D should cooperate with their DRM, particularly in complying with the mandatory requirements set out in this Circular.

### **Maintaining an Accurate Records Inventory**

6. An accurate inventory of records is a prerequisite for good records management because it facilitates efficient control and retrieval of records and provides basic information to support records management activities (e.g. establishing records disposal schedules). Accordingly, it is incumbent upon all B/Ds to **prepare and maintain an accurate inventory of records** if they have not already done so. Such records inventory should be regularly updated to cater for changes. A records inventory on files should at least include the following information –

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<sup>2</sup> The Records Management Manual, the Guideline on the Management of Electronic Mail and other records management publications, such as Publication No. 1 "A Practical Guide to Records Scheduling and Disposal", Publication No. 2 "Managing Active Records: File Management", Publication No. 3 "Subject Filing" and Publication No. 4 "General Administrative Records Disposal Schedules" can be accessed at <http://grs.host.ccgo.hksarg/>.

- (a) file title;
- (b) file reference number;
- (c) date opened and date closed; and
- (d) storage location (e.g. room/ floor).

## **Proper Management of Electronic Mail Records**

7. Apart from paper records, e-mails created or received in the course of official business should be kept as records to serve as evidence of such business. E-mail records include, for example, internal and external communication relating to the functions and activities of the B/D, information pertinent to the decision making process, formulation of policies and procedures and transaction of business. In case of doubt as to whether a particular e-mail should be kept as record, an officer should seek guidance from his supervisor. The use of electronic recordkeeping system for keeping electronic records is being studied by GRS together with the Office of the Government Chief Information Officer and the Efficiency Unit. In the meantime and unless otherwise agreed by GRS, e-mail correspondence should be **“printed-and-filed”** for record purposes, i.e. subject officers should arrange to print an e-mail record directly from the e-mail software<sup>3</sup> for filing in an appropriate paper-based file similar to other records.

## **Records Classification**

### ***Establishment of new records classification schemes***

8. To facilitate a wide range of records management activities, including identification, capturing and retrieval of records, security and access control, records should be systematically organized according to a **records classification scheme** (also called a file plan), which is a plan for logical arrangement of records according to one or more of the following: business functions, activities and contents of the records. It includes a coding system expressed in symbols (e.g. alphabetical, numerical and alpha-numerical) to show the logical relationship amongst the records. An effective records classification scheme is conducive to effective records management. As a requirement to ensure quality, **new classification schemes for a B/D** such as those necessitated by re-organisation **should from now on be approved by its DRM**. The DRM's approval is also required for records classification schemes to be adopted for a new office, irrespective of whether this is by way of creating new schemes or extending existing schemes. Before giving approval, the DRM should have regard to the principles set out in **Appendix II** which are derived from existing guidelines on content classification contained in paragraphs 414-420 of the RMM and guidelines on records classification contained in paragraphs 3.9-3.12 and

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<sup>3</sup> If an e-mail record is exported or copied to other software for printing, its structure (e.g. e-mail header and body) which affects understanding of the information contained therein may not be accurately presented.

3.16 of GRS' Records Management Publication No. 2 "Managing Active Records: File Management".

### *Administrative records*

9. Administrative records are records created or received during the course of day-to-day administrative activities that deal with finance, accommodation, procurement and supply, establishment, personnel and other general administrative activities. Records of this nature are common to B/Ds. The GRS has promulgated a standard classification scheme for administrative records, which provides standard primary subject terms on administrative activities to help B/Ds achieve a higher efficiency and accuracy in organizing common administrative records and in disposing of such records. The standard classification scheme and the standard disposal schedules for administrative records are detailed respectively in GRS' Records Management Publication No. 3 "Subject Filing" and Publication No. 4 "General Administrative Records Disposal Schedules". While B/Ds may add secondary, tertiary and other lower level terms under the primary terms to suit their circumstances, they are required to seek GRS' prior agreement for addition of a new primary term to the standard classification scheme, so that timely action can be taken to establish a corresponding disposal schedule.

10. Since the introduction of the standard classification scheme in 1994, B/Ds have been adopting the standard scheme gradually to manage their administrative records. To reap the full benefits set out in paragraphs 8 and 9 above, B/Ds which have yet to **adopt the standard classification scheme for all their administrative records** are required to do so without further delay and, in any event, **not later than April 2012**. For the few B/Ds which have yet to be covered by GRS' records management studies, they should comply with this requirement three years after completion of the studies.

### *Programme records*

11. Programme records are records created or received by a B/D whilst carrying out the primary functions, activities or mission for which the B/D was established. Records of this nature are unique to each B/D. B/Ds should make reference to the procedures set out in GRS' Records Management Publication No. 3 to develop its own classification scheme for programme records.

### *Regular review of records classification schemes*

12. A records classification scheme allows modifications such as addition of new records series to cater for changing circumstances. To ensure that each scheme remains effective to cope with changes over time and to identify scope for improvement, the DRM is required to **review the records classification**

— **schemes every two to three years**, having regard to the principles set out in **Appendix II**. The results of the review and any follow-up action taken should be documented. Some large departments may need to designate staff at regional/district level to conduct such reviews. In such cases, the designated staff should not be below the rank of Senior Executive Officer or equivalent, and the DRM will remain responsible for the overall co-ordination and effectiveness of the review.

## **Records Disposal**

### ***Establishing disposal schedules for all programme records***

13. It is important to establish **disposal schedules** to ensure systematic planning and orderly implementation of records disposal after records have been kept the right length of time to meet the purposes they are created and in compliance with legal or statutory requirements. This will facilitate subsequent transfer of inactive records to GRS' records centres for intermediate storage, transfer of archival records to the Public Records Office of GRS for permanent retention or destruction of unwanted records.

14. To dispose of **administrative records**, B/Ds should adopt the set of disposal schedules developed by GRS and detailed in GRS' Records Management Publication No. 4 "General Administrative Records Disposal Schedules". For **programme records**, B/Ds should, in consultation with GRS, develop **disposal schedules** which stipulate the length of time that records should be retained and the ways of disposal (e.g. destruction; intermediate storage at records centre and then destruction; microfilming and then destruction; permanent retention) having regard to the administrative, operational, fiscal and legal requirements and archival values of the records<sup>4</sup>.

15. With experience gained in the disposal of their administrative and programme records and in establishing disposal schedules for many of their programme records, B/Ds should now be in a position to establish disposal schedules for all their programme records. Accordingly, **B/Ds are required to prepare and forward to GRS draft disposal schedules covering all their programme records not later than April 2012**. These draft disposal schedules should be endorsed by an officer not below the rank of Senior Executive Officer or equivalent. GRS will consider the draft disposal schedules and discuss with the B/D concerned regarding the proposed retention period and disposal action with a view to finalizing the disposal schedules. Finalized disposal schedules should be signed by an officer not below the rank of Senior Executive Officer or equivalent in the B/D concerned. For new series of programme records created

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<sup>4</sup> Chapter 4 of GRS' Records Management Publication No. 1 "A Practical Guide to Records Scheduling and Disposal" sets out procedures on drafting disposal schedules for programme records.



after April 2012, B/Ds should forward draft disposal schedules to GRS within a period of two years.

***Transferring records having archival value to GRS***

16. Some records may contain information having archival value (as appraised by the Public Records Office of GRS and indicated in approved disposal schedules) which forms part of the memory of the community. **B/Ds should transfer their records having archival value to the Public Records Office of GRS according to the respective disposal schedules.**

***Disposal of time-expired records***

17. Regular disposal of records facilitates easy retrieval of records in active use, and minimizes costs for maintaining and storing records. Accordingly, it is necessary to arrange prompt disposal of time-expired records, i.e. inactive records which have been retained for the period specified in the “General Administrative Records Disposal Schedules (GARDS)” for *administrative records* or the approved disposal schedules for *programme records* and are ready for disposal. As a requirement, B/Ds should from now on **dispose of time-expired records at least once every two years** for all their administrative records, which are covered by GARDS, and for all their programme records with approved disposal schedules. In the interest of proper internal control, disposal of records, including destruction of records, should be considered and endorsed in writing by a senior officer not below the rank of Senior Executive Officer or equivalent in the B/D. The records disposal process in respect of administrative records and programme records is shown in the flow chart at **Appendix III** for reference. If there are valid reasons to defer the transfer of time-expired records having archival value or potential archival value to the Public Records Office of GRS for retention or appraisal by more than two years, they should be set out in writing for agreement by a directorate officer in the concerned B/D. Such cases have to be brought up to the directorate officer for direction during the next disposal exercise.

***Prior consent before destruction of records***

18. **B/Ds must obtain the prior agreement of the GRS Director before they destroy any government records.** This is to safeguard against premature disposal of records and destruction of records having archival value. GRS will process B/Ds’ requests as soon as possible.

19. To minimize the risk of inadvertent unauthorized destruction of records during the disposal process, B/Ds should designate an officer not below the rank of Executive Officer II or equivalent to **ensure that the disposal process is**

properly supervised and the records disposal procedures as set out in **Appendix IV** are complied with.

***Transferring government records to non-government bodies***

20. In case a B/D needs to transfer its records to non-government bodies due to such reasons as corporatization, privatization or outsourcing, the DRM should send a list of records pending transfer to the GRS Director for prior agreement so that appropriate arrangements can be made for records having archival value. The list should group the records by disposal schedule and include the information set out in paragraph 6(a) to (c) above, i.e. file title, file reference number, date opened and date closed. **No government records should be transferred outside the Government unless with the prior agreement of the GRS Director.**

**Proper Custody and Storage of Records**

21. B/Ds should **put in place appropriate arrangements to ensure the safe custody of records.** To minimize the risk of losing records during bulk relocation of files, appropriate arrangement should be made during the process. These include: designating an officer not below the rank of Executive Officer II or equivalent to oversee the task; taking stock before the relocation exercise; conducting a file inventory check after relocation; documenting the inventory check and updating the new storage location immediately afterwards.

22. Any loss or unauthorized destruction of records should be immediately reported to the DRM and a copy of such report sent to GRS simultaneously. Upon receipt of such report, the DRM should –

- (a) ascertain the facts and identify the circumstances leading to the loss/ unauthorized destruction;
- (b) reconstruct the records where necessary;
- (c) take steps to prevent recurrence;
- (d) consider whether any disciplinary action or other administrative action is necessary; and
- (e) report his findings and actions on (a) to (d) above to GRS within three months.

23. Records should be stored in such a manner so as to facilitate user access and protected from unauthorized access, use, disclosure, removal, deterioration,

loss or destruction. At present, most government records are in paper form. Paper deteriorates rapidly in an environment of high temperature and high humidity. Furthermore, mould growth on paper is a health hazard to staff. Records should therefore be stored in proper facilities (e.g. filing cabinets, filing racks) in a clean and dry environment. Consideration may be given to making use of GRS' records centres as an intermediate storage for inactive records not requiring frequent retrieval.

### **Protecting Vital Records**

24. Vital records are those records containing information essential to the continued and effective operation of an organization during and after an emergency or disaster. B/Ds should **identify and protect their vital records** by way of duplication or off-site storage to ensure uninterrupted operation of major business functions. For B/Ds who have yet to take action in this regard, they are required to **draw up an action plan not later than April 2012** to establish and implement a vital records protection programme<sup>5</sup>.

### **Regular Review of Records Management Practices**

25. To ensure that their records management programme is functioning effectively, B/Ds should review their records management practices regularly. The review should include -

- (a) assessment of compliance with the mandatory records management requirements set out in this Circular (e.g. progress in implementing the standard classification scheme for administrative records, establishing draft disposal schedules for programme records etc.); and
- (b) identification of areas requiring improvement with regard to desirable best practices and formulation of plans to implement improvement measures.

26. To assist B/Ds in this task, GRS will issue a further guideline setting out the scope and issues for review. The completed review should be endorsed by a directorate officer and returned to GRS.

### **Summary of Requirements**

27. In sum, B/Ds are required to -

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<sup>5</sup> Detailed guidelines and procedures for establishing a vital records protection programme are given in GRS' Records Management Publication No. 6 "Manual on Vital Records Protection".

- (a) review whether there should be any change to staff designated as the DRM and inform GRS of any replacement of the DRM (para. 5);
- (b) prepare and maintain an accurate records inventory (para. 6);
- (c) print-and-file e-mail records (para. 7);
- (d) ensure that any new records classification scheme is approved by the DRM (para. 8);
- (e) adopt the standard classification scheme designed by GRS for all administrative records not later than April 2012 (para. 10);
- (f) review records classification schemes every two to three years (para. 12);
- (g) establish draft disposal schedules for all existing programme records not later than April 2012 (para. 15);
- (h) transfer records having archival value to GRS according to the respective disposal schedules (para. 16);
- (i) dispose of time-expired records at least once every two years, with disposal of records considered and endorsed in writing by a senior officer (para. 17);
- (j) obtain prior agreement from the GRS Director before destruction of records (para. 18);
- (k) ensure that the records disposal process is properly supervised (para. 19);
- (l) obtain prior agreement from the GRS Director before transferring government records to non-government bodies (para. 20);
- (m) put in place arrangements to ensure proper custody and storage of records, and investigate any loss or unauthorized destruction of records (paras. 21-23);
- (n) draw up an action plan not later than April 2012 to identify and protect vital records (para. 24); and
- (o) review records management practices regularly (paras. 25-26).

28. In addition to the DRM, B/Ds may consider designating appropriate staff to ensure the compliance of the mandatory records management requirements set out in this Circular.

#### **Assistance from GRS**

29. Enquiries arising from this Circular may be addressed to Chief Executive Officer (Records Management and Administration) on 2195 7818 or Senior Executive Officer (Records Management) on 2195 7789. GRS will arrange seminars / briefings to assist B/Ds in meeting the requirements set out in this Circular.

A handwritten signature in black ink, reading "Jennifer Mak". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Mak".

( Miss Jennifer Mak )  
Director of Administration

c.c. Judiciary Administrator

**Major Duties of Departmental Records Manager**

- (a) Ensure that the design of the recordkeeping system, the choice of equipment and the use of resources and space are as efficient and cost-effective as possible;
- (b) Establish, implement and document departmental records management practices and procedures according to the guidelines and instructions of the GRS;
- (c) Provide records management staff with appropriate training and guidance to supplement those provided by GRS, having regard to the operational needs of the B/D;
- (d) Appoint Assistant Departmental Records Manager(s), where necessary, to monitor records management routines;
- (e) Introduce the use of technology in a cost-beneficial manner to any aspect of the records management function that improves operation of the organization and helps achieve the records management policy of the government;
- (f) Use GRS' records centres as far as practicable to store, service and dispose of inactive records;
- (g) Facilitate records appraisal and records access review conducted by the Public Records Office of GRS and ensure prompt and systematic transfer of archival records to the Public Records Office for preservation;
- (h) Identify and protect vital records so as to ensure their availability in the event of any emergency or disaster;
- (i) Foster cooperation between records management personnel and other staff to facilitate the most effective management of departmental records;
- (j) Cooperate with GRS in evaluating and improving the effectiveness of the records management programme on a regular basis;
- (k) Approve new records classification schemes and review records classification schemes every two to three years;

- (l) Conduct investigation into cases involving loss or unauthorized destruction of records, take appropriate follow-up action, and report findings to GRS; and
- (m) Consult GRS when records management advice is required.

(Notes: This list is adapted from Appendix C to the Records Management Manual, with items (k) and (l) added to reflect the new duties arising from this Circular.)

**Principles in Establishing / Reviewing Records Classification Schemes**

The Departmental Records Manager is required to have regard to the following in approving a new records classification scheme or reviewing records classification schemes -

- (a) whether programme records are separated from administrative records;
- (b) whether the scheme is systematic, logical, consistent and scalable to facilitate accurate and complete documentation of policies, procedures and decisions for the efficient carrying out of the B/D's functions, activities and transactions;
- (c) whether the scheme can be used easily and the file titles are clear and unique (e.g. avoid the use of "general"/"miscellaneous") to facilitate accurate capturing and ready retrieval of records; and
- (d) whether the scheme facilitates segregation of vital records for protection and establishment of disposal schedules to satisfy retention requirement stipulated by legislation (e.g. Personal Data (Privacy) Ordinance) and to separate records which need to be kept for a long period (e.g. those on policy) from those which need to be kept briefly (e.g. routine correspondence).

(Notes: The principles in this Appendix are derived from paragraphs 414-420 of the Records Management Manual and paragraphs 3.9-3.12 and 3.16 of GRS' Records Management Publication No. 2 "Managing Active Records: File Management".)



**Flow Chart Showing Major Steps to Dispose of Records**

**For administrative records**

B/Ds to identify time-expired administrative records according to the General Administrative Records Disposal Schedules promulgated by GRS

**For programme records**

B/Ds to draw up draft disposal schedules for their programme records

Pass the draft disposal schedules to GRS for approval

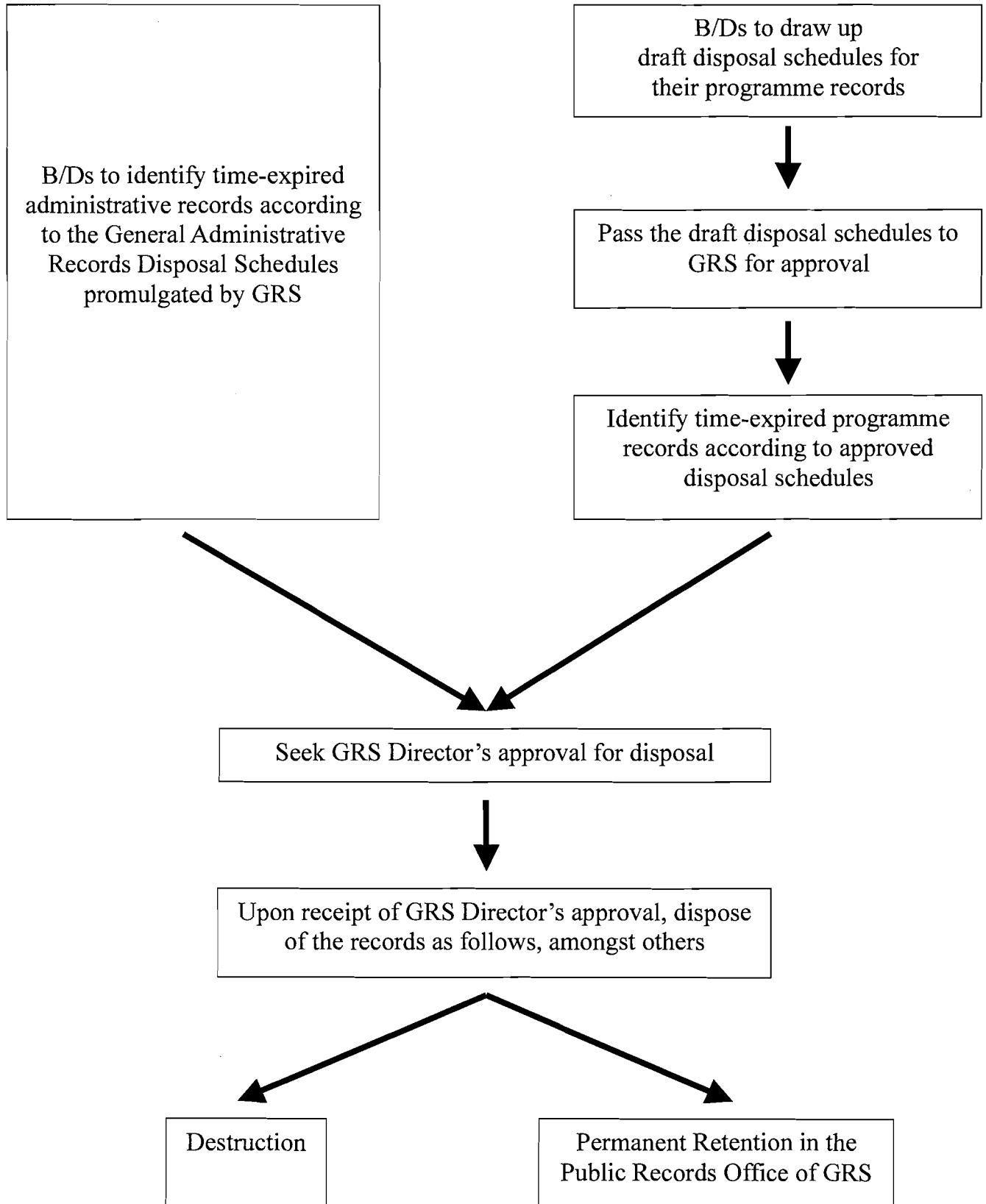
Identify time-expired programme records according to approved disposal schedules

Seek GRS Director's approval for disposal

Upon receipt of GRS Director's approval, dispose of the records as follows, amongst others

Destruction

Permanent Retention in the Public Records Office of GRS



**Procedures on Records Disposal**

(a) Preparing an accurate list of files to be disposed of

For records under the custody of B/Ds, files to be disposed of should be physically checked against the list to ensure its accuracy. For records stored in GRS' records centres, B/Ds may make use of the records transfer list for the purpose of seeking GRS' agreement for disposal. The list should be updated to exclude files already retrieved from the records centres.

(b) Ensuring the completeness of files having archival value

For records kept by B/Ds where the relevant disposal schedule stipulates that the files should be transferred to the Public Records Office of GRS for appraisal of archival value or for permanent retention, the contents of the files should be checked to ensure that no enclosures or minute sheets are missing.

(c) Segregation of records approved for destruction

For records kept by B/Ds, upon receipt of GRS' approval for destruction, an officer should be tasked to identify the relevant records and check to ensure that records approved for destruction do not mix up with those pending approval.

(d) Documentation for accountability

The checks in (a), (b) and (c) above should be documented for accountability.

(Notes: Bureaux/departments were advised of these procedures among other measures to minimize loss and inadvertent destruction of government records in GRS' memo (1) in LM (2) in GRS RC 30/0 dated 13 May 2008.)



# Motion debate on “Enacting an archives law” held at the Legislative Council meeting on 16 November 2011

## Dr Hon Margaret Ng’s original motion:

That, in order to properly manage and preserve valuable public records, and provide channels for the public to access such records, this Council urges the Government to immediately launch public consultation on the formulation of an archives law and expeditiously proceed with its enactment.

## Voting results:

投票 VOTE: 4  
日期 DATE: 16/11/2011  
時間 TIME: 07:42:25 下午 PM

動議 MOTION: 「訂立檔案法」議案  
MOTION ON "ENACTING AN ARCHIVES LAW"

動議人 MOVED BY: 吳靄儀 Dr Margaret NG

	功能團體 Functional Constituencies	地方選區 Geographical Constituencies	最後結果 Final Result
出席 Present	26	25	
投票 Vote	26	24	
贊成 Yes	8	16	
反對 No	1	0	
棄權 Abstain	17	8	
結果 Result	否決 Negated	通過 Passed	否決 Negated

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

議員 MEMBER	投票 VOTE	議員 MEMBER	投票 VOTE
<b>功能團體 Functional Constituencies</b>		<b>地方選區 Geographical Constituencies</b>	
何鍾泰 Dr Raymond HO	棄權 ABSTAIN	曾鈺成 TSANG Yok-sing	出席 PRESENT
李國寶 Dr David LI		何俊仁 Albert HO	贊成 YES
吳靄儀 Dr Margaret NG	贊成 YES	李卓人 LEE Cheuk-yan	贊成 YES
張文光 CHEUNG Man-kwong	贊成 YES	李華明 Fred LI	贊成 YES
梁劉柔芬 Mrs Sophie LEUNG	棄權 ABSTAIN	涂謹申 James TO	
黃宜弘 Dr Philip WONG	棄權 ABSTAIN	陳耀林 CHAN Kam-lam	棄權 ABSTAIN
黃香根 WONG Yung-kan	棄權 ABSTAIN	梁耀忠 LEUNG Yiu-chung	贊成 YES
劉卓榮 LAU Wong-fat	棄權 ABSTAIN	劉江華 LAU Kong-wah	
劉健儀 Miriam LAU	贊成 YES	劉慧卿 Emily LAU	
霍震霆 Timothy FOK	棄權 ABSTAIN	鄭家富 Andrew CHENG	
石禮謙 Abraham SHEK	反對 NO	譚耀宗 TAM Yiu-chung	棄權 ABSTAIN
李鳳英 Li Fung-ying	棄權 ABSTAIN	馮檢基 Frederick FUNG	
張宇人 Tommy CHEUNG		余若薇 Audrey EU	贊成 YES
方剛 Vincent FANG		王國興 WONG Kwok-hing	棄權 ABSTAIN
李國麟 Dr Joseph LEE	贊成 YES	李永達 LEE Wing-tat	贊成 YES
林健鋒 Jeffrey LAM	棄權 ABSTAIN	張學明 CHEUNG Hok-ming	棄權 ABSTAIN
梁君彥 Andrew LEUNG	棄權 ABSTAIN	湯家驊 Ronny TONG	贊成 YES
黃定光 WONG Ting-kwong	棄權 ABSTAIN	甘乃威 KAM Nai-wai	贊成 YES
詹培忠 CHIM Pui-chung		何秀蘭 Cyd HO	贊成 YES
劉秀成 Prof Patrick LAU	棄權 ABSTAIN	李慧琼 Stacey LEE	棄權 ABSTAIN
林大輝 Dr LAM Tai-fai	棄權 ABSTAIN	陳克勤 CHAN Hak-kan	棄權 ABSTAIN
陳茂波 Paul CHAN	贊成 YES	梁美芬 Dr Priscilla LEUNG	棄權 ABSTAIN
陳健波 CHAN Kin-por	贊成 YES	黃成智 WONG Sing-chi	贊成 YES
梁家驊 Dr LEUNG Ka-lau	贊成 YES	黃國健 WONG Kwok-kin	棄權 ABSTAIN
張國柱 CHEUNG Kwok-che	贊成 YES	葉劉淑儀 Mrs Regina IP	贊成 YES
葉偉明 IP Wai-ming	棄權 ABSTAIN	梁家傑 Alan LEONG	贊成 YES
葉國謙 IP Kwok-him	棄權 ABSTAIN	梁國雄 LEUNG Kwok-hung	贊成 YES
潘耀輝 Dr PAN Pey-chyau	棄權 ABSTAIN	陳淑莊 Tanya CHAN	贊成 YES
謝偉俊 Paul TSE	棄權 ABSTAIN	陳偉業 Albert CHAN	贊成 YES
譚偉豪 Dr Samson TAM	棄權 ABSTAIN	黃毓民 WONG Yuk-man	贊成 YES

秘書 CLERK

秘書 CLERK

## Motion as amended by Hon Paul Tse:

That, in order to properly manage and preserve valuable public records, and facilitate the public to access such records, this Council urges the Government to expeditiously review the existing management of government records, and having regard to the outcome of the review, to consider adopting appropriate measures to enhance the management of government records and related services for the public.

## Voting results:

投票 VOTE: 2  
日期 DATE: 16/11/2011  
時間 TIME: 07:34:58 下午 PM

動議 MOTION: 謝偉俊議員對吳靄儀議員的「訂立檔案法」議案作出的修正案  
AMENDMENT BY HON PAUL TSE TO DR HON MARGARET NG'S MOTION ON "ENACTING AN ARCHIVES LAW"

動議人 MOVED BY: 謝偉俊 Paul TSE

	功能團體 Functional Constituencies	地方選區 Geographical Constituencies	最後結果 Final Result
出席 Present	26	25	
投票 Vote	26	24	
贊成 Yes	21	8	
反對 No	5	16	
棄權 Abstain	0	0	
結果 Result	通過 Passed	否決 Negatived	否決 Negatived

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

議員 MEMBER	投票 VOTE	議員 MEMBER	投票 VOTE
<b>功能團體 Functional Constituencies</b>		<b>地方選區 Geographical Constituencies</b>	
何鍾泰 Dr Raymond HO	贊成 YES	曾鈺成 TSANG Yok-sing	出席 PRESENT
李國寶 Dr David LI		何俊仁 Albert HO	反對 NO
吳靄儀 Dr Margaret NG	反對 NO	李卓人 LEE Cheuk-yan	反對 NO
張文光 CHEUNG Man-kwong	反對 NO	李卓明 Fred LI	反對 NO
梁劉柔芬 Mrs Sophie LEUNG	贊成 YES	涂謹中 James TO	
黃宜弘 Dr Philip WONG	贊成 YES	陳麗林 CHAN Kam-lam	贊成 YES
黃容根 WONG Yung-kan	贊成 YES	梁耀忠 LEUNG Yiu-chung	反對 NO
劉皇發 LAU Wong-fat	贊成 YES	劉江華 LAU Kong-wah	
劉健儀 Miriam LAU	反對 NO	劉慧卿 Emily LAU	
霍震霆 Timothy FOK	贊成 YES	鄭家富 Andrew CHENG	
石禮謙 Abraham SHEK	贊成 YES	譚耀宗 TAM Yiu-chung	贊成 YES
李鳳英 LI Fung-ying	贊成 YES	馮檢基 Frederick FUNG	
張宇人 Tommy CHEUNG		余若薇 Audrey EU	反對 NO
方剛 Vincent FANG		王國興 WONG Kwok-hing	贊成 YES
李國麟 Dr Joseph LEE	反對 NO	李永達 LEE Wing-tat	反對 NO
林健鋒 Jeffrey LAM	贊成 YES	張學明 CHEUNG Hok-ming	贊成 YES
梁君彥 Andrew LEUNG	贊成 YES	湯家驊 Ronny TONG	反對 NO
黃定光 WONG Ting-kwong	贊成 YES	甘乃威 KAM Nai-wai	反對 NO
詹培忠 CHIM Pui-chung		何秀蘭 Cyd HO	反對 NO
劉秀成 Prof Patrick LAU	贊成 YES	李慧琼 Starry LEE	贊成 YES
林大輝 Dr LAM Tai-fai	贊成 YES	陳克勤 CHAN Hak-kan	贊成 YES
陳茂波 Paul CHAN	贊成 YES	梁美芬 Dr Priscilla LEUNG	贊成 YES
陳健波 CHAN Kin-por	贊成 YES	黃成智 WONG Sing-chi	反對 NO
梁家駒 Dr LEUNG Ka-lau	贊成 YES	黃國健 WONG Kwok-kin	贊成 YES
張國柱 CHEUNG Kwok-che	反對 NO	葉劉淑儀 Mrs Regina IP	反對 NO
葉偉明 IP Wai-ming	贊成 YES	梁家傑 Alan LEONG	反對 NO
葉國謙 IP Kwok-him	贊成 YES	梁國雄 LEUNG Kwok-hung	反對 NO
潘佩嫻 Dr PAN Pey-chiou	贊成 YES	陳淑莊 Tanya CHAN	反對 NO
謝偉俊 Paul TSE	贊成 YES	陳偉業 Albert CHAN	反對 NO
譚耀宗 Dr Samson TAM	贊成 YES	黃毓民 WONG Yui-man	反對 NO

秘書 CLERK

## Motion as amended by Hon Cyd Ho:

That, in order to properly manage and preserve valuable public records, and provide channels for the public to access such records, this Council urges the Government to immediately launch public consultation on the formulation of an archives law and expeditiously proceed with its enactment, and to:

- establish a standing committee to review the existing situation of records management and put forward improvement proposals;
- create a professional grade comprising all records management posts in the Government Records Service, and stipulate professional qualifications in records management as mandatory requirements; and
- extend the mandatory requirements that are currently applicable only to the Government's internal records management to all publicly-funded statutory bodies.

## Voting results:

投票 VOTE: 3  
日期 DATE: 16/11/2011  
時間 TIME: 07:57:51 下午 PM

動議 MOTION: 何秀蘭議員對吳靄儀議員的「訂立檔案法」議案作出的修正案  
AMENDMENT BY HON CYD HO TO DR HON MARGARET NG'S MOTION ON "ENACTING AN ARCHIVES LAW"

動議人 MOVED BY: 何秀蘭 Cyd HO

	功能團體 Functional Constituencies	地方選區 Geographical Constituencies	最後結果 Final Result
出席 Present	26	25	
投票 Vote	26	24	
贊成 Yes	5	15	
反對 No	18	7	
棄權 Abstain	3	2	
結果 Result	否決 Negated	通過 Passed	否決 Negated

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

議員 MEMBER	投票 VOTE	議員 MEMBER	投票 VOTE
<b>功能團體 Functional Constituencies</b>		<b>地方選區 Geographical Constituencies</b>	
何鍾泰 Dr Raymond HO	反對 NO	曾鈺成 TSANG Yok-sing	出席 PRESENT
李國寶 Dr David LI		何俊仁 Albert HO	贊成 YES
吳靄儀 Dr Margaret NG	贊成 YES	李卓人 LEE Cheuk-yan	贊成 YES
張文光 CHEUNG Man-kwong	贊成 YES	李華明 Fred LI	贊成 YES
梁劉柔芬 Mrs Sophie LEUNG	反對 NO	涂謹申 James TO	
黃宜弘 Dr Philip WONG	反對 NO	陳耀林 CHAN Kam-lam	反對 NO
黃春根 WONG Yung-kan	反對 NO	梁耀忠 LEUNG Yiu-chung	贊成 YES
劉皇發 LAU Wong-fat	反對 NO	劉江華 LAU Kong-wah	
劉健儀 Miriam LAU	棄權 ABSTAIN	劉慧卿 Emily LAU	
霍震霆 Timothy FOK	反對 NO	鄭家富 Andrew CHENG	
石禮謙 Abraham SHEK	反對 NO	譚耀宗 TAM Yiu-chung	反對 NO
李鳳英 LI Fung-ying	反對 NO	馮檢基 Frederick FUNG	
張宇人 Tommy CHEUNG		余若蕓 Audrey EU	贊成 YES
方剛 Vincent FANG		王國興 WONG Kwok-hing	棄權 ABSTAIN
李國麟 Dr Joseph LEE	贊成 YES	李永達 LEE Wing-tat	贊成 YES
林健鋒 Jeffrey LAM	反對 NO	張學明 CHEUNG Hok-ming	反對 NO
梁君彥 Andrew LEUNG	反對 NO	湯家驊 Ronny TONG	贊成 YES
黃定光 WONG Ting-kwong	反對 NO	甘乃威 KAM Nai-wai	贊成 YES
詹培忠 CHIM Pui-chung		何秀蘭 Cyd HO	贊成 YES
劉秀成 Prof Patrick LAU	反對 NO	李慧瑋 Stacey LEE	反對 NO
林大輝 Dr LAM Tai-fai	反對 NO	陳克勤 CHAN Hak-kan	反對 NO
陳茂波 Paul CHAN	反對 NO	梁美芬 Dr Priscilla LEUNG	反對 NO
陳健波 CHAN Kin-por	反對 NO	黃成智 WONG Sing-chi	贊成 YES
梁家驊 Dr LEUNG Ka-lau	贊成 YES	黃國健 WONG Kwok-kin	棄權 ABSTAIN
張國柱 CHEUNG Kwok-che	贊成 YES	梁家傑 Mrs Regina IP	反對 NO
葉偉明 IP Wai-ming	棄權 ABSTAIN	梁家傑 Alan LEONG	贊成 YES
葉國謙 IP Kwok-kim	反對 NO	梁國雄 LEUNG Kwok-hung	贊成 YES
潘佩珊 Dr PAN Pey-chiu	棄權 ABSTAIN	陳淑莊 Tanya CHAN	贊成 YES
謝偉俊 Paul TSE	反對 NO	梁國業 Albert CHAN	贊成 YES
譚偉豪 Dr Samson TAM	反對 NO	黃毓民 WONG Yuk-man	贊成 YES

秘書 CLERK: 

Source: Clerk to the Legislative Council, Council meeting of 16 November 2011 Amendments to motion on "Enacting an archives law", 11 November 2011, [http://legco.gov.hk/yr11-12/english/counmtg/motion/m\\_papers/cm1116cb3-130-e.pdf](http://legco.gov.hk/yr11-12/english/counmtg/motion/m_papers/cm1116cb3-130-e.pdf), retrieved on 18 November 2011



# **Draft Public Records Bill**

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# DRAFT PUBLIC RECORDS BILL

## Long Title

An Ordinance to establish the Government Archives and Records Authority and make provisions for the proper management of public archives and records, and connected or incidental matters.

## Part I

### Preliminary

#### Section 1 - Short Title and Commencement

- (1) This Ordinance may be cited as the Public Records Ordinance.
- (2) This Ordinance shall come into operation on a date to be appointed by [ ] by notice in the Gazette.

#### Section 2 - Interpretation

- (1) Section 2 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to this Ordinance so far as it is inconsistent with the provisions of this Ordinance.

- (2) In this Ordinance, unless the context otherwise requires:

**‘access’** means the right and opportunity to find and retrieve information in records. For the purpose of this Ordinance, access to public records and public archives means allowing a reasonable opportunity to locate, inspect, hear and/or view the content of public records and public archives or their copies

**‘appraisal’** means the evaluation process conducted by professional archivists in the Government Archives and Records Authority to determine which records must be kept and preserved as public archives and which records can be disposed of

**‘archival records’** means records appraised of having enduring value and preserved for access and use

**‘archival repository’** means a building or part of a building in which archives are preserved and made available for access

**‘archives’** means the archival repository in which archival records are preserved and made available for access. It also bears the same meaning as archival records

**‘Authority’** means the Government Archives and Records Authority

**‘classified public records and archives’** means any public records and public archives which are subject to a security classification

**‘closed records’** means any public records and public archives not available for public access

**‘Council’** means the Archives and Records Council

**‘estrays’** means records created and/or owned by a public office but have been abandoned, removed or transferred out of the control of the respective public office without lawful authority

**‘heads of public offices’** means the Secretary or Director or other persons responsible for directing public offices

**‘inactive records’** are those records rarely or no longer required for action or reference

**‘preservation’** means the processes and operations involved in ensuring the technical and intellectual survival of authentic and usable records through time

**‘private records’** means records other than public records

**‘public archives’** means records appraised and nominated by the Government Archivist as archival records for preservation in the Public Records Office, which is the central government archives, or any place of deposit appointed by the Government Archivist under section 11 of this Ordinance

**‘public office’** means any institution, body or individual funded wholly or partly by public money that creates, receives or maintains records in exercising a public function. It includes the Office of the Chief Executive, the Executive Council, the Legislative Council, any District Council, any government bureau, department, office, agency, any commission, authority, board, committee, corporation, service, court, tribunal or any instrumentality exercising any function of any branch of the executive, judicial and legislative power of the Hong Kong Special Administrative Region. It also includes any organization established for a public purpose, any commission or board of inquiry ordered by the Chief Executive or the Chief Executive-in-Council, and anybody, office or institution declared by law to be a public office.

**‘public records’** means the records created, received and maintained by a public office

**‘recordkeeping’** means the making and maintaining complete, adequate, usable and reliable evidence of business functions and transactions in the form of recorded information usable as and when needed

**‘recordkeeping requirements’** are requirements for making and maintaining complete, accurate and reliable evidence in the form of recorded information retrievable and usable as and when needed to protect legal, financial and other rights and interests that are related to the functions, activities and transactions of an organization or individual and ensuring safe custody, authorized access and proper maintenance and use of records

**‘records’** means recorded information regardless of form or medium created, received and maintained by any organization or individual in the pursuance of legal obligations or in the transaction of business and providing evidence of the performance of those obligations or business

**‘records disposal’** means the range of processes relating to decisions and implementation of retention, destruction, transfer or technology migration of or relating to records

**‘records management’** includes planning, directing, controlling, reviewing, training and other managerial activities involved with respect to the creation, classification, indexing, distribution, handling, use, tracking, storage, retrieval, protection and disposal of records to achieve adequate and proper documentation of policies, decisions and transactions as well as efficient and cost-effective operation

**‘records management system’** means any information system whether manual or electronic which captures, classifies, manages and provides for access, use, storage, maintenance and disposal of records through time

**‘records retention and disposal schedule’** means a document describing the recurring records of an organization or an administrative unit thereof, specifying which records should be preserved as archives and authorising on a continuing basis and after the lapse of retention periods or the occurrence of specified actions or events, the disposal of the remaining records by destruction or other means

**‘transfer’** means moving records from one location to another as well as changing their custody, ownership and/or the responsibilities for records

**‘unclassified public records and archives’** means public records and public archives which are not subject to a security classification.

### **Section 3 - Purposes of the Ordinance**

The purposes of this Ordinance are:

- (1) To establish the Government Archives and Records Authority.
- (2) To provide for the role of the Government Archivist in developing, supporting and monitoring proper records management practices in public offices including without limiting to making independent determinations on records

inspection and audit, appraisal, disposal, transfer and preservation of public records, which are public property with ownership vested in the Government.

- (3) To establish the Archives and Records Council which advises the Chief Executive and the Government Archivist on matters relating to public archives and records, and determines records access appeals.
- (4) To enable the Government to be held accountable by ensuring that:
  - (a) accurate, adequate, reliable and usable records of public offices are created, maintained and disposed of properly;
  - (b) public records of enduring value are identified as public archives and preserved for prompt public access.
- (5) To enhance public confidence in the integrity and reliability of public records.
- (6) To promote and support safe custody and preservation of and access to private records that are relevant to local historical and cultural heritage.

#### **Section 4 - Reckoning of Time**

Any period of time mentioned by this Ordinance unless specified otherwise shall run from the first day of January in the year following the year in which the records were created.

#### **Section 5 - Application**

This Ordinance binds the Government, all public offices defined in section 2 of this Ordinance and all the persons acting on behalf of the Government or any of the public offices.

### **Part II**

#### **Establishment, Appointment and Organization**

##### **Section 6 - Establishment of the Government Archives and Records Authority**

- (1) There is established by this section the Government Archives and Records Authority (hereafter referred to as 'the Authority').
- (2) The Authority comprising the Government Archivist and staff shall be responsible to the Chief Executive.

##### **Section 7 - Functions and Powers of the Government Archives and Records Authority**

- (1) The Authority shall contribute to the efficiency, effectiveness and economy of the Government by:

- (a) promoting, developing and implementing policies, mandatory and advisory standards, guidance and procedures for proper recordkeeping and management of public records throughout their entire life cycle from creation to final disposal;
  - (b) advising on the best practices and providing or arranging training in records management for public offices;
  - (c) ensuring that public offices follow the recordkeeping and records management standards and procedures issued by the Authority; and
  - (d) establishing and implementing systems and procedures for the appraisal, acquisition and transfer of public records of enduring value for preservation.
- (2) The Authority shall acquire, manage, preserve and make available for access and use records acquired from public and private sources selected for preservation as public archives.
  - (3) The Authority shall encourage and support archival activities and the archival community in the identification, appreciation, use and preservation of documentary heritage.
  - (4) The Authority may do all such things as necessary for or incidental or conducive to the better performance of its functions required by this Ordinance.

#### **Section 8 - Appointment and Dismissal of the Government Archivist**

- (1) For the purposes of this Ordinance, there is established an Office of the Government Archivist.
- (2) The Government Archivist is the head of the Government Archives and Records Authority.
- (3) The Government Archivist must possess recognized professional qualifications and knowledge, and at least 10 years relevant experience in managing public archives and records to perform the duties and responsibilities required by this Ordinance.
- (4) The Chief Executive shall appoint the Government Archivist with endorsement from the Archives and Records Council and provide the Government Archivist with adequate resources including without limiting to professionally qualified staff and funding required to perform the functions and duties under this Ordinance.
- (5) The Government Archivist shall be employed subject to the ordinances, regulations, administrative rules, and terms and conditions of services applicable to public officers.

- (6) The Government Archivist shall hold office during good behaviour and performance until the normal age of retirement.
- (7) The Government Archivist may be dismissed by order in writing by the Chief Executive on recommendation of the Archives and Records Council if the Government Archivist has acted in contravention of this Ordinance or to the ordinances, regulations, administrative rules, and terms and conditions of services applicable to public officers. A full statement explaining the circumstances of dismissal shall be made at the first opportunity to the Legislative Council.

## **Section 9 - Functions and Powers of the Government Archivist**

### **(1) *Records Management***

The Government Archivist shall be responsible for the oversight of records management practices of public offices by:

- (a) providing professional leadership, advice, guidance and services including records centre services for inactive records in the establishment and implementation of records management systems;
- (b) establishing or approving standards, procedures and codes of best practice for the management of public records and public archives, and ensuring compliance by public offices;
- (c) providing or making arrangements for the necessary training of records staff in public offices;
- (d) drawing up general records retention and disposal schedules which cover public records common to most public offices with sufficient authority for taking the disposal action specified at the due date;
- (e) agreeing with the heads of public offices of the retention and disposal schedules for records specific to each of such offices with sufficient authority for taking the disposal action specified at the due date;
- (f) ensuring that the provisions of the records retention and disposal schedules are implemented;
- (g) making independent decision in authorising the disposal of public records with regards to the purposes of this Ordinance and relevant professional standards; and
- (h) conducting records research, study, review, survey, inspection and audit in public offices; providing records related services and support; recommending measures to public offices and monitoring their performance with respect to improving archives and records management systems and practices.

(2) ***Records Appraisal and Acquisition***

The Government Archivist shall appraise and nominate suitable records regardless of their nature, form or security grading as public archives for preservation and public access.

(3) ***Records Transfer***

- (a) The Government Archivist shall direct and/or arrange the transfer of records appraised and nominated as public archives to the Public Records Office, the central government archives, or any place of deposit as appointed under section 11 of this Ordinance as early as practicable and no later than 20 years from the record creation date except for those records required to be kept in a particular place by other law.
- (b) No duty of confidence, secrecy or non disclosure operates to prevent the transfer of public archives in compliance with this subsection which overrides a provision of any other ordinance inconsistent with it, except for an express provision that states to apply in spite of this subsection.
- (c) Deferment of records transfer for a specified period may be approved by the Government Archivist if suitable accommodation is not available, arrangement for their reception cannot be made or there are other reasons which satisfy the Government Archivist.

(4) ***Archives Administration, Preservation and Access***

The Government Archivist shall be responsible for the management, provision of access, safe custody and preservation of public archives and shall in particular:

- (a) take charge of the Public Records Office, the central government archives;
- (b) provide the Public Records Office with professionally qualified staff and suitable facilities, equipment, supplies and conditions for the management, safe custody and preservation of and access to its record holdings;
- (c) arrange and describe archival records, prepare and make available to the public appropriate records guides, lists, indexes and finding aids to all archival records irrespective of their security grading and perform any processes to facilitate records access and access applications by the public;
- (d) ensure that reasonable facilities for services such as consultation, reference, research and copying related to archival records are available to the public in the Public Records Office and any place of



deposit that the Government Archivist may appoint under section 11 of this Ordinance insofar as such records are open to public access;

- (e) ensure that reasonable facilities are available to duly authorised officers of the public office that created the archival records or its successor in function for inspecting and obtaining copies of such archival records preserved in the Public Records Office and any place of deposit that the Government Archivist may appoint under section 11 of this Ordinance; and
- (f) determine the access status of archival records under sections 17 and 20 of this Ordinance.

(5) ***Recovery of Estrays***

The Government Archivist shall have the right to inspect, recover and instruct protection of public records which are or believed to be estrays. No limitation period operates to bar the right of action by the Government Archivist to recover an estray. If recovery or return of estrays is infeasible, a copy of the records may be made as the Government Archivist thinks fit.

(6) ***Other Archival Duties***

The Government Archivist may do all such things as appear to him or her for the purpose of facilitating acquisition, management, safe custody, preservation and public access to and use of archival records according to professional standards and such other matters as this Ordinance requires, in particular:

- (a) prescribe rules to be observed by those wishing to consult public archives;
- (b) prepare and sell publications relating to public archives;
- (c) arrange exhibitions and lend public archives for exhibitions elsewhere subject to conditions which the Government Archivist may specify;
- (d) provide certified copies of public archives as evidence in legal proceedings and for other purposes;
- (e) dispose of public records in the custody of the Government Archivist if they are not of enduring value, subject to agreement by the head of the public office in which the records were created or its successor in function;
- (f) acquire private records by gift, purchase, bequest or deposit, and dispose of those private records if they are not of enduring value subject to agreement with the private donors;
- (g) enter into arrangements with other institutions for the joint management of conservation and restoration, reprographic or other technical facilities relating to records and archives; and

- (h) provide professional and technical advice and support to the private sectors that are involved in the preservation and promotion of documentary heritage.

(7) ***Exempted Records***

The Government Archivist may alter or declare new categories of exempted records in consultation with the Archives and Records Council under section 21(2) of this Ordinance.

(8) ***Annual Report***

Within six months after the end of each financial year, the Government Archivist shall submit to the Chief Executive a report, which includes also the annual report by the Archives and Records Council, on the functions and activities of the Authority during that year. A copy of the annual report shall be forwarded to the Legislative Council before it is published and made available to the public.

(9) ***Independence of the Government Archivist***

In performing the duties of records inspection and audit, appraisal, disposal, transfer and preservation under this Ordinance, the Government Archivist shall not be subject to the direction of any person or authority.

**Section 10 - Delegation of Power**

- (1) The Government Archivist may delegate in writing his or her power under this Ordinance to appropriately qualified members of the staff in the Authority.
- (2) In subsection (1), appropriately qualified members of the staff in the Authority includes having the professional qualifications, knowledge, experience and skills appropriate to exercise the power.

**Section 11 - Place of Deposit**

- (1) The Government Archivist may appoint a place of deposit for specified public records other than the Public Records Office when it appears to him or her that the place:
  - (a) affords suitable facilities for the safe custody and preservation of public records of enduring value and for their access by the public, and
  - (b) is adequately and independently funded for those purposes.
- (2) Before the Government Archivist makes such an appointment, the Government Archivist shall inspect the proposed place of deposit and make a report of its suitability.

- (3) The management responsible for the public records in a place of deposit shall prepare finding aids to those records and submit a copy of the finding aids to the Government Archivist.
- (4) If a place of deposit fails to maintain suitable facilities or to submit a copy of its finding aids or ceases to be adequately funded, the Government Archivist may revoke the appointment.

## **Section 12 - The Archives and Records Council**

- (1) There should be an Archives and Records Council to:
  - (a) advise the Chief Executive on the operation and compliance of this Ordinance and matters concerning public records and archives; particularly those aspects of the work of the Authority which affect members of the public in accessing public records and archives, and using the services and facilities provided by the Authority;
  - (b) determine records access appeals under section 19 of this Ordinance; and
  - (c) advise the Government Archivist on the criteria for exceptions to the 20-year Rule under section 17 (2) and categories of exempted records under section 21(2) of this Ordinance.
- (2) The Council shall comprise no more than 12 members including:
  - (a) The Government Archivist who is not entitled to vote at the Council meeting;
  - (b) 1 member appointed by the Chief Secretary's Office for Administration;
  - (c) 1 member appointed by the Chief Justice;
  - (d) 1 member appointed by the Director of Audit;
  - (e) 2 members appointed by the Legislative Council;
  - (f) 1 member appointed by the Hong Kong Bar Association;
  - (g) 1 member appointed by the Law Society; and
  - (h) 3 members appointed by the Chief Executive from universities or professional organizations in Hong Kong who have the requisite knowledge and experience in research or management of archives and records that enable them to make a useful contribution to the work of the Council.

- (3) Save for the Government Archivist who shall be the ex officio member of the Council, all members shall be appointed for a term of 3 years and eligible for reappointment for one further term.
- (4) A member may resign from office by a written notice given to the Chairperson of the Council at least 1 calendar month in advance.
- (5) A vacancy in the Council must be filled by a successor appointed by the relevant authority under subsection (1) within 2 calendar months.
- (6) The Council shall appoint its Chairperson and regulate its meetings.
- (7) The Council shall meet as often as it considers necessary but not less than 4 times a year.
- (8) The Council shall provide an annual report of its work for inclusion into the annual report of the Authority to the Chief Executive and a copy of the annual report by the Authority shall be sent to the Legislative Council.
- (9) The Secretariat of the Council shall be provided by the Authority.

### **PART III**

## **Recordkeeping and Records Management Requirements of Public Offices**

### **Section 13 - Creation and Maintenance of Accurate, Adequate, Reliable and Usable Records**

Heads of public offices assisted by designated staff shall be responsible for:

- (1) Creating and maintaining accurate, adequate, reliable and usable records of the functions, activities and transactions of their respective public offices and ensuring safe custody, authorised access and proper maintenance and use of public records through implementing proper records management systems and recordkeeping practices in conformity with the standards, guidance and recommendations issued by the Government Archivist.
- (2) Determining access to closed public records in the control of the Government Archivist by third parties, other than the authorised personnel of the public office that created them or its successor in function.
- (3) Cooperating with the Government Archivist in the conduct of records research, study, review, survey, inspection and audit.
- (4) Ensuring that no public records are tampered with.

### **Section 14 - Disposal of Public Records**

Heads of public offices assisted by designated staff shall be responsible for:

- (1) Preparing records retention and disposal schedules relating to records specific to the respective public office in consultation and agreement with the Government Archivist.
- (2) Implementing records and disposal schedules issued by the Government Archivist.
- (3) Making public records and their finding aids available to the Public Records Office for appraisal as required by the Government Archivist.
- (4) Ensuring that no public records are disposed of whether it is by destruction, transfer of ownership, technology migration, or relinquishment from the control of the respective public office without the prior written consent of the Government Archivist.
- (5) Keeping proper records of all disposal actions for public records and archives from the respective public office.

### **Section 15 - Transfer of Public Records**

Heads of public offices assisted by designated staff shall be responsible for cooperating with the Government Archivist in the management of public records and in particular for:

- (1) Transferring public records appraised and nominated by the Government Archivist as public archives to the Public Records Office or any place of deposit under section 11 of this Ordinance according to the requirements specified by the Government Archivist as early as practicable and no later than 20 years from their creation, except insofar as deferment of transfer for a specified period has been approved by the Government Archivist under section 9(3)(c) of this Ordinance.
- (2) Maintaining archival records in conditions prescribed by the Government Archivist before they are transferred to the Public Records Office or any place of deposit assigned by the Government Archivist under section 11 of this Ordinance.

## **PART IV**

### **PUBLIC ACCESS**

#### **Section 16 - The 20-year Rule**

- (1) No public records shall be closed to public access permanently.
- (2) Unclassified public archives shall be made available for public access 20 years after their creation, calculated as prescribed in section 4 this Ordinance, except for an express provision in written law that states to override this subsection or

it is a decision of the Government Archivist made under section 20 of this Ordinance.

- (3) Classified public records shall be reviewed for declassification by the public office that created the records or its successor in function as soon as practicable. The review shall take place no longer than 5 years after records creation. If the security classification is considered to be no longer necessary, the records shall be declassified. Where the declassified records have been appraised as public archives, they shall be open to public access 20 years after creation.
- (4) Where any public archives are bound, sewn or otherwise attached to form a bound volume, file, or other compilation, the year of creation of the latest document may be taken as the year of creation for all of the records contained therein.
- (5) When this Ordinance requires disclosure of a public record, it shall take precedence over any other law except for an express provision in written law that states to override this subsection.

#### **Section 17 - Exceptions to the 20-year Rule**

- (1) A closure period longer than 20 years for unclassified public archives may be prescribed by regulation made under section 35 of this Ordinance or at the written request of the head of the public office that created the records or its successor in function with written approval of the Government Archivist and published in the Gazette only when there is a continuing need to restrict public access on the grounds of:
  - (a) national security;
  - (b) maintenance of public order;
  - (c) maintenance of public health;
  - (d) safeguarding public revenue;
  - (e) safeguarding public confidence and interests;
  - (f) protecting the constitutional rights of any person;
  - (g) protecting physical safety and health of any person; or
  - (h) protecting trade secrets.
- (2) Public archives that are still security graded as Restricted, Confidential, Secret or Top Secret at the expiration of the closure period of 20 years shall be reviewed by the public office that created the records or its successor in function according to the criteria prescribed in subsection 1 and any additional criteria provided by the Government Archivist in consultation with the

Archives Advisory Council to ascertain whether or not continuing the security classification which forbids public access is justified.

- (3) Public offices must give justifications to the Government Archivist in writing for the continued closure of time expired classified public archives and review the records for public access in a schedule agreed by the Government Archivist. Written consent of Government Archivist must be obtained for extending the records closure period and for the review date.
- (4) Census schedules nominated as public archives may be open for public access 100 years after their creation as prescribed under section 31 of this Ordinance.
- (5) Public records in the public domain or to which members of the public already have access shall be open to public inspection irrespective of their age after they have been identified and nominated as public archives by the Government Archivist.
- (6) Heads of public offices may permit a third party to have full or partial access to the records identified and nominated as public archives before the expiry of the 20-year closure period with written confirmation to the Government Archivist.
- (7) The Government Archivist has the discretion to provide access to a closed archival record having regards to the protection of national security, public order, public health, public revenue, public confidence and interests, the constitutional rights, physical safety and health of any person, trade secrets and any other relevant factors.

## **Section 18 - Access Application for Closed Records**

- (1) Any person may apply to the Government Archivist for access to a closed archival record, irrespective of its security classification, preserved in the Public Records Office or a place of deposit appointed under section 11 of this Ordinance.
- (2) Finding aids and indexes to closed archival records shall be made publicly available to facilitate access application.
- (3) Access to closed archival records may be provided with or without conditions attached where the head of public office that created the records or its successor in function agrees to the disclosure.
- (4) Where an application for access to closed public archives is refused or conditions are attached to record disclosure by the head of the public office that created the records or its successor in function, the head of that public office must provide reasons to the applicant.

## **Section 19 - Access Appeal**

- (1) Appeal to a decision of access application may be made to the Archives and Records Council in writing within 60 calendar days after the applicant is notified of the decision against which he or she wishes to appeal.
- (2) The Council may confirm, vary or set aside any decision, direction or requirements in respect of the access application. The appeal decision by the Council given with reasons in writing shall not be inconsistent with the purposes and provisions of this Ordinance.
- (3) The applicant shall be informed of the decision of the Council through the Government Archivist within 60 calendar days after the appeal is received from the applicant or within such time as the Council may specify otherwise.

## **Section 20 - Withholding Access by the Government Archivist**

The Government Archivist may withhold access to any archival record if:

- (1) The archival record is less than 20 years old and the head of the public office that created the record or its successor in function does not approve disclosure;
- (2) Giving access to the archival record would be detrimental to record preservation;
- (3) The archival record is not available because it is being processed for record description, preservation, review or is being used for any purposes permitted by this Ordinance; or
- (4) Suitable equipment or technology to provide access to the record is not available.
- (5) An appeal against the access decision of the Government Archivist may be lodged to the Archives and Records Council under section 19 of this Ordinance.

## **PART V**

### **Exemptions**

#### **Section 21 – Exempted Records**

- (1) Sections 13(2), 14, 15, 16, 17, 18, 19 and 20 of this Ordinance do not apply to:
  - (a) ballot or voting papers for any elections;
  - (b) records acquired by means other than transfer or arrangements with public offices and form part of the permanent collections of any



- museums, galleries or libraries funded wholly or partly by public money;
- (c) patient records of any hospitals and clinics operated under the Hospital Authority;
  - (d) student records, examination records and papers, assignments, and research projects and papers of any schools, colleges, universities and teaching institutions funded wholly or partly by public money; and
  - (e) private records unless and until they have been become public records or nominated as public archives by the Government Archivist.
- (2) The Government Archivist in consultation with the Archives and Records Council may by notice in the Gazette alter or declare new categories of exempted records.

## **PART VI**

### **Sanctions**

#### **Section 22 - Non Compliance with Recordkeeping and Records Management Requirements, Unauthorised Removal and Destruction, Willful Mutilation of Public Records and Archives, and Unreasonable Denial of Records Access**

- (1) Any public officer who fails to create or manage public records according to the recordkeeping and records management requirements pursuant to sections 13, 14 and 15 of this Ordinance commits an offence and is liable on summary conviction to a fine not exceeding HK\$100,000 or to imprisonment for a term not exceeding 12 months or to both.
- (2) Any person who removes or destroys any public records or archives without proper authorisation or who willfully mutilates any public records or archives commits an offence and is liable on summary conviction to a fine not exceeding HK\$200,000 or to imprisonment for a term not exceeding 24 months or to both.
- (3) Any public record under 20 years old and has been removed without proper authorisation in the past or will be so removed in the future may be reclaimed by the Government Archivist or the public office in which it was created or by its successor in function, and in respect of public records over 20 years old, by the Government Archivist.
- (4) Any person who without reasonable cause denies access to public records authorised by this Ordinance commits an offence and is liable on summary conviction to a fine not exceeding HK\$100,000 or to imprisonment for a term not exceeding 12 months or to both.

### **Section 23 - Illegal Export of Public Records and Public Archives**

- (1) The export of original public records outside the Hong Kong Special Administrative Region whether or not they have been appraised or transferred as public archives to the Public Records Office or a place of deposit appointed by the Government Archivist under section 11 of this Ordinance is prohibited unless prior written consent from the Government Archivist is obtained.
- (2) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding HK\$200,000 or to imprisonment for a term not exceeding 24 months or to both and the records shall be put at the disposal of the Government Archivist.

## **PART VII**

### **Financial Provisions**

#### **Section 24 - Administrative Expenses**

The administrative expenses of the Authority shall be a charge on a consolidated fund. The expenses of the Authority shall be charged to the general revenue and any sums which may be payable to the Authority.

#### **Section 25 - Funding**

The fund of the Authority shall include:

- (1) Any sums which may be appropriated by the Legislative Council and the Government for the purposes of the Authority.
- (2) Any sums which may be payable to the Authority by way of donations, gifts or bequests.

#### **Section 26 - Fees**

Fees may be charged for the supply of copies, the certification of copies and the provision of any other services by the Authority.

#### **Section 27 - Accounts**

The Government Archivist shall keep proper books of accounts and records in respect of the receipt and expenditure of funds accruing to the Authority.

## **Part VIII**

### **Regulatory Provisions**

#### **Section 28 - Legal Validity of Public Records and Archives**

- (1) The legal validity of any public records or archives shall not be affected by their transfer to the Public Records Office or to a place of deposit appointed by the Government Archivist under section 11 of this Ordinance.
- (2) A copy of or extract from public archives examined and certified as a true copy by an officer authorised by the Government Archivist shall be admissible as evidence in any proceedings without any further or other proof thereof if the original record would have been admissible as evidence in those proceedings.

#### **Section 29 - Copyright**

- (1) Making available for inspection, internal processing, preservation or providing a copy of public archives by the Government Archivist shall not be in breach of any private copyrights therein.
- (2) The provision of copies of public archives by the Government Archivist does not involve the transfer of any copyright therein to the recipients.
- (3) The publication of copies, verbatim transcripts or literal translations of public archives in which copyright of the Government subsists is prohibited except with the written consent of the Government Archivist and subject to such conditions and payment of fees as may be required by the Government Archivist.

#### **Section 30 - Data Protection**

- (1) The acquisition and transfer of archival records containing personal data to the Public Records Office or any place of deposit appointed by the Government Archivist under section 11 of this Ordinance and the use of such archival records for internal processing and preservation shall not be in breach of the Data Protection Principles 1 and 3 of the Data Protection (Privacy) Ordinance (Cap. 486).
- (2) To preserve authenticity and integrity of archival records, personal data in archival records before or after they are transferred to the Public Records Office or a place of deposit appointed by the Government Archivist under section 11 of this Ordinance shall not be erased or blocked. For the purpose of meeting data correction requests, a note of correction containing the verified information may be added in the appropriate place of the records.

### **Section 31 - Census and Statistics Records**

Completed schedules for census collected and provided to the Commissioner of Census and Statistics under the Census and Statistics Ordinance, Cap. 316 shall be appraised by the Government Archivist and preserved as public archives as appropriate. The preserved schedules may be open for public access 100 years after their creation.

### **Section 32 - Code on Access to Information**

Nothing in this Ordinance shall be construed to eliminate any right to request and obtain information from public offices made under the Code on Access to Information.

## **PART IX**

### **Miscellaneous Provisions**

#### **Section 33 - Private Records**

Where it appears to the Government Archivist that any private records, or any part of them, are of historical importance and that it is in the public interest that they be acquired, the Government Archivist, after consultation with the owner of the private records, may acquire such records or any part of them and declare them to be public archives, whereupon the provisions of this Ordinance shall have effect.

#### **Section 34 - Protection against Civil and Criminal Liability, Defamation and Breach of Confidence**

No action for civil or criminal liability, defamation or breach of confidence lies against a public officer because of giving access to or supplying a copy of public archives or of any act done in good faith without negligence under a requirement of this Ordinance.

#### **Section 35 - Regulations**

The Government Archivist may make regulations prescribing matters required or permitted by this Ordinance for carrying out or giving effect to this Ordinance.

#### **Section 36 - Power of the Chief Executive to Give Directions**

The Chief Executive on the advice of the Archives and Records Council may give directions in writing to the Government Archivist if the Chief Executive considers the public interests so require and not to be inconsistent with the purposes and provisions of this Ordinance.

### **Section 37 - Transitional Provisions**

- (1) Records and other materials in the custody of the Government Records Service and in the Public Records Office on the day before the coming into operation of this Ordinance are hereby transferred to the custody of the Government Archivist of the Government Archives and Records Authority, subject to any terms and conditions that were applicable to those records and other materials on that day.
- (2) All orders, rules, grants, contracts, agreements, licenses and any other actions that have been issued, granted, made or entered into the performance of any function transferred by this Ordinance shall continue in effect according to their terms until modified, terminated, superseded or revoked.

### **Section 38 - Repeals and Amendments**

- (1) The Public Records (Access) Rules, and any rules and regulations made hereunder are hereby repealed.
- (2) All references in other ordinances and regulations to public records shall be construed as referring to this Ordinance.







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