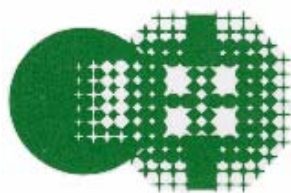


DIRECT INVESTIGATION REPORT

**PUBLIC RECORDS MANAGEMENT
IN HONG KONG**

March 2014



**Office of The Ombudsman
Hong Kong**

EXECUTIVE SUMMARY

Direct Investigation Public Records Management in Hong Kong

Background

Government records management and archiving of public records in Hong Kong are the responsibilities of a Government office known as the Government Records Service (“GRS”), under a purely administrative regime. Elsewhere in the world, many jurisdictions have introduced specific laws to protect their archives, requiring proper creation and management of records, with penalty provisions to ensure compliance.

2. In light of the above, The Ombudsman initiated this direct investigation to determine whether Government’s public records management is in keeping with modern standards of open and accountable administration and affords adequate protection of records for public access. In this investigation, we seek to:

- (1) examine Government’s records management system to identify its inadequacies and problems;
- (2) assess how such systemic inadequacies affect the public’s access to information; and
- (3) draw reference from records management systems and practices of other jurisdictions, with a view to suggesting directions for improvement in Hong Kong.

Our Findings

3. We have identified the following inadequacies in Hong Kong’s public records management regime.

I. Lack of legal backing

4. GRS' discharge of its responsibilities is not underpinned by law. It relies on compliance by Government bureaux and departments ("B/Ds") with the administrative manual and instructions that it issues from time to time.

5. In 2009, GRS issued General Circular No. 2/2009 entitled "Mandatory Records Management Requirements" ("GC No. 2/2009") to govern essential aspects of records management. Despite its title, it does not carry legal force and GRS has no effective way of ensuring B/Ds' compliance.

II. Lack of effective measures to ensure compliance

6. GRS monitors B/Ds' compliance mainly through B/Ds' self-assessment surveys and GRS' records management studies. However, the self-assessment surveys may not accurately reveal B/Ds' real practices. And although all 80 B/Ds have been subjected to records management studies of some sort, 49 of the studies covered only limited aspects of some records of the B/Ds concerned, and, therefore, hardly help ensure B/Ds' compliance with GRS' stipulations. There is no regular and independent auditing of B/Ds' records management practices, as is provided for in the public records laws or archives laws of some other jurisdictions.

7. An independent advisory body is an essential feature of the public records laws or archives laws in other jurisdictions, which helps not only to gauge societal needs and expectations, develop professionalism and expertise, but also enable public engagement and scrutiny, and command more public confidence in the public records management system. There is no such external body for GRS to turn to for advice on records disposal and other matters relating to government records management.

8. Under GC No. 2/2009, B/Ds should, by April 2012, establish their departmental records management policies, adopt GRS' standard classification scheme for their administrative records, and draw up draft disposal schedules for their programme records. However, many of such requirements had yet to be met after the due date.

9. Robust measures are also lacking for ensuring B/Ds' compliance with GRS' stipulations on records creation. GRS required in 2012 that B/Ds establish by end 2015 their business rules for records creation and collection. As at December 2012,

only 3 B/Ds have fulfilled the requirement. Compliance by all B/Ds by the deadline is doubtful. Meanwhile, quite a number of cases of failure to create records have been reported by the media or discussed at the Legislative Council.

10. GRS' current role in ensuring B/Ds' timely transfer of records is passive. Although B/Ds are required to dispose of time-expired records by proposing disposal actions for GRS' approval at least once every two years, between 2008 and 2012, 7 B/Ds did not transfer any records at all to GRS for appraisal. Another 9 B/Ds did not transfer any records to GRS for appraisal in accordance at the required interval.

11. The current monitoring of B/Ds' transfer of records to GRS for disposal is loose. GRS does not require to be informed of B/Ds' deferral of transfer of records to it. Such deferral merely requires the written agreement of a directorate officer of the B/D, who does not have to give any justification. We observe that there has been a drastic increase in deferral of transfer of records from B/Ds to GRS in recent years. This affects preservation of records with archival value. Unlike in other jurisdictions, GRS as the archives body is not empowered to require B/Ds' strict abidance with its requirement.

12. GRS relies on B/Ds' initiative to report loss or unauthorised destruction of records. As some such incidents are not reported to GRS, the real magnitude of the problem is not known. Unlike in other jurisdictions where the public records laws or archives laws provide for statutory penalty, GRS has no mandate or power to impose punitive actions on wrongdoers.

13. Among the cases reported to GRS, very few of the wrongdoers were subject to disciplinary or administrative action. In some cases, even though GRS considered disciplinary or administrative action necessary, the B/Ds did not agree and GRS did not pursue the matters any further.

III. Limited coverage of current regime

14. With the exception of two ^{Note}, GRS' administrative requirements on records management do not cover public organisations, many of which provide important services to the community, e.g. the Hospital Authority, the Hong Kong Housing Society, the Airport Authority and the universities.

^{Note} *The Independent Commission Against Corruption and the Hong Kong Monetary Authority.*

15. Subjecting the records of both government agencies and public organisations to the same level of scrutiny and accessibility by the public is indeed a principle and standard of transparent and accountable public administration widely recognised by other jurisdictions in their public records laws or archives laws. The community has a legitimate expectation for public organisations to be accountable to the public in their administration, especially since more of Hong Kong's B/Ds have in recent decades been turned into public organisations and new services are increasingly provided by public organisations instead of B/Ds.

IV. Workload and staffing

16. There continue to be huge backlogs within GRS in vetting of records disposal schedules, appraisal of records and accessioning of records. Such backlogs affect efficient and effective records management. Yet, GRS has only got 12 Archivists, 3 Curators and 15 Executive Officers ("EOs"), and the EOs are non-professional officers subject to frequent turnover. A staffing review is called for, particularly if GRS' remit is to cover public organisations as well. Meanwhile, GRS should also take reference from the practices of the archives bodies in other jurisdictions, with a view to streamlining its processes and resolving the backlog problems.

V. Lack of transparency

17. Hong Kong lags behind other jurisdictions where the law requires regular dissemination of information about the work of the national archives body and the advisory body, disposal schedules and the records destroyed. Under the current regime, there is no systematic proactive dissemination of information to the public about individual B/Ds' records management policy statements, their disposal schedules, the records that have been destroyed or B/Ds' compliance with GRS' requirements. Nor is there any annual report on GRS' work. We consider that regular dissemination of information on B/Ds' disposal schedules and records destroyed would facilitate public understanding and enable public scrutiny of B/Ds' disposal (in particular destruction) of records.

VI. Need for review regarding records closure and disclosure

18. Under the existing regime, opening for public access of unclassified records 30 years old or more is automatic, while opening of classified records 30 years old or more has to be cleared with the records-creating/responsible B/Ds first.

19. In other jurisdictions, applications by government agencies to withhold records from public access or to keep records closed beyond the stipulated period are vetted by both the government and an independent advisory body.

20. We also note that access to records under 30 years of age requires prior application in writing to GRS Director, who will make a decision in consultation with the records-creating B/D, having regard to the security grading of the record and the Code on Access to Information (“the Code”). We have been told, though, that in practice, GRS invariably requires the B/D to give a valid reason under the Code if the B/D wishes to withhold the records. In the interest of public access to information, we consider that there is no point in keeping the security grading of records as one of the factors that GRS Director should take into account when considering applications for access to closed records, since security grading could be arbitrary.

21. In the light of the many liberalising reforms in other jurisdictions in recent years, Government should review its system of closure of records, in particular the closure period and the need for considering security grading of records.

VII. Failure to manage electronic records

22. Government has been promoting the use of electronic means of communication and the recognition of emails as official records. However, under the existing regime, most B/Ds are still using the print-and-file approach whereby B/Ds staff are required to convert e-mail records into printed form for management, storage and archive purposes. This approach is unreliable and prone to omission and loss. Emails and/or their attachments are sometimes omitted and not printed out and kept in the paper files.

23. Government is aware of the inadequacy of the print-and-file approach. Since 2001, GRS has been working with the Office of the Government Chief Information Officer and the Efficiency Unit to formulate a policy, strategies, and

standards for the effective management of electronic records, with the long-term goal for each B/D to develop an electronic recordkeeping system (“ERKS”).

24. More than a decade has elapsed and full implementation of ERKS across Government is still nowhere in sight. Government has not even been able to specify a timetable for B/Ds to develop or adopt an ERKS. Such tardiness and inability to catch up with the times means that more records may fail to be captured and be lost forever.

25. In other jurisdictions, electronic records management has already taken full swing. Plans with timelines and actions are in place to ensure that digital records are effectively managed, maintained, shared, kept and remain usable in the future.

Our Recommendations

26. While legislation may not be the panacea to all problems, it at least provides a framework for setting legally binding rules for regulating public records management to ensure strict compliance by government and other agencies and protection of public records for public access and heritage preservation. It also gives the people assurance of the government’s commitment to accountability, transparency and openness. A purely administrative regime for public records management, which basically relies on self-discipline of the parties concerned, can at best be a second-rate substitute.

27. The Ombudsman, therefore, urges the Administration to seriously consider introducing a law on public records and archives covering not only B/Ds but also public organisations, particularly those providing essential services to the public.

28. Pending legislation, Government should also, *inter alia*:

- (1) make more efforts to urge public organisations to follow its requirements and standards on records management;
- (2) set up an independent body to advise GRS on records management policies, practices and actions;

- (3) review the staffing of GRS, so as to enable it to handle its heavy workload with efficiency and professionalism and to clear its backlogs expeditiously;
- (4) review its arrangement for B/Ds' deferral of transfer of records to GRS, to ensure that approvals for deferral are well justified;
- (5) conduct regular auditing of the records management practices of each B/D to gauge the magnitude of the problem of loss and unauthorised destruction of records;
- (6) regularly disseminate information about the disposal of records of B/Ds so as to facilitate public understanding and enable public scrutiny of the B/Ds' disposal (in particular, destruction) of records;
- (7) review its system of closure of records including the closure period and the need for considering the security grading of records;
- (8) map out as soon as possible a clear and comprehensive implementation plan of ERKS with timelines for all parties concerned; and
- (9) conduct studies to gauge the electronic records management situations in B/Ds, with a view to identifying problems in the different practices among B/Ds and plugging existing loopholes.

Office of The Ombudsman
March 2014

CONTENTS

Executive Summary

<i>Chapter</i>		<i>Paragraph</i>
1	INTRODUCTION	
	<i>Background</i>	<i>1.1 - 1.3</i>
	<i>Purpose</i>	<i>1.4</i>
	<i>Ambit</i>	<i>1.5</i>
	<i>Investigation Process</i>	<i>1.6 - 1.7</i>
2	MANDATE AND COVERAGE	
	<i>Mandate</i>	<i>2.1 - 2.12</i>
	<i>Coverage</i>	<i>2.13 - 2.20</i>
3	GOVERNANCE AND STAFFING	
	<i>Governance</i>	<i>3.1 - 3.4</i>
	<i>Staffing</i>	<i>3.5 - 3.8</i>
4	CREATION AND SCHEDULING OF DISPOSAL OF RECORDS	
	<i>Overview</i>	<i>4.1 - 4.2</i>
	<i>Records Management Policy</i>	<i>4.3 - 4.4</i>
	<i>Standard Classification of Records</i>	<i>4.5 - 4.8</i>
	<i>Creation of Records</i>	<i>4.9 - 4.13</i>
	<i>Schedules of Disposal of Records</i>	<i>4.14 - 4.22</i>
5	DISPOSAL OF RECORDS	
	<i>Transfer of Records to GRS</i>	<i>5.1 - 5.11</i>
	<i>Appraisal of Records</i>	<i>5.12 - 5.18</i>
6	HANDLING OF LOSS OR UNAUTHORISED DESTRUCTION OF RECORDS	
	<i>Stipulations</i>	<i>6.1 - 6.2</i>
	<i>Cases of Loss or Unauthorised Destruction</i>	<i>6.3 - 6.11</i>
7	DISSEMINATION OF INFORMATION AND OPENING	

OF RECORDS

<i>Dissemination of Information</i>	<i>7.1 - 7.13</i>
<i>Accessioning and Description of Records</i>	<i>7.14 - 7.15</i>
<i>Opening of Records</i>	<i>7.16 - 7.27</i>

8 *MANAGEMENT OF ELECTRONIC RECORDS*

<i>Current Situation</i>	<i>8.1 - 8.3</i>
<i>Current E-records Management Requirements</i>	<i>8.4 - 8.15</i>
<i>Government's Long-term Plan</i>	<i>8.16 - 8.37</i>

9 *CONCLUSION AND RECOMMENDATIONS*

<i>Conclusion</i>	<i>9.1 - 9.2</i>
<i>Recommendations</i>	<i>9.3 - 9.4</i>
<i>Acknowledgement</i>	<i>9.5</i>

ANNEXES

A	<i>Major features of the records management systems of other jurisdictions</i>
B	<i>Flow Chart Showing Major Steps to Dispose of Records</i>
C	<i>Some cases involving government records that could not be traced, had not been created, or had been lost/destroyed, as found by this Office, reported by the media or discussed at LegCo in 2011 - 2013</i>
D	<i>The amount of records approved for destruction during 2009-2013 in respect of B/Ds which were relocated to Tamar in 2011</i>

INTRODUCTION

BACKGROUND

Government records management and archiving of public records in Hong Kong are the responsibilities of a Government office known as the Government Records Service (“GRS”), under a purely administrative regime. The Administration has maintained that the current system is effective. However, there have been calls from the public, the media and legislators for Government to strengthen its protection of public records. Some people have urged Government to enact an archives law.

1.2 Elsewhere in the world, many jurisdictions have introduced, in as early as the 1940s and 1950s, specific laws to protect their archives. Some of such laws require proper creation and management of records, with penalty provisions to ensure compliance.

1.3 In light of the above, The Ombudsman initiated a direct investigation into the standards and practices of public records management in Hong Kong.

PURPOSE

1.4 This investigation serves as the sequel to that on the access to information regime in Hong Kong (OMB/DI/238), for without proper creation and keeping of records, public access to information would be seriously restricted. The aim of this investigation is to determine whether Government’s public records management is in keeping with modern standards of open and accountable administration and affords adequate protection of records for public access.

AMBIT

1.5 In this investigation, we seek to:

- (1) examine Government's records management system to identify its inadequacies and problems;
- (2) assess how such systemic inadequacies affect the public's access to information; and
- (3) draw reference from records management systems and practices of other jurisdictions, with a view to suggesting directions for improvement in Hong Kong.

INVESTIGATION PROCESS

1.6 Our investigation involved the following:

- (1) meetings with the key Government bureaux/departments ("B/Ds"), including the Administration Wing ("Adm Wing") of the Chief Secretary for Administration's Office ("CS Office") and GRS;
- (2) visits to selected B/Ds including the Immigration Department ("ImmD"), Buildings Department ("BD") and Leisure and Cultural Services Department ("LCSD"), and a public body, the Hospital Authority ("HA");
- (3) inspection of sampled files of the Food and Health Bureau ("FHB") and the Education Bureau ("EDB");
- (4) perusal of Legislative Council ("LegCo") documents, Government reports and information on official websites;
- (5) study of the situations in Hong Kong and in other jurisdictions;
- (6) enquiries of the authorities in other jurisdictions concerning their regimes and practices on records management; and
- (7) consideration of 39 sets of views and information received during public consultation, some of which concern both the topics of public records management and the access to information regime in Hong Kong.

1.7 Having considered the comments from the Administration on our findings, we finalised this investigation report on 17 March 2014.

2

MANDATE AND COVERAGE

MANDATE

GRS' Responsibilities

2.1 GRS is responsible for:

- (1) formulating and implementing records management policies and programmes that enable B/Ds to manage information appropriate to their purpose;
- (2) advising and supporting B/Ds and giving them instructions on proper management of government records that are of long-term or permanent value;
- (3) identifying and preserving records of archival value, valuable government publications and printed materials;
- (4) providing storage and disposal services for inactive records;
- (5) enhancing public awareness of Hong Kong's documentary heritage, and providing research and reference services; and
- (6) providing access to government archives and valuable publications.

2.2 GRS' discharge of its responsibilities in respect of public records management is not underpinned by law, but is governed by circulars and manuals it issues from time to time.

Issue of Circulars and Manuals

2.3 GRS works jointly with B/Ds to manage public records. It issues circulars and manuals on records management and monitors B/Ds' compliance. Such circulars and manuals stipulate GRS' mandate to appraise the archival value of B/Ds' records, and to vet and approve the disposal schedules for such records.

2.4 In 2001 and 2006 respectively, the Records Management Manual ("RMM") and General Circular No. 5/2006 entitled "Management of Government Records" ("GC No. 5/2006") were promulgated. RMM functions as a code of best practice for the government. GC No. 5/2006 contained instructions to be followed by B/Ds and civil servants.

2.5 In 2009, the first set of mandatory requirements for B/Ds' records management was promulgated in General Circular No. 2/2009 entitled "Mandatory Records Management Requirements" ("GC No. 2/2009"). Those requirements govern inventory, classification, retention, disposal, custody and storage of records, protection of the vital ones, management of electronic mail records and regular reviews.

Monitoring of Compliance

2.6 GRS monitors B/Ds' compliance with its records management requirements mainly through:

- (1) B/Ds' self-assessment surveys, and
- (2) GRS' records management studies.

Self-assessment Surveys

2.7 In 2010 and 2012, GRS asked B/Ds to conduct self-assessment surveys on their records management practices, covering the 18-month period of 22 April 2009 - 31 October 2010 ("Review 2010") and the 26-month period of 1 November 2010 - 31 December 2012 ("Review 2012"). For each of the surveys, GRS issued a review form to the Departmental Records Managers¹ ("DRMs") of the B/Ds for their completion. After consolidation and analysis, GRS set out its findings, together with its recommendations, in a report for

¹ GC No. 2/2009 requires B/Ds to each designate one Departmental Records Manager to handle matters relating to records management. Some B/Ds have designated more than one Departmental Records Manager.

internal reference and distribution to the B/Ds concerned. The results of the surveys were used for drawing inferences about and assessing B/Ds' compliance with GRS' requirements and their adoption of the promulgated best practices. Those results were not released to the public.

Records Management Studies

2.8 From time to time, GRS conducts records management studies on B/Ds, with a view to ensuring accurate and complete documentation, safe retention, and efficient and cost-effective management of records. Although all 80 B/Ds² have been covered by records management studies of some sort, some of the studies were of limited scope and did not fully achieve the objective. Between 2002 and 2010, 49 studies were carried out. However, those studies covered only the classification systems for administrative records kept in the general registries of the B/Ds concerned. They hardly helped ensure accurate and complete documentation, safe retention, and efficient and cost-effective management of records. While the scope of the subsequent studies was enlarged, only 3 B/Ds have been covered as at end January 2014. More B/Ds should be subject to such studies with enlarged scope.

Practices in Other Jurisdictions

2.9 We have studied the records management systems of other jurisdictions, including the **United Kingdom** ("UK"), **New Zealand**, **Australia**, the **United States of America** ("USA"), and **Mainland China**. A table setting out major features is at **Annex A**.

2.10 In those jurisdictions, their public records laws stipulate for the commissioning of regular independent audits, surveys or inspections of the recordkeeping practices of every agency. Reports on such have to be presented by the ministry concerned to the legislative body for monitoring. In **New Zealand**, for example, the Public Records Act 2005 stipulates that the Chief Archivist must commission once every five to ten years an independent audit of recordkeeping practices in every public office on aspects specified by him.

² Each Departmental Records Manager of a B/D is counted as one B/D in the context of records management..

Our Observations

2.11 *GRS' requirements, though called "mandatory", are not backed up by law. As a result, it is difficult for GRS to ensure that B/Ds create, maintain and dispose of records properly; nor does it have the power to audit and rectify B/Ds' recordkeeping practices for compliance with the requirements. Although the instructions in Government circulars are binding on civil servants, who can be subject to disciplinary proceedings for non-compliance, these are administrative arrangements and do not carry legal force.*

2.12 *Besides, B/Ds' self-assessment surveys and self-reporting can hardly be relied upon for gauging the compliance situation in the B/Ds, as the questions and replies in such surveys are broad-brushed and may not accurately reveal the real practices of B/Ds and their staff. The records management studies conducted by GRS serve the purpose better, but the studies with comprehensive scope have so far been carried out on only some B/Ds. Furthermore, there is a complete lack of independent auditing of B/Ds' records management practices like that in other jurisdictions.*

COVERAGE

Current Situation

2.13 The administrative requirements and standards on records management established by GRS do not cover the numerous public organisations that Hong Kong has established over the years to support Government or provide services to the public. The only exceptions are the Independent Commission Against Corruption and the Hong Kong Monetary Authority.

2.14 As at April 2013, there are some 460 public organisations, or "advisory and statutory bodies" as referred to by Government³. Many of these provide important services to the community e.g. HA, the Hong Kong Housing Society, the Airport Authority, the Urban Renewal Authority and the universities. While some of these bodies may be subject to specific laws or stipulations which require them to manage and preserve specific types of their business records for specific periods of time, they are not required to create or

³ *The coverage of the public organisations, or "advisory and statutory bodies", is extensive and includes statutory bodies and non-statutory bodies, which are either fully or partially funded by Government, or rely on the fees charged for their services or levies collected under the relevant legislation to fund their operation. Statutory bodies are those that are set up by enabling legislation and can either be advisory or executive; while non-statutory bodies are those that are set up administratively and are mainly advisory bodies.*

manage their records according to GRS' requirements, nor are they required to transfer their records to GRS for appraisal and preservation.

2.15 GRS has issued a set of guidelines in October 2011 to encourage public organisations to adopt good records management practices. These guidelines were issued through the relevant B/Ds to 49 public organisations. Most other public organisations have not received the guidelines. Government does not know how many public organisations have adopted the guidelines. Even less is known about whether and, if so, how such organisations manage and preserve their business records.

2.16 GRS accepts donations of records from outside Government, including those from public organisations, but the number is small as it does not actively seek donations. As at end February 2013, a total of 48 parties, including public organisations such as the former Hong Kong Tourist Association, have donated records to GRS for permanent preservation.

Practices in Other Jurisdictions

2.17 In other jurisdictions, “public records” is defined to cover records in any format created or received by both government and non-government bodies carrying out public functions.⁴ The fundamental philosophy and principle underlying such broad coverage is

⁴ In **UK**, where “public records” encompass the records of both the government and non-government boards and establishments, the names of over 70 non-government bodies and establishments are listed in its archives law. The power of deciding whether or not records are “public records” rests with the Lord Chancellor and his decisions are published in the Keeper's Annual Report.

In New Zealand, the Public Records Act covers not only all levels of the government, all public offices, including legislative, executive and judicial branches of the government, and local authorities, but also activities carried out by contractors on public sector organisations' behalf.

In Australia, the Archives Act covers records of any authority, body, tribunal or organisation, whether incorporated or unincorporated, established for a public purpose and any Commonwealth-controlled company or association.

In USA, records covered by the National Archives and Records Administration (“NARA”) Act include records created by agencies of USA under Federal law or its legitimate successor, elements of the legislative and judicial branches, executive branch agencies, and the President of USA. The President is subject to a separate legislation, namely, the Presidential Records Act 1978, which stipulates that all of an outgoing President's records created during the previous presidency must be retained, taken custody of and be audited by the NARA immediately at the change of presidency with a view to releasing them after the official secrecy period.

In Mainland China, the Archives Law covers every state organ, unit of the armed forces, political party, public organisation, enterprise and institution (一切國家機關、武裝力量、政黨、社會團體、企業事業單位).

that public records created, managed and preserved in the service of the people using public money are kept for the people. As a result, records created, collected or maintained by both government and non-government bodies are subject to the statutory stipulations governing proper creation, management, appraisal and preservation of public records.

Our Observations

2.18 *GRS' stipulations cover B/Ds, to the exclusion of almost all public organisations, many of which are responsible for providing essential public services, including health services, social services and education. Proper management and maintenance of the records of such bodies are vital not only to their effective operation, but also to the preservation of the heritage of Hong Kong.*

2.19 *The community has legitimate expectation for public organisations to be accountable to the public in their administration, including their records management practices. It is indeed a principle and standard of transparent and accountable public administration widely recognised by other jurisdictions that the records of both government agencies and public organisations should be subject to the same level of scrutiny and accessibility by the public. In the recent decades, Hong Kong has seen more and more of its Government departments turned into public organisations and new services being provided by public organisations instead of Government departments. Falling outside GRS' purview of records protection, the records that they hold are indeed vulnerable. Government should, therefore, subject public organisations to its records management guidelines and requirements to ensure that their records are duly created, managed and preserved. If this necessitates legislation, Government should consider making such a move.*

2.20 *Pending the introduction of long-term measures such as legislation, we consider that GRS should, as a matter of priority, strengthen its efforts to urge public organisations to follow its requirements and standards on records management. Government should also further promote donation of records with archival value from public organisations.*

3

GOVERNANCE AND STAFFING

GOVERNANCE

Current Situation

3.1 GRS is under Adm Wing of CS Office. While GRS conducts user surveys from time to time to collect users' feedback on its service, there is no external body for it to turn to for advice on disposal of records and other matters relating to government records management and archiving.

Practices in Other Jurisdictions

3.2 In **UK**, **New Zealand** and **Australia**, the oversight of records management and archiving in the public sector is the responsibility of their respective National Archives. Like GRS, the National Archives of the above three jurisdictions are part of government⁵. However, they differ from GRS in that by law they have to consult an independent advisory body, which comprises members with fixed terms of tenure⁶. In **UK**, the independent

⁵ *The National Archives of **UK** is an executive agency of the Ministry of Justice and a government department in its own right. Archives **New Zealand** is overseen by the Ministry of Internal Affairs. The National Archives of **Australia** is an executive agency of the Australian Government and reports to the Attorney-General.*

⁶ *In **UK**, the Advisory Council on National Records and Archives meets regularly to provide independent advice on questions relating to access to public records and advises the Lord Chancellor (to whom the National Archives reports its work) on issues relating to public records that are over thirty years old. The Advisory Council advises the Lord Chancellor on government departments' requests to keep their records, and advises him on public interest when departments want to keep historical records closed under certain exemptions. It also offers advice on matters relating to historical manuscripts, records and archives. The Advisory Council reports to the Lord Chancellor every year and its report is published with the annual report of The National Archives.*

advisory council is consulted on government departments' exemption of records from disclosure and advises the government from the public interest point of view.

3.3 In all three jurisdictions, the advisory body is required by law to report its work to the public annually.

Our Observations

3.4 *Unlike these jurisdictions, Hong Kong's GRS lacks recourse to independent and expert advice on its decisions to destroy or retain records and other matters relating to records management and archiving. This over-reliance on the decisions of GRS itself, suggestions from B/Ds and instructions from Adm Wing as the case may be, is not conducive to the gauging of societal needs and expectations and development of professionalism and expertise. GRS and Adm Wing currently have absolute power to determine the fate of records. By the time their decisions are called in question, the evidence required for verifying their decisions i.e. the records themselves, may have already been destroyed. It is, therefore, imperative for a system to be established such that GRS regularly takes advice from an independent body. The setting up of such an advisory body would enable public engagement and scrutiny, and would help command more public confidence in Hong Kong's public records management system.*

STAFFING

Current Situation

3.5 Work relating to records management and archiving at GRS is carried out at officer level, which comprises the Archivist, Curator and Executive Officer ("EO") grades.

In New Zealand, the Archives Council, an unincorporated body established under the Public Records Act 2005, provides independent advice to the Minister of Internal Affairs, who is responsible for overseeing recordkeeping and archives matters. The Archives Council normally holds four meetings a year to discuss archival and record keeping matters and will hold additional meetings as necessary. At intervals of not more than one year, the Archives Council reviews Archives New Zealand's risk management strategy and customer and other stakeholder relations and reviews the Council's focus.

In Australia, the Archives Act 1983 provides for the establishment of the National Archives of Australia Advisory Council, which is composed of members including a Senator chosen by the Senate, a member of the House of Representative chosen by that House, and 11 other members appointed by the Minister. They are on three-year terms to give advice to the responsible Minister and the Director-General with respect to matters relating to archives of Australia. The Council met four times in 2012-13.

The Archivists are mainly responsible for the selection and management of archival records at GRS. The Curators are responsible for the conservation of archival records. The EOs are responsible for general and administrative duties relating to government records management. The Archivists are professional staff belonging to GRS and are not subject to out-posting. The Curators are professional staff deployed by LCSD to GRS. The EOs are “generalists”, who come from and join a different B/D every few years.

3.6 The numbers of posts of the three officer grades as at March 2013 in GRS are as follows:

Archivist	–	12
Curator	–	3
EO	–	15

3.7 Entry to the Archivist and Curator grades requires a bachelor degree in a related discipline⁷. New recruits are given training in specialised aspects of GRS’ work. Officers of the EO grade are not required to possess knowledge about records management or archiving before they join GRS.

Our Observations

3.8 *As evidenced by the constant and enormous backlogs in GRS’ work (paras.4.17, 5.14 and 7.15), the number of officer grade staff in GRS (only 30) is clearly much too small for shouldering the heavy responsibility relating to records management and archiving for the sizable Hong Kong Government, not to mention if GRS is to extend its coverage to public organisations as suggested (para. 2.19). Moreover, of the 30 officers, half (i.e. the 15 EOs) are non-professional officers subject to frequent turnover, which is not conducive to retention of experience and development of expertise. A staffing review is called for.*

⁷ Disciplines related to the Archivist grade include history, political science and public administration. Disciplines related to the Curator grade include conservation, applied chemistry, chemistry, material science and materials engineering.

4

CREATION AND SCHEDULING OF DISPOSAL OF RECORDS

OVERVIEW

4.1 As mentioned in Chapter 2, the responsibilities for proper management of government records fall on both GRS and the B/Ds which create and collect records. GRS sets the standards and requirements of records management for B/Ds' compliance. To meet such standards and requirements, B/Ds have to:

- (1) establish their own records management policies;
- (2) adopt the standard classification of records;
- (3) duly create and collect records;
- (4) draw up records disposal schedules; and
- (5) properly dispose of records, including transfer of records to GRS for appraisal.

4.2 The key process of records disposal is set out in **Annex B**.

RECORDS MANAGEMENT POLICY

4.3 Pursuant to GC No. 2/2009 and the Circular Memorandum entitled "Establishment of Departmental Records Management Policies" of 11 July 2012, B/Ds were required to establish their departmental records management policies by April 2013 and let GRS have a copy of the policies. A departmental records management policy is a statement which gives an overview of how the B/D should create and manage its records to meet operational, policy, legal and financial needs.

4.4 As at end July 2013, 71 out of the 80 B/Ds have drawn up their policies and given a copy to GRS.

STANDARD CLASSIFICATION OF RECORDS

4.5 B/Ds are required to classify their records under two categories: **administrative records** and **programme records**, pursuant to the standard classification scheme promulgated by GRS in GC No. 2/2009, i.e. by April 2012, B/Ds should adopt the standard classification scheme designed by GRS for all administrative records, and draw up draft disposal schedules for all existing programme records.

4.6 **Administrative records**, also known as “housekeeping records”, are defined as records which document common service activities relating to the internal administration of B/Ds and are of housekeeping nature. They are broadly grouped into six categories: administration; accommodation and facilities; procurement and supplies; finance and accounting; human resources (or personnel); and information systems and services.

4.7 **Programme (or function) records** are defined as those created or received by a B/D while carrying out the primary functions, activities or missions for which the B/D was established. Programme records are unique to each B/D. B/Ds are required to develop their own classification for their programme records.

4.8 According to Review 2012, 76 out of the 80 B/Ds have adopted the standard classification scheme for administrative records⁸.

CREATION OF RECORDS

4.9 In July 2012, GRS promulgated its mandatory requirement for B/Ds to create and collect records, by way of the Circular Memorandum “Guidelines on Creation and Collection of Records”. B/Ds are required to establish by the end of 2015 their business rules for records creation and collection covering all their business functions and activities. B/Ds should create and capture sufficient but not excessive records to ensure that the recorded information accurately and adequately records government functions, policies,

⁸ *The remaining four B/Ds were given permission by GRS to implement the standard classification scheme at a later date because they have taken part in GRS’ records management studies on standard classification scheme under GC No. 2/2009.*

procedures, decisions, transactions and activities and that such records are created in a format that will permit them to be transferred to and preserved by GRS.

4.10 According to the latest self-assessment survey required of all B/Ds by GRS in 2012, i.e. Review 2012 (**para. 2.7**), only 3 B/Ds (4%) reported that they had established business rules for records creation and collection. One B/D (1%) reported that such business rules were not needed as these had been covered by existing operational manuals/guidelines. 75 B/Ds (94%) had not established business rules, although they stated that they planned to do so by 2015 or June 2016. One B/D (1%) indicated that it needed more time to form a view on whether or not to establish business rules.

Practices in Other Jurisdictions

4.11 In the other jurisdictions that we have studied, the law requires the government and other agencies to create and maintain full and accurate records of their affairs in accordance with the stipulated standards and procedures. In **USA**, the National Archives and Records Administration (“NARA”) Act of 1984 provides that the Archivist shall make recommendations to the head of an agency for correction in respect of violations of provisions of the Act, and unless satisfactory corrective measures are taken within a reasonable time, the Archivist should submit a written report of the matter to the President and the Congress.

Our Observations

4.12 *Numerous cases relating to failure to create, loss or unauthorised destruction of records have been found by this Office, reported by the media or discussed at LegCo. Some cases that took place in 2011 - 2013 are listed in **Annex C**. In some of the cases, the Administration admitted that no records had been created or kept. Government’s failure to create or keep the records caused public outcry. As these reported cases demonstrate, poor documentation will put B/Ds in a difficult and embarrassing position, as they will not be able to produce evidence to account for their decisions or actions.*

4.13 *There can be no public access to information if the records have not been created in the first place. Yet GRS’ requirements for records creation are implemented in a loose manner. Instead of making it mandatory for B/Ds to create records and take related measures in 2009, GRS stipulated its requirements on records creation in 2012 and B/Ds were given until end 2015 to establish the business rules on records creation. As few B/Ds have fulfilled the requirement to date, compliance by all B/Ds by the deadline is*

doubtful. Robust measures are lacking for ensuring compliance with GRS' stipulations on creation of records guarding against failure to create records. To this end, Government should consider introducing a public records or archives law like those in other jurisdictions.

DISPOSAL OF RECORDS

Approval of Draft Disposal Schedules

4.14 Disposal of records not only refers to destruction of records, but also encompasses the processes of appraisal and permanent preservation (of records of archival value). B/Ds are required to dispose of records in accordance with the disposal schedules stipulated or approved by GRS. GRS assumes overall responsibility for authorising the disposal of government records through approving records disposal schedules and records disposal requests. A disposal schedule generally contains:

- (1) a description of the series of records (including nature, subject matter and title);
- (2) GRS' decision on the retention period (i.e. the period of retention of the records by the records-creating B/D before transfer to GRS for disposal); and
- (3) the disposal action (i.e. destruction or transfer to GRS for preservation) to be taken in respect of the series of records after the retention period.

4.15 Disposal of Administrative Records – All B/Ds are required to dispose of their administrative records in accordance with a set of guidelines entitled “General Administrative Records Disposal Schedules” developed by GRS in 1998. The underlying assumption is that administrative records are common in nature among B/Ds.

4.16 Disposal of Programme Records – The programme records of each B/D are to be disposed of in accordance with the schedules approved by GRS. A disposal schedule of programme records specifies the archival value or intrinsic value of the records. GC No. 2/2009 required all B/Ds to prepare and forward to GRS not later than April 2012 draft disposal schedules covering all their programme records. Draft disposal schedules for new series of programme records created after April 2012 should be forwarded to GRS within two years after creation.

4.17 According to Review 2012, all B/Ds have forwarded to GRS draft disposal schedules covering all their programme records. However, there is a huge backlog of programme records disposal schedules pending GRS' approval. As at 31 December 2013, B/Ds have submitted a total of 13,117 draft disposal schedules to GRS. Of these draft disposal schedules, only 7% (or 912) have been approved and established; 81% (or 10,677) are either in the process of screening, appraisal by GRS, or pending confirmation by the B/Ds; the remaining 12% (or 1,528) have been withdrawn or subsumed under the disposal schedules of other records after processing.

4.18 B/Ds are required to review the disposal schedules for their programme records at least once every five years, or more often where necessary, to ascertain the need for amendments. GRS monitors B/Ds' actions in this regard through B/Ds' self-assessment surveys.

4.19 In Review 2012, most B/Ds with approved disposal schedules reported that they had reviewed the schedules regularly. GRS had provided B/Ds with a standard checklist to facilitate their reviews. However, we notice that as the guidelines provided lack concrete information about the aspects of issues to be considered in a review, some B/Ds might overlook important factors (e.g. judicial requirement as in **Case 8 in Annex C**) when determining the length of retention period of records.

Our Observations

4.20 *Given the small number of staff at GRS (para. 3.8), there is little wonder that GRS' backlogs stay huge. Government should consider providing GRS with more manpower to help clear its backlogs.*

4.21 *Government should also review the requirements on disposal schedules, having regard to the circumstances and public expectations, to determine whether there is a need for a longer retention period for certain kind of records e.g. those on B/Ds' decisions which can still be appealed against (cf. **Case No. 8 in Annex C**).*

4.22 *Furthermore, Government should provide more specific guidelines to B/Ds on how to carry out reviews of disposal schedules to ensure their reviews are focused and relevant.*

5

DISPOSAL OF RECORDS

TRANSFER OF RECORDS TO GRS

General Procedures

5.1 Time-expired records, i.e. records that have reached the end of the retention period specified in the disposal schedule, have to be disposed of.

5.2 For such time-expired records, B/Ds are required to propose disposal actions (i.e. transfer to GRS for appraisal or destruction) in a Records Inventory Form for GRS' approval. GRS will comment on the proposed disposal actions, appraise the records, and authorise appropriate disposal actions, including nomination of the records as archives for preservation at GRS.

5.3 B/Ds are required by GRS to dispose of time-expired records at least once every two years. However, between 2008 and 2012, 7 B/Ds did not transfer any records at all to GRS for appraisal. Another 9 B/Ds did not transfer records to GRS at the required interval.

Deferral of Transfer

5.4 GRS' guidelines stipulate that if a B/D wishes to defer by more than two years transfer or appraisal of time-expired records having archival value or potential archival value, the written agreement of a directorate officer of the B/D is necessary. There is, however, no need for the directorate officer to provide justifications or for the directorate officer's agreement to be forwarded to GRS for endorsement or information.

5.5 According to Review 2012, there was a 200% increase in the number of B/Ds with transfer deferrals between the two reviews of 2010 and 2012. The quantity of

deferred time-expired records involved increased drastically by 4205%, from 556 items (31 linear metres⁹ (“lm”)) in Review 2010 to 23,939 items (1,211 lm) in Review 2012.

5.6 Self-assessment by B/Ds is the only means by which GRS gauges the number of deferral cases. GRS does not have a bring-up system for monitoring how B/Ds handle their records. No sanction is taken if it is eventually found that a B/D has failed to transfer records to GRS in accordance with the disposal schedule.

Practices in Other Jurisdictions

5.7 In other jurisdictions, such as **UK**, requests for deferral of transfer of records are scrutinised and approved by an independent advisory body.

Our Observations

5.8 *Under the current regime, GRS has no effective control or means to ensure that records are transferred for disposal and appraisal in an orderly and timely manner. GRS has been asking B/Ds to dispose of their time-expired records regularly and has set standards, guidelines, and mandatory requirements for B/Ds’ compliance. However, GRS’ role in ensuring B/Ds’ timely transfer of records is passive. B/Ds are at liberty to transfer records to GRS or request deferral of transfer of the records, with no need to provide justifications for such requests. Despite GRS’ promulgation of various guidelines, there remain 16 B/Ds that have either not transferred any records to GRS or have not adhered to the schedules of transfer. Retention of records by B/Ds for unduly long periods of time without genuine business need is not conducive to the preservation of archival value records and eventual public access to such records. Sporadic, unpredictable and uncontrolled transfer of records to GRS has also caused serious backlogs of records pending GRS’ appraisal (para. 5.14).*

5.9 *We consider it necessary for GRS to be empowered to enforce B/Ds’ strict adherence to the guidelines. Legislation appears to be an effective way of ensuring B/Ds’ compliance and of minimising arbitrary or unscrupulous handling of records.*

5.10 *In other jurisdictions, approval to defer transfer of records to the national archive authority is made by an independent third party, with account taken of both public interest and the needs of the records-creating agencies. Transfers of records are also*

⁹ Linear metre is a standard measurement unit of the quantity of archival materials on the basis of shelf space occupied or the length of drawers in vertical files or the thickness of horizontally filed materials.

governed by the public records or archives law to ensure that they are carried out in a timely manner.

5.11 *Accordingly, Government should review its arrangement for deferral of transfer, with a view to ensuring that decisions are made with full consideration of both the interest of public access to archival records and the needs of B/Ds.*

APPRAISAL OF RECORDS

Paper Appraisal and Physical Appraisal

5.12 In Hong Kong, appraisal of the archival value of public records is carried out exclusively by the archivists in GRS. They appraise records by looking at the list of records submitted by the B/D concerned in a standard form (**paper appraisal**) and if necessary also by physically examining the records (**physical appraisal**). The standard form submitted for paper appraisal merely contains nutshell information about the records, such as brief descriptions of the contents and subject matters of the records, type of records, and dates of creation and dates of closure of the records. The archivists will also set out their main considerations and recommendation/decision in the appraisal form. However, as they merely check in the categories of reasons printed in the appraisal form, it is not always discernable from the completed or even approved forms whether the destruction of individual records is well justified.

Amount of Records Transferred to GRS for Appraisal

5.13 The amount of records transferred to GRS for appraisal fluctuates (**Table 1**). There were particularly large amounts of records transferred for appraisal in 2011 and 2012. That was due to the large quantities of records transferred from ImmD, the Companies Registry (“CR”) and the Inland Revenue Department (“IRD”). (According to GRS, most of those records were only duplicates.)

5.14 Yet, the number of officers responsible for appraising records at GRS had only increased from 2 in 2008 to 3 in 2011 and 5 in 2012, which was clearly not commensurate with the amount of records requiring their appraisal. As a result, huge backlogs have been built up. As at the end of 2012, 239,122 records were carried forward to the subsequent year for GRS’ processing.

Table 1 The numbers of records for appraisal and the number of Archivist grade officers responsible for records appraisal

Year	Brought forward from previous years (a)	Total no. of records received by GRS for appraisal (b)	No. of records appraised (c)	No. of staff responsible for records appraisal	Backlog as at end of year (d) = (a)+(b)-(c)
2008	31,413	56,668	52,107	2	35,974
2009	35,974	42,796	17,970	2	60,800
2010	60,800	93,001	40,983	3	112,818
2011	112,818	7,088,079 #	49,992	3	7,150,905
2012	7,150,905	4,364,545 #	11,276,328	5	239,122
2013	239,122	2,480,777#	2,501,544	6	218,355

The large amount of records received by GRS included 6,959,407 microfilm jackets from ImmD, 965,861 microfiche copies of registered companies' public documents from CR, and 3,234,165 composite tax case files and computer printouts from IRD's information systems.

Practices in Other Jurisdictions

5.15 Instead of solely relying on the national archives authority to carry out the records appraisal as in the case of Hong Kong, appraisal in some jurisdictions is done by the records creating agencies or external consultants.

5.16 In **UK**, staff at the National Archives and the government agencies are involved in the process of appraisal. Government agencies select records of historical value and enduring public interest under the supervision and guidance of the Keeper of Public Records at the National Archives. The Departmental Records Officer of each agency is responsible for selecting those public records which ought to be permanently preserved. Government agencies appraise their own records and decide what to transfer, retain or destroy in line with the guidance provided by the National Archives. The National Archives advises the agencies on their appraisal of their records according to the selection criteria in the records collection policy.

5.17 In **New Zealand**, appraisal of government records is usually conducted by government agencies or consultants acting on their behalf. They prepare an appraisal report and a disposal and retention schedule, which the Archivist reviews before it can be approved by the Chief Archivist.

Our Observations

5.18 *Backlogs in records appraisal affect efficient and effective records management. To avoid backlogs of records pending appraisal, GRS should closely monitor its backlog situations and deploy staff to clear the backlogs in a timely manner. GRS should also keep in view and take reference from the practices taken of the archives bodies in other jurisdictions and consider their applicability to Hong Kong in resolving its own backlog problems.*

6

HANDLING OF LOSS OR UNAUTHORISED DESTRUCTION OF RECORDS

STIPULATIONS

6.1 GRS requires B/Ds to report immediately any loss or unauthorised destruction of records. The DRM of the B/D should:

- (1) ascertain the facts and identify the circumstances leading to the loss/unauthorised destruction;
- (2) reconstruct the records where necessary and feasible;
- (3) take steps to prevent recurrence;
- (4) consider whether any disciplinary action or other administrative action is necessary; and
- (5) report his findings and actions on (1) - (4) above to GRS within three months.

6.2 According to Review 2012, 60 B/Ds (75%) reported that they were not aware of any loss or unauthorised destruction of records during the period.

CASES OF LOSS OR UNAUTHORISED DESTRUCTION

Reported Cases

6.3 Between August 2011 and end February 2013, GRS received reports from 20 B/Ds of a total of 38 cases of loss or unauthorised destruction of records. Those cases

involved 500 files, 53 documents and 18.2 Im of records. As at April 2013, the investigations into 27 of the 38 cases have been completed. Among the 27 cases:

- (1) administrative action¹⁰ has been taken in respect of **1 case**, with written/verbal advice to all the responsible officers, except one officer who had retired;
- (2) milder administrative actions, which included counseling of the responsible staff, have been taken in respect of **4 cases**; and
- (3) in respect of the remaining **22 cases**, no disciplinary action¹¹ has been taken because:
 - there was not sufficient evidence to suggest negligence or misconduct of staff, or the responsible officer could not be identified (**16 cases**);
 - the incident had taken place a long time ago, or the staff concerned had been posted out or had left the service (**2 cases**);
 - the mistake was unintentional (**3 cases**); or
 - the fault lay in a contractor, against whom no disciplinary action could be taken (**1 case**).

6.4 In two of the cases, despite GRS' view that disciplinary action or administrative action should be taken against the staff concerned, the B/Ds did not agree and GRS did not pursue the matters any further. GRS merely reminded the B/Ds concerned of the measures that should be taken to avoid recurrence of such incidents and of the need to adhere to the guidelines. GRS did not monitor the B/Ds' implementation of its reminders.

6.5 There were numerous reports of loss or unauthorised destruction of records by some of the same B/Ds. In response, GRS alerted the senior management of the B/Ds concerned and organised tailor-made seminars for some of such B/Ds to enhance their awareness of the importance of records management and promote safe custody of government records.

Cases Not Reported to GRS

6.6 We also notice that numerous cases have not been reported to GRS instantly because the B/Ds concerned refused to admit that the records had been lost. In a few cases, the delay in reporting loss or unauthorised destruction of records was related to the failure of the B/Ds concerned to update their records inventories. In some of the cases,

¹⁰ *Administrative action refers to verbal/written advice.*

¹¹ *Disciplinary action refers to verbal/written warning, reprimand, severe reprimand, financial penalty, reduction in rank, compulsory retirement or dismissal.*

only when the records were required to be transferred to GRS for disposal was the loss discovered and admitted. Some cases of loss or unauthorised destruction of records have not been reported to GRS at all. In other cases, the loss or unauthorised destruction of records took place in public organisations, to which GRS' public records stipulations do not apply. Such cases were, therefore, not reported to GRS even though the records concerned vital public services using public money. Some examples can be found in **Annex C**.

Practices in Other Jurisdictions

6.7 In most of the jurisdictions that we have studied, their public records laws or archives laws stipulate for the punishment of those individuals or agencies which have damaged, lost or destroyed records without authorisation under the law.¹²

Our Observations

6.8 *The number of loss/unauthorised destruction of records reported to GRS is unreliable, because the figures are only based on B/Ds' self-assessments and reports. The cases in Annex C have not been reported to GRS because either the organisations concerned were public organisations outside GRS' existing purview or the cases were related to failure to create records, on which no reporting to GRS is required. We consider that GRS should conduct regular auditing of the records management practices of each B/D to gauge the magnitude of the problem of loss and unauthorised destruction of records.*

6.9 *At present, even when loss/unauthorised destruction of records is discovered, GRS cannot impose upon the B/Ds its views on actions to be taken. If the B/Ds refuse to follow GRS' advice and punish the wrongdoers, GRS can do nothing.*

¹² *The Public Records Act ("PRA") of New Zealand stipulates that damages, illegal disposal or destruction, or contravention of a PRA provision may be punishable with a fine of up to NZ\$5000 for any person and NZ\$10,000 for any organisation or institution.*

The Archives Act of Australia provides that damage, destruction, alteration or transfer of the custody of Commonwealth records are punishable at 20 Penalty Units.

The NARA Act of USA stipulates that destroying, damaging and unauthorised taking or using of public records are punishable by a fine of US\$2000-5000 or imprisonment for three to five years.

The Archives Law of Mainland China provides for the imposition of administrative sanctions, warning and/or fine on individuals or organisations for: damage, loss, unauthorised destruction, sale, transfer, alteration or forgery of archives; failure to file records; and failure to adopt any measures for the archives to be preserved.

6.10 *Government should seriously consider empowerment of GRS by way of legislation for effective enforcement of the records management requirements, with a view to avoiding loss/unauthorised destruction of records and enabling the taking of sanctions against those who do not abide by the stipulations.*

6.11 *Meanwhile, Government should reinforce its training and education for staff so that everyone who may create, keep, or use records handles the records carefully.*

7

DISSEMINATION OF INFORMATION AND OPENING OF RECORDS

DISSEMINATION OF INFORMATION

Current Situation

7.1 In Hong Kong, little information about GRS' and B/Ds' disposal of records is made available to the public. GRS is only accountable to Adm Wing. There is no annual report dedicated to the work of GRS for public viewing. The public is merely given scanty information through the Administration's response to the occasional questions raised by Legislative Councillors and the media.

7.2 There is no systematic proactive dissemination of information about the disposal of records in respect of each B/D. The public has no way of knowing what records of B/Ds have been destroyed or archived. There is no information readily available about the records management policy statement of each B/D or the disposal schedules that are currently applied to the different types of records of the B/Ds.

7.3 Neither are the reports on self-assessment surveys by B/Ds published. The status of B/Ds' compliance with records management requirements is not known to the public. Hence, there is little incentive for B/Ds to perform well in their records management or at least to meet the records management requirements stipulated by GRS.

Practices in Other Jurisdictions

7.4 In other jurisdictions, the public records law or archives law requires the national archives authority to report to the legislative body and issue an annual report on its work.

7.5 Both the National Archives and the Advisory Council on National Archives of **UK** publish annual reports. The National Archives also publishes detailed information on departments' progress in tackling transfer backlog.

7.6 In **New Zealand**, the Chief Archivist publishes annual reports on the state of keeping of government records. The Archives Council, which provides independent advice to the Minister responsible for Archives New Zealand, also publishes annual reports. Upon receipt of such a report, the Minister will present it to the House of Representatives. Both reports are available to the public on the website of Archives New Zealand.

7.7 In **Australia**, the Archive Act 1983 stipulates that the National Archives shall submit to the Minister every year a report on its operations. The report should be laid before each House of Parliament.

7.8 In **USA**, the disposal schedules of each department are available on the department's website, which set out clearly the types of records and their descriptions, disposition (including information on whether they are to be retained permanently or destroyed), and the date of the latest review of the disposal schedule applicable to each type of records. NARA also makes available to the public a list of the records that have been destroyed.

Our Observations

7.9 *Hong Kong clearly lags behind other jurisdictions in terms of transparency and proactive dissemination of information about its public records management. Government should take reference from other jurisdictions and make available to the public on a regular basis more information about the work of GRS and B/Ds in public records management, including their disposal schedules and the records destroyed.*

7.10 *We note that in 2011, GRS approved the destruction of an enormous number of files. Some people alleged that the B/Ds concerned conveniently took the opportunity of the relocation of the Government Headquarters to Tamar Central Government Offices*

(“the Relocation”) in the second half of 2011 to indiscriminately get rid of their records. GRS claims that it could not attribute the destruction of particular records to the Relocation, as the normal records disposal in respect of each B/D had been on-going.

7.11 *However, the number of records destroyed was indeed larger than in the previous year of 2010 or in the following year (Annex D).*

7.12 *It is difficult to ascertain why considerably more records were approved for destruction in 2011. GRS attributes this to its promulgation of the mandatory records management requirements in GC No. 2/2009 and the consequential actions taken by B/Ds to dispose of their records. But we have no way of knowing whether the records were destroyed after due appraisal. Little information is available on the records destroyed. The information in the standard form filled in by B/Ds is not telling.*

7.13 *Regular dissemination of information on the disposal schedules and records destroyed in respect of B/Ds would facilitate public understanding and enable public scrutiny of the B/Ds’ disposal (in particular destruction) of records.*

ACCESSIONING AND DESCRIPTION OF RECORDS

7.14 To prepare archived records for public inspection involves the processes of **accessioning** and **description** by GRS. In the process of accessioning, archivists examine the content and context of the records in order to determine the records series for inputting into GRS’ Integrated Information Access System. In the process of description, the archivists identify and describe the content and context of the archived records in a systematic and consistent manner to facilitate public access.

7.15 There is a considerable backlog in the accessioning and description of records. As at end December 2013, GRS has 139,393 records pending accessioning and description. GRS aims to complete accessioning of those records by 2015.

OPENING OF RECORDS

7.16 The opening of archival records for public inspection is governed by the Public Records (Access) Rules 1996 (“the Access Rules”), which is a set of administrative rules administered by Adm Wing and GRS. A distinction is made between classified and

unclassified records in the release of records¹³. While unclassified records 30 years old or more should be released for public access automatically, classified records 30 years old or more still have to be reviewed by the records creating/responsible B/Ds to determine their release for public access. Access to records under 30 years of age requires prior application in writing to the GRS Director. The application will be passed on to the records creating B/D for consideration.

7.17 When GRS opens records, it avails such records, together with its description, by rendering them searchable in the online catalogue of GRS' Integrated Information Access System. GRS does not make separate announcements on the documents that have been opened to the public or forecast documents about to be opened.

7.18 According to Adm Wing, the numbers of classified records due to be reviewed each year between 2008 and 2012 and ready for public inspection after review are as set out in **Table 2**. The release rate dropped from 61% in 2008 and 66% in 2009 to 46% in 2011, and further to 41% in 2012.

Table 2: The number of classified records opened for public inspection since 2008

Year	No. of classified records reviewed by B/Ds in the year (a)	Of (a), the no. of classified records opened for public inspection (b)	(b) as percentage of (a)
2008	350	215	61%
2009	235	156	66%
2010	260	125	48%
2011	235	107	46%
2012	207	85	41%

7.19 Under the Access Rules, GRS Director, in his discretion and in accordance with the general instructions of the Chief Secretary for Administration, may permit any person to inspect closed archival records. Upon receipt of an application, GRS will seek the views of the records creating or transferring B/Ds on whether access to the records may be granted. The principle is that the records requested should be released unless there is

¹³ *The Records Management Manual provides that B/Ds should categorise records into classified (Top Secret, Secret, Confidential or Restricted) and unclassified information, according to their level of sensitivity and the degree of harm which would be caused by unauthorised disclosure at a particular time. The category of a record affects the manner of its handling and circulation.*

good reason to withhold disclosure, e.g. statutory requirements or sensitive information contained in the records. The GRS Director may withhold access to archival records to ensure their safe custody and proper preservation.

7.20 In exercising his discretion to permit access to closed records, GRS Director will have regard to:

- (1) the security grading of the records to which access is requested;
- (2) the views of the records creating or transferring B/Ds;
- (3) any statutory or administrative requirements related to the protection of personal data; and
- (4) the provisions of Government's Code on Access to Information ("the Code")¹⁴.

7.21 Between 2008 and 2012, 7,902 requests for access to archival records were received. Among those requests, 98 relating to access to closed records were referred to B/Ds for consideration.

7.22 We note that both the Rules and the Code provide for public access to records, but the Code does not include the security grading of records *per se* as one of the valid reasons for declining access requests, while the security grading of records is one of the factors to be considered by GRS Director when vetting requests for inspecting closed records (**para.7.20(1)**). We have been told that in practice, on receipt of an application for access to closed records, GRS Director will seek the comments of the B/D concerned, regardless of the security grading of the record. If the B/D considers the closed record not suitable for public access, it will have to provide a valid reason under the Code. If that is the case, it is our view that there is no point in keeping the security grading of records as one of the factors that GRS Director should take into account when considering applications for access to closed records. Removal of that factor would help avoid public suspicion that Government is arbitrarily withholding disclosure of records.

Practices in Other Jurisdictions

Decision to Withhold Access

7.23 In Hong Kong, decisions to withhold records from public access or to keep records closed beyond 30 years are made by GRS Director and B/Ds. In other

¹⁴ Established in 1995, the Code requires B/Ds to make available to the public the information they hold, unless they have a reason specified by the Code for withholding the information.

jurisdictions, applications by government agencies to withhold records from public access or to keep records closed beyond the stipulated period are vetted by both the government and an independent advisory body.

7.24 In **UK**, the Advisory Council on National Records and Archives considers applications to withhold records from public access for longer than the stipulated period. If the Advisory Council accepts that information should be withheld, the records will be transferred as closed and the relevant closure period applied.

Closure Period

7.25 In many of the jurisdictions that we have studied, there have been reforms in recent years to reduce the period of closure of public records. In the reform of 2010 in **UK**, the length of the closure period was cut down from 30 years to 20 years. **New Zealand** has also shortened the period from 30 to 25 years pursuant to a reform in 2008. In the **Republic of Ireland**, the FOI (Amendment) Act came into force in 2003, as a result of which Cabinet minutes must now be released no later than 10 years after their creation. Similar initiatives to liberalise release are noticed in **Germany, the Netherlands** and **Spain**.

7.26 In **USA**, Freedom of Information (“FOI”) laws provide for systematic declassification of classified records. In a bid to strengthen its declassification initiative, NARA has designated an office to oversee the government-wide security classification programme and report its status on an annual basis to the President. Anyone can request a declassification review of specific classified material that he/she is able to identify under the Mandatory Declassification Review (“MDR”) programme or under the FOI Act. MDR is appropriate for any classified materials including Presidential Papers which are not subject to the FOI Act. A denial decision may be appealed against to the Archivist or the Interagency Security Classification Appeals Panel.

Our Observations

7.27 *The closure of records in Hong Kong is at the discretion of the B/Ds and GRS, with no input of independent advice or external monitoring. Compared to the progressive liberalisation of restrictions on opening of records in other jurisdictions, Hong Kong has been inert in its promotion of transparent and open government. It is time for Government to review its system of closure of records, in particular the closure period and the criteria for approving/refusing public access to records including the need for considering the security grading of records (para. 7.22).*

8

MANAGEMENT OF ELECTRONIC RECORDS

CURRENT SITUATION

Growth of Electronic Records

8.1 With the widespread use of networked desktop computers, more government records are created electronically and maintained in a variety of formats. The quantity of electronic records reported by the 80 B/Ds grew by 17% from 2,725,700 GB in mid-September 2011 to 3,189,406 GB in end December 2012.

Green Initiative

8.2 At the same time, Government has been promoting the use of information communication and technology to reduce the environmental impact of government activity, for instance by reducing the use of paper within Government. This includes more internal communication and information sharing via the Government Communication Network, the Confidential Mail System and Intranet.

8.3 While the environment-friendly initiative is laudable, inadequate measures are in place to manage, maintain and archive the electronic records created.

CURRENT E-RECORDS MANAGEMENT REQUIREMENTS

Print-And-File

8.4 GRS' Guideline on the Management of Electronic Mail recognises that emails created or received for official business and kept as evidence of such business are records. According to the Guideline, official email records are government property and Government has the right to access, read, use, manage and dispose of such email records. Some email records may also be selected as archives for permanent preservation. They should be subject to the same regulatory framework that applies to all other records.

8.5 GC No.2/2009 requires B/Ds to convert e-mail records into printed form for management and storage and put in place appropriate arrangements to ensure proper custody and storage of these printed e-mail records in the same way as for paper records. B/Ds intending to destroy records, irrespective of formats, must obtain the GRS Director's prior agreement.

8.6 In October 2010, Adm Wing further promulgated the "Guideline on the Management of Electronic Mail" to help B/Ds identify, create, file and manage e-mail records so as to retain sufficient and accurate evidence of official business and activities for legal, operational, reporting and archival purposes. The Guideline requires that emails should be captured into a reliable recordkeeping system and managed properly.

File Inspections

8.7 We have inspected the files relating to four randomly chosen distinctive subjects of EDB and FHB created between 1999 and 2012 to make observations on B/Ds' records management practices. Those subjects were under four units within EDB and FHB.

8.8 We find that the records created in the early days took the form of memoranda, letters, file minutes, or handwritten remarks on paper. Starting from around 2005, the use of email in communication both within and outside Government drastically increased. At the same time, the use of the paper-based modes of communication decreased both within and outside Government. By around 2008, the internal and external communications and transactions, as revealed in the inspected files of the two bureaux, have become predominantly email-based.

Decreasing Reliance on Paper Files

8.9 The shift to electronic communication has significantly changed the function of the paper files. Since officers no longer have to refer to the paper files in their daily transactions and communications, the paper files have become more or less a repository of printed-out email records exclusively for record purpose. The subject officer, who used to work on paper files, now works on his/her desktop computer. He/she prints out the electronic records only after the transactions and communications are completed. Thus, in this era of paperless office, instead of being part and parcel of the process of creating records, the filing of paper records in a physical file has become an inorganic extra step prone to be overlooked. Markings on the cover of paper files that used to record the movement of files are few, if not non-existent.

Shift of Filing Responsibility to Individual Officers

8.10 The paperless office era has also substantially changed the records management practices. Instead of having incoming communications routed through the file registry of the office in the form of postal mails and facsimiles, the electronic records are now received directly by individual officers. This means that the burden of filing of records is now with individual officers. Whether records created are properly filed has become totally dependent upon individual officers' action. Yet the significance of paper files for record purpose is unchanged as they remain to be the office's official record of its transactions, operations and decisions under the print-and-file approach of electronic records management. GRS, too, can only rely on such paper records.

Management of Hybrid of Electronic and Non-Electronic Records and Makeshift Measures

8.11 We find that in two of the units of EDB that we visited, central electronic filing systems have been created on their respective shared drives in the computer systems to be shared among the staff within each unit. This involves the creation of a file plan and a folder directory on a shared drive that resembles the arrangement of folders in a traditional filing cabinet. The purpose of setting up such systems, according to EDB and the officers we interviewed, was to facilitate the sharing of knowledge among staff of the unit and their retrieval of information. Useful to the staff as they may be, they are not part of the Bureau's central filing system. The documents and information stored in such systems are not considered records and are, therefore, not subject to the prevailing records management requirements stipulated by GRS regarding retention, disposal and appraisal.

8.12 We notice that officers within each of the two units archive their emails chronologically in the “Archive” folder in Lotus Notes¹⁵ under each officer’s account. There is no linkage between individual officers’ “Archive” folders and the Bureau’s filing system or file inventory. Nor do the folders in the shared drive correspond to the central filing system of the Bureau. No file reference numbers are assigned to the emails, and there is no linkage between the emails and the paper files. There is no requirement for the emails in the “Archive” folders to be transferred to GRS for appraisal or disposal.

8.13 Makeshift measures like those above have been initiated by individual units in individual B/Ds in response to the prevalent use of electronic mails and records and the lack of an electronic recordkeeping system that adequately supports B/Ds’ daily use of electronic records. The print-and-file approach remains the official requirement in B/Ds’ records management. Emails in their electronic form are not records for retention, disposal and archive purposes; they have to be turned into hard copies first.

Omission in Printing and Filing

8.14 We notice from the records of the B/Ds that we visited that attachments to emails are sometimes omitted and not printed out and kept in the paper files. This highlights the unreliability of the print-and-file approach in ensuring that records are adequately saved.

8.15 The print-and-file approach is prone to omission and loss of records. It does not ensure consistency and applicability across the board. It should be replaced with a proper electronic recordkeeping system (“ERKS”) without further delay.

GOVERNMENT’S LONG-TERM PLAN

Efforts to Formulate Policy, Strategy and Standards

8.16 Government is aware of the inadequacy of the print-and-file approach. Since 2001, GRS has been working with the Office of the Government Chief Information Officer (“OGCIO”) and the Efficiency Unit (“EU”) to formulate a policy, strategies, standards and management tools for the effective management of both electronic records and non-electronic records. The long-term goal is for each B/D to develop ERKS.

¹⁵ *Lotus Notes is a business software used by Government as a platform for communication and business collaboration.*

8.17 Between September 2007 and September 2008, GRS carried out an ERKS pilot run in selected offices of OGCI0 and the Transport Department. On review of the pilot runs, GRS saw a need for further work to address issues relating to electronic records management (“ERM”) and ERKS¹⁶. According to GRS, difficulties in finding suitable ERKS solutions in the local information technology market, the need for engagement of overseas consultants and the lack of awareness of ERM among B/Ds have affected the progress of ERKS implementation in Government.

ERKS and Electronic Information Management Strategy

8.18 In 2009, the Electronic Information Management Steering Group (“EIMSG”), which comprised the Government Chief Information Officer as convenor and members from GRS, EU and Adm Wing, was set up. In 2011, it adopted an integrated approach of electronic information management (“EIM”), under which ERKS and ERM were integral parts.

8.19 A consultancy study on Government-wide EIM strategy was conducted in 2010, which made a number of recommendations on spurring further development and implementation of ERKS in B/Ds. On the basis of that study, OGCI0 promulgated in May 2011 the Government EIM strategy, which requires B/Ds to adopt an ERKS to drive ERM in Government.

8.20 To help B/Ds develop or adopt a proper ERKS, GRS promulgated in May 2011 a set of updated ERKS functional requirements for compliance by B/Ds and promulgated in July 2013 a handbook on long-term preservation of electronic records. B/Ds are given the choice of setting up an ERKS as a stand-alone system or as a part of an integrated EIM solution under the Government EIM strategy. Users of ERKS are required to select suitable removable storage media and implement proper protective measures to minimise the impact of media deterioration and possible information loss.

8.21 Under the EIM strategy, OGCI0 is responsible for providing support to B/Ds in their development of organisational EIM strategies. GRS is responsible for helping B/Ds develop ERKS, for developing ERM standards and guidelines for B/Ds’ reference, and for monitoring compliance through B/Ds’ self-assessments. GRS provides essential ERM training for B/Ds in taking forward ERM and ERKS.

¹⁶ *These issues include development of records management standards on metadata (which are data describing the content, context and structure of records and their management through time) and on transfer of records from one ERKS to another, and preservation of electronic records with archival value.*

8.22 As part of change management, GRS has developed a theme page on Government's intranet to promote best practices for and use of ERM among government officers. GRS has developed and promulgated seven ERM and ERKS standards and guidelines to help B/Ds plan and implement ERKS. GRS has organised ERM training, briefings and workshops for records managers and other government officers. Government will review the progress of ERKS implementation in 2014 in the context of EIM implementation.

8.23 In 2014, GRS will continue to: develop ERM standards and guidelines and establish model cases for B/Ds' reference; enhance the ERKS functionality to manage and store confidential records and deliver it for use by B/Ds; and provide records management support to B/Ds to facilitate their early implementation of an ERKS having regard to their individual readiness.

8.24 GRS also intends to conduct a comprehensive study on the long-term preservation of electronic records. To prepare for the comprehensive study, GRS and OGCIO conducted a preliminary study from February 2012 to January 2013 to assess the magnitude and complexity of the comprehensive study and to define the scope of consultancy services and expertise required of consultants for conducting the comprehensive study. GRS is working out the timetable for conducting the comprehensive study. There is, however, no timeframe for completion of the study.

Latest Position and Working Targets

8.25 As the first step to take forward EIM implementation, B/Ds are required to formulate their organisational EIM strategies, which should include an implementation plan of an ERKS. Government aims to have 12 B/Ds completing their organisational EIM strategies by 2014. As at January 2014, 10 B/Ds have established their EIM strategies. As reported in Review 2012, 2 B/Ds (3%) had already implemented an ERKS, 27 B/Ds (33.5%) intended to implement an ERKS in five years, 47 B/Ds (58.5%) had no such plan, and the remaining 4 B/Ds (5%) had not arrived at a firm decision on the issue.

8.26 Government does not intend to specify a timetable for B/Ds to develop or adopt an ERKS. GRS undertakes to keep the progress of ERKS implementation under review and seek the steer of the EIMSG as necessary. Until ERKS is implemented in full, electronic records will continue to be managed under the print-and-file approach.

8.27 GRS has no plan for systematically digitising archives for preservation. It digitises records mainly for publication purposes. GRS preserves and archives records in a variety of forms (paper, microfilm and/or digital). The general principle is to preserve and archive records in the form as they are transferred from B/Ds.

Practices in Other Jurisdictions

8.28 In other jurisdictions, electronic records management has taken full swing.

8.29 In **UK**, government departments have been managing digital records since 2004, using various types of electronic records management system. In 2000, the government embarked on a series of projects to create a system for managing the growing volume of digital files and records. The new storage and preservation system that the National Archives has developed in partnership with private companies allows it not only to efficiently store, manage, and migrate its current collection of digital files, but also to provide headroom for significantly expanding its electronic archive. The National Archives also administers the National Digital Archive of Datasets, which is one of the very few digital archives that both preserve and provide online access to digital records. It conserves and provides access to many computer datasets from central government departments and agencies, which have been selected for preservation by the National Archives dating back to 1963. The National Archives carries out analyses on the types of users of its services, their geographical locations and the types of information that are searched and used by the public. The National Archives has been developing the infrastructure for a digital repository to enable it to receive large volumes of digital records.

8.30 **New Zealand** has been developing an on-going proactive action plan, namely, the Digital Continuity Action Plan, to sustain the public sector's digital environment and to ensure that public sector digital information is preserved, accessible, usable and re-usable for as long as it is needed. Such requirements are underpinned by the Public Records Act of New Zealand, which stipulates that electronic records should be treated according to content rather than format, and should be managed in a recordkeeping system.

8.31 In **Australia**, a Digital Transition Policy has been introduced to provide for digital recordkeeping for efficiency. Under digital records keeping, the majority of agencies' records are created, stored and managed digitally and, where possible, incoming paper records are scanned so that new paper files are not created. In accordance with the Policy, records that are created digitally after 2015 will be accepted for transfer to the National Archives in digital formats only.

8.32 In USA, the Electronic Records Archive (“ERA”) is NARA’s strategic initiative. It provides a means for NARA to take in, preserve and provide continued access to digital information created by the Federal Government, and to transition government-wide management of the lifecycle of all records as a shared service. ERA reached Initial Operating Capability in 2008 after commencing its research stage in 1998; the ultimate goal is to make it easier for government agencies and NARA to conduct business and to pool critical information quickly to make important decisions.

Our Observations

8.33 *In Hong Kong, more and more of Government’s internal and external correspondence, which carries important documentary trails of why, how, when and what decisions are made, is delivered electronically. Emails of B/Ds can easily be lost or misplaced under the current situation. Yet the necessary records management measures are not in place to ensure the integrity, security, and authenticity of records. The existing print-and-file approach, which hinges predominantly upon the conscientiousness of individual officers to print electronic documents and file them, is prone to mistakes and omissions and can at best be a makeshift arrangement pending full ERKS and ERM implementation.*

8.34 *The RMM promulgated in as early as 2001 had foreseen the challenges posed on records management by the advent of modern technology. It stated:*

“With the increasing popularity of computer technology and the rapid growth of electronic records, the Government is in the process of formulating a new strategy and relevant policies for the management of electronic information systems and records. Detailed guidelines and instructions for the management of email and other forms of electronic records will be issued in due course.”

8.35 *More than a decade has elapsed and full implementation of ERKS across Government is still nowhere in sight. Progress has been painfully slow. Such tardiness and inability to catch up with the times means that more records may fail to be captured and be lost forever. This results in irreversible disappearance of information and hence risks in legal actions, decrease in efficiency and damage to reputation. The long lead-time that Government has taken to prepare for implementing electronic records management systems across the board suggests that the use of digital technologies has outpaced Government’s capacity to manage digital records.*

8.36 *There is an urgent need to implement ERKS and ERM in all B/Ds so that makeshift print-and-file can be replaced by a sustainable and integrated approach to managing both electronic and non-electronic records. Government should map out a clear and comprehensive implementation plan of ERKS and ERM with timelines for compliance by all parties concerned so as to salvage its electronic records.*

8.37 *Meanwhile, in-depth studies are necessary to gauge the electronic records management situations in B/Ds, with a view to identifying problems in the different practices among B/Ds and plugging existing loopholes. GRS should provide specific and practical guidelines on the management of the hybrid of paper, electronic and other forms of records by B/Ds.*

9

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

9.1 To sum up, we have identified the following inadequacies in the public records management regime in Hong Kong:

- (1) GRS' requirements are not backed up by law. As a result, it is difficult for GRS to ensure that B/Ds create, maintain and dispose of records as required (**para. 2.11**).
- (2) GRS' stipulations are not effective in ensuring compliance by B/Ds with respect to creation and transfer of records and in the reporting of loss or unauthorised destruction of records (**paras. 4.12-4.13; 5.8; 6.8-6.9**).
- (3) Despite its mandatory requirements, GRS is unable to take effective measures against B/Ds' failure to comply with its requirements, to guard against B/Ds' failure to create and maintain records properly or to punish B/Ds or the officers concerned for non-compliance (**paras. 4.13, 5.8 and 6.9**).
- (4) B/Ds' records management practices are not subject to regular and independent auditing (**paras. 2.12 and 6.8**).
- (5) Government policy and practices on records management are not subject to external monitoring, such as an independent body to advise on the decisions of GRS and B/Ds (**paras. 3.4, 5.10 and 7.23**).

- (6) As GRS records management requirements do not cover public organisations, the protection of and public access to their records are problematic (**para. 2.18**).
- (7) GRS is clearly short of staff (in particular professional officers) for shouldering its huge workload in respect of vetting of records disposal schedules, and appraisal and accessioning of records (**paras. 3.8, 4.17, 4.20, 5.14 and 7.15**).
- (8) Records disposal schedules take little account of the circumstances and public expectations (**para. 4.21**).
- (9) There is no systematic proactive dissemination of information about the disposal of records of B/Ds to facilitate public understanding and enable public scrutiny (**paras. 7.2, 7.9 and 7.13**).
- (10) Hong Kong lags behind other jurisdictions in liberalising restrictions on opening of records for public access (**para. 7.27**), and GRS should not have included the security grading of records as a criterion for approving/refusing public requests for access to closed records (**para. 7.22**).
- (11) The current print-and-file approach for electronic records management is prone to mistakes and omissions and, therefore, loss of records, but Government has been tardy in implementing ERKS to ensure integrity, security and accessibility of records (**paras. 8.33 – 8.35**).

9.2 While legislation may not be the panacea to all problems, it at least provides a framework for setting legally binding rules for regulating public records management to ensure strict compliance by government and other agencies and protection of public records for public access and heritage preservation. It also gives the people assurance of the government's commitment to accountability, transparency and openness. A purely administrative regime for public records management, which basically relies on self-discipline of the parties concerned, can at best be a second-rate substitute.

RECOMMENDATIONS

9.3 The Ombudsman, therefore, urges the Administration to seriously consider introducing a law on public records and archives to strengthen Hong Kong's management of public records, covering not only B/Ds but also public organisations, particularly those providing essential services to the public.

9.4 Pending legislation, Government should also:

- (1) make more efforts to urge public organisations to follow its requirements and standards on records management;
- (2) further promote donation of records with archival value from public organisations to GRS;
- (3) set up an independent body to advise Adm Wing and GRS on records management policies, practices and actions;
- (4) review the staffing of GRS, so as to enable it to handle its heavy workload with efficiency and professionalism and to clear its backlogs expeditiously;
- (5) review the requirements on disposal schedules, having regard to the circumstances and public expectations, to determine whether there is a need for a longer retention period of certain kinds of records;
- (6) provide specific guidelines to B/Ds on how to carry out reviews of disposal schedules to ensure their reviews are focused and relevant;
- (7) review its arrangement for B/Ds' deferral of transfer of records to GRS, to ensure that approvals for deferral are well justified;
- (8) conduct regular auditing of the records management practices of each B/D to gauge the magnitude of the problem of loss and unauthorised destruction of records;
- (9) reinforce its training and education for government officers on careful handling of records;

- (10) regularly disseminate information about the disposal of records of B/Ds so as to facilitate public understanding and enable public scrutiny of the B/Ds' disposal (in particular, destruction) of records;
- (11) review its system of closure of records including the closure period and the criteria for approving/refusing access to records;
- (12) map out as soon as possible a clear and comprehensive implementation plan of ERKS and ERM with timelines for all parties concerned;
- (13) as a matter of priority, conduct studies to gauge the electronic records management situations in B/Ds, with a view to identifying problems in the different practices among B/Ds and plugging existing loopholes; and
- (14) provide B/Ds with specific and practical guidelines on the management of the hybrid of paper, electronic and other forms of records.

ACKNOWLEDGEMENT

9.5 The Ombudsman is grateful to Adm Wing, GRS, EDB, FHB, ImmD, BD, LCSD and HA for the cooperation and assistance that they have rendered to this investigation. He would also like to thank all those who have given this Office views and information on the subject.

Office of The Ombudsman

Ref.: OMB/DI/246

March 2014

Major features of the records management systems of other jurisdictions

	UK	New Zealand	Australia	USA	Mainland China
1. Authority	National Archives	Archives New Zealand	The National Archives of Australia	National Archives and Records Administration (“NARA”)	The National Archives Administration Department (國家檔案局)
2. Year of establishment of the authority	1967 (formerly Public Records Office 1838)	2000	1961 (formerly National Library of Australia)	1984 (formerly National Archives 1934)	1958
3. Status	a government department and an executive agency of the Ministry of Justice	a group overseen by the Minister of Internal Affairs	an executive agency of the government overseen by: the Department of Regional Australia, Local Government, Arts and Sport, reporting to the Minister for the Arts	an independent agency	an agency reporting to the General Office of the Communist Party of China Central Committee (國務院部委管理的國家局)
4. Power vested in the authority	Public Records Office Act 1838 Public Records Act 1958	Archives Act 1957 Public Records Act (“PRA”) 2005	Archives Act 1983	NARA Act of 1984	Archives Law 1988 (中華人民共和國檔案法 1988)
5. Advisory body	Advisory Council on Public Records	Archives Council Te Rua Wānanga	National Archives of Australia Advisory Council	Advisory Committee on Records of Congress	not stated.
6. Coverage	records held by government departments and agencies, administrative and departmental records of boards and establishments under government departments and over 70 listed non-government bodies and establishments; and court records	records of all levels of government, all public offices and local authorities, including activities carried out by contractors on public sector organisations’ behalf	records of any authority, body, tribunal or organisation, whether incorporated or unincorporated, established for a public purpose, and any Commonwealth-controlled company or association	records of: agencies of USA under Federal law; elements of the legislative and judicial branches, and executive branch agencies; and the President of USA	records of state agencies, the armed forces, political parties, social organisations, business enterprises, institutions and citizens

	UK	New Zealand	Australia	USA	Mainland China
7. Sanctions	not stated*	damage, illegal disposal or destruction, or contravention of a PRA provision may be fined for up to NZ\$5000 for any person and NZ\$10,000 for any organisation or institution	damage, destruction, alteration or illegal transfer of the custody of Commonwealth records are punishable at 20 Penalty Units.	destroying, damaging and unauthorised taking or using of public records are punishable by US\$2000-5000 fine or imprisonment for three to five years	damage, loss, unauthorised destruction, sale or transfer, alteration; and forgery of archives; failure to file records; and failure to adopt any measures for the archives to be preserved, will be subject to administrative sanctions, warning and/or fine
8. Closure period (or open access period)	20 years for most records (previously 30 years); 30 years for Cabinet notebooks (previously 50 years)	25 years (previously 30 years)	25 years	25 years	30 years; less than 30 years for economic, scientific, technological and cultural fields

* Failure to comply with the “information notices” and “enforcement notices” issued by the Information Commissioner in relation to access to records under section 5(3) of the Freedom of Information Act 2000 is punishable by a court of law and the relevant public authority will be dealt with as if it had committed a contempt of court (section 54 of FOIA).

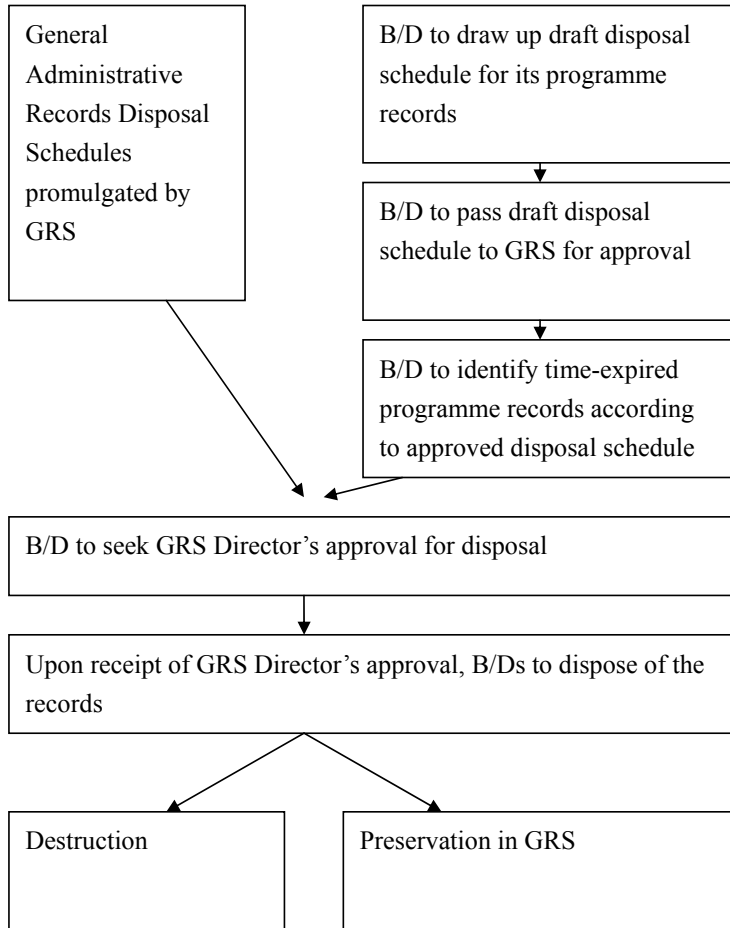
Flow Chart of Major Steps to Dispose of Records

For administrative records

For programme records

格式化: 不加底線

格式化: 不加底線



ANNEX C

Some cases involving records of B/Ds and/or public organisations that could not be traced, had not been created, or had been lost /destroyed, as found by this Office, reported by the media or discussed at LegCo in 2011 - 2013

	<i>Nature of case</i>	<i>Source</i>	<i>Gist of case</i>
1.	Unauthorised destruction of records	Hospital Authority (“HA”)	<p>Our Lady of Maryknoll Hospital informed HA on 8 Nov 2012 that it had inadvertently destroyed the paper records of 4,271 patients. The mistake was discovered on 2 Aug 2012 upon enquiry by a patient of his/her own medical record. The Chief Executive of the Kowloon West Cluster commissioned a panel to investigate the incident and made recommendations to provide training to staff and strengthen supervision of the Medical Records Office.</p> <p>The incident did not need to be reported to GRS because HA is not subject to GRS’ public records management stipulations.</p>
2.	Missing records	South China Morning Post, 4 Dec 2012	<p>At a LegCo meeting, the Secretary for Development (“S for Dev”) was asked to explain why the land leases of a number of private hospitals did not contain clauses relating to the provision of beds at low costs and investment of profits. S for Dev replied that it was difficult to answer specific questions about the land-grant requirements, since many of the relevant documents could no longer be found.</p>
3.	Records not created or missing	Hansard, Motion Debate, LegCo, 16 Nov 2011 and GRS	<p>In the 2004 inquiry of the change of land use of Discovery Bay which resulted in a loss of \$160 million in government revenue, the Public Accounts Committee found that part of the documentary records relating to the Discovery Bay development had not been created or were missing. The inquiry ultimately ended up with nothing definite.</p>
4.	Records not created	Hansard, Motion Debate, LegCo, 16 Nov 2011	<p>The Administration admitted in a number of LegCo Council meetings that it had not opened any file for keeping records of some policies, including records about indemnity paid by Government in dealing with “feng shui” matters.</p>
5.	Records not created	Leisure and Cultural Services Department (“LCSD”) and this Office’s observations upon inspection of the file records	<p>The Coroner at the Coroner’s Court in Mar 2009 found, in relation to the case of a fallen tree in Stanley that had resulted in the death of a young woman on 27 Aug 2008, that records which should have been kept on the tree concerned had not been duly created.</p> <p>According to LCSD’s Guidelines on Preservation, Protection and Maintenance of Old and Valuable Trees (“OVTs”), the responsible tree team should routinely inspect every OVT at least twice a year and produce a detailed inspection report with photos for each inspection. The respective Leisure Manager/Assistant Leisure</p>

	<i>Nature of case</i>	<i>Source</i>	<i>Gist of case</i>
			<p>Manager should conduct audit inspections at least annually and maintain audit inspection records for future reference.</p> <p>This Office observed that some of the inspections of the tree concerned only had photo records without written report and the tree inspection form was not duly completed. There was only one completed tree inspection report for each of 2005, 2006 and 2007. There was no audit inspection report during those years.</p> <p>Improvement measures to strengthen inspections and documentation were introduced after the incident.</p> <p>LCSD was not required to report the case to GRS because it was not related to loss or unauthorised destruction of records.</p>
6.	Records not created	Report of the Select Committee (LegCo) to inquire into the handling of the Severe Acute Respiratory Syndrome (“SARS”) outbreak by Government and the HA (Jul 2004)	<p>The Select Committee noted and found it unfortunate that the records of the daily informal meetings held by the Chief Executive of HA with the Cluster Chief Executives and Directors between 15 and 24 March 2003, in which important decisions might have been made regarding measures to deal with the SARS outbreak, were not documented.</p> <p>The case did not need to be reported to GRS because HA is not subject to GRS’ stipulations and the case was not related to loss or unauthorised destruction of records.</p> <p>HA subsequently set up an Emergency Executive Committee (“EEC”) on 15 Jan 2004 so that it can act for the Board and exercise its power and functions during crisis situations. All discussions of EEC are required to be recorded.</p>
7.	Lack of proper records and documentation	Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 Oct 2012, issued on 10 Apr 2013 (“The Report”)	<p>The report highlighted many of the shortcomings of the Marine Department (“MD”) in relation to recordkeeping, including:</p> <ul style="list-style-type: none"> (a) absence of any contemporaneous documentation of the genesis of the decision-making; (b) verbal dissemination of policy, short-term measures and job requirements without clear documentation; (c) important safety issues, such as ship stability, where MD documentation noted merely as “seen” rather than being carefully assessed and then approved; (d) documentation being too brief, rudimentary and not going into the heart of the issues required to be resolved; (e) a general “disconnect” between the two parts of the same safety requirement done by two different persons (i.e. plan approval by one officer and inspection of vessel done by another officer some time later), with no documentation to link the two processes and to link the knowledge of the two

	<i>Nature of case</i>	<i>Source</i>	<i>Gist of case</i>
			<p>persons; and</p> <p>(f) shortcomings in the system for checking stability calculations, which should be improved in terms of the documentation and recordkeeping.</p> <p>According to existing GRS stipulations, there is no need for the B/Ds concerned to report the case to GRS if it does not involve loss or unauthorised destruction of records.</p>
8.	Premature destruction of records	Court of Appeal Judgment of 4 Sep 2009, Immigration Department (“ImmD”) and GRS	<p>In 2003, a group of persons were denied entry into Hong Kong at the immigration counter at the Airport. Some of them who purportedly held valid multiple entry permits, sought a judicial review to challenge the Director of Immigration’s decision of refusing them entry. ImmD could not present to the court records relating to the refusal of entry, as the records had been destroyed in accordance with the Department’s usual practice. The Court of Appeal criticised ImmD’s practice of destroying relevant documents before the expiry of time for seeking judicial review.</p> <p>It was only after the case that ImmD conducted an internal review on its schedule of disposal of entry records and sought a meeting with GRS in late 2010. In February 2011, it was agreed that ImmD should keep the records relating to people who have been refused entry, for so long as they can seek judicial review.</p>
9.	Failure to keep records	Complaint received by The Ombudsman in 2013	<p>The procurement of wine by the General Office of the Chief Executive (“CE Office”) and the management of the wine inventory records were the subjects of the complaint. The complainant was aggrieved by the alleged failure of CE Office to provide all of the requested information, namely, (a) the expenditure, (b) number and (c) types of wine procured by CE Office, between 1996 and 2013. CE Office could provide only items (a) and (c), but not item (b) for the period before Jul 2012, as it did not keep the relevant statistics.</p> <p>We found, after investigation, that the failure of CE Office to provide information was not a violation of the Code on Access to Information <i>per se</i>, as the Code does not require B/Ds to create a record. However, the case involved the failure of CE Office to keep financial records as required by Government’s Standing Accounting Instructions. The financial records were administrative records and should not have been destroyed until 7 years after the end of the financial year of the last entry.</p>
10.	Failure to properly create and keep records	Observations by The Ombudsman at site visit and	<p>In Jul 2013, this Office sampled nine venues of LCSD.</p> <p>We found that two of the venues, namely, Tung Chung Man Tung</p>

	<i>Nature of case</i>	<i>Source</i>	<i>Gist of case</i>
	and failure to carry out record disposal	file checks at LCSD offices	<p>Road Sports Centre (“TCMTRSC”) and the Island East Sports Centre (IESC”), had failed to properly create and maintain records. In a file of TCMTRSC containing applications for use of the sports facilities, none of the enclosures were indexed or numbered. In a complaint file of IESC, none of the enclosures were properly numbered or indexed.</p> <p>We also found that three venues had not taken record disposal actions on their administrative and/or programme records since their respective years of opening.</p> <p>No disposal actions had been taken on both the administrative and programme records of IESC, which was opened in 2001.</p> <p>No disposal actions had been taken on the administrative records of the Tsuen Wan Town Hall, which was opened in 1980, and the Kwai Ching Theatre, which was opened in 1999.</p>
11.	Failure to manage records properly	Observations by The Ombudsman at site visit and file checks at Buildings Department (“BD”) offices	<p>In July 2013, this Office visited BD, which has 21 registries.</p> <p>We found at an office for investigating water seepage complaints that there was no system of keeping track of files sent out from the registry or received. The files were not signed out or signed in a register. As a result, there was no way of tracing the whereabouts of files.</p> <p>BD has since created a proper register of transfer of files.</p>

Annex D

Amount of records approved for destruction during 2009 – 2013 in respect of B/Ds which were relocated to Tamar in 2011

B/Ds relocated to Tamar in 2011	Total number of records approved for destruction in the year (linear metres)				
	2009	2010	2011	2012	2013
1. Chief Executive's Office	0	2.1	66.56	1.5	0
2. Central Policy Unit	0	0	29.8	0	0
3. Chief Secretary for Administration's Office (including Administration Wing and Efficiency Unit)	12.63	218.67	263.46	107.72	97.80
4. Civil Service Bureau (including General Grades Office)	9.54	282.52	492.84	132.44	95.89
5. Commerce and Economic Development Bureau (including Create Hong Kong, Innovation and Technology Commission, Office of the Government Chief Information Officer, Tourism Commission and Travel Agents Registry)	62.14	180.33	206.35	128.86	86.54
6. Constitutional and Mainland Affairs Bureau	0.05	0.01	45.65	0.99	0
7. Development Bureau	44.80	115.75	277.52	33.74	0.33
8. Education Bureau	980.00	271.96	540.22	596.4	766.74
9. Environment Bureau	14.16	2.1	7.05	0	0
10. Financial Secretary's Office (including Economic Analysis and Business Facilitation Unit)	0	0	0	3.36	6.55
11. Financial Services and the Treasury Bureau (including Office of the Commissioner of Insurance)	124.00	16.07	67.22	33.86	87.56
12. Food and Health Bureau	0.66	23.76	42.6	12.22	17.16
13. Home Affairs Bureau	7.59	10.89	53.02	15.24	41.21
14. Labour and Welfare Bureau	0	16.00	0	15.75	133.21
15. Security Bureau (including Narcotics Division)	15.57	0	178.85	66.38	53.73
16. Transport and Housing Bureau (Transport Branch)	29.63	73.01	54.95	13.1	12.26
TOTAL	1,300.77	1,213.17	2,326.09	1,161.56	1,398.98