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DRAFT PUBLIC RECORDS BILL

Long Title

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

Part I

Preliminary

Section 1 - Short Title and Commencement

- (1) This Ordinance may be cited as the Public Records Ordinance.
- (2) This Ordinance comes into operation on [].

Section 2 - Interpretation

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

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

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

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

‘archival repository’ means a building or part of a building in which archival records are preserved for access and use.

‘archives’ means an archival institution or unit with an archival repository in which archival records are preserved for access and use. It also bears the same meaning as archival records.

‘Authority’ means the Public Archives and Records Authority.

‘classified public records and archives’ means any public records and public archives which are subject to a security classification such as “Restricted”, “Confidential”, “Secret” or “Top Secret”, indicating the need for a specific level of protection based on the expected harm or damage caused by unauthorized access.

‘closed public archives’ means any public archival records not available for public access.

‘Council’ means the Archives and Records Council.

‘electronic records’ means records created, captured, generated, transmitted, processed, used or stored by computing technology.

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

‘heads of public agencies’ means the Secretary or Director or other persons responsible for directing public agencies.

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

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

‘private records’ means records other than public records.

‘public agency’ means any existing, defunct or ceased institution, body or individual funded wholly or more than 50% by public money that creates, receives or maintains records in exercising a public function or delivering a public service. It includes the Office of the Chief Executive, Office of the Chief Secretary for Administration, Office of the Financial Secretary and Office of the Secretary for Justice, the Executive Council, the Legislative Council, any District Council, any government bureau, department or office, any commission, authority, board, committee, task force, corporation, service, court, tribunal or any instrumentality exercising any function of any branch of the executive, judicial and legislative power of the Hong Kong Special Administrative Region. It also includes any organization established for a public purpose, any commission or board of inquiry ordered by the Chief Executive or the Chief Executive-in-Council, and anybody, office or institution declared by law to be a public office.

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

‘public records’ means the records created, received and maintained by a public agency.

‘recordkeeping’ means making and maintaining accurate, complete, usable and reliable evidence of business functions and transactions in the form of recorded information.

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

‘recordkeeping system’ means any information system whether manual, electronic or hybrid which captures, classifies, manages and provides for access, use, storage, maintenance and disposal of accurate, complete, reliable and usable records.

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

‘records closure period’ means the period of time during which public records and archives are not available for public access.

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

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

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

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

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

Section 3 - Purposes of the Ordinance

The purposes of this Ordinance are:

- (1) To establish the Public Archives and Records Authority.
- (2) To provide for the role of the Government Archivist in developing, supporting and monitoring proper records management practices in public agencies including making determinations on records inspection and audit, records creation, maintenance, use, appraisal and disposal of public records and transfer, preservation and access service of public archives.
- (3) To establish the Archives and Records Council which advises the Chief Executive and the Government Archivist on matters relating to public records and archives, and determines records access appeals.
- (4) To enable the Government to be held accountable by ensuring that:
 - (a) accurate, complete, reliable and usable records of public agencies are created, maintained and disposed of properly;
 - (b) public records of enduring value are identified as public archives and preserved for prompt public access.
- (5) To enhance public confidence in the integrity and reliability of public records and archives.
- (6) To promote and support safe custody and preservation of and access to archival records including private archival records that are relevant to local historical and cultural heritage.
- (7) To encourage and support archival activities and the archival community.

Section 4 - Reckoning of Time

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

Section 5 - Application

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

Part II

Establishment, Appointment and Organization

Section 6 - Establishment of the Public Archives and Records Authority

- (1) There is established by this section the Public Archives and Records Authority.

- (2) The Authority comprising the Government Archivist and staff are responsible to the Chief Executive.

Section 7 - Functions and Powers of the Public Archives and Records Authority

- (1) The Public Archives and Records Authority contributes to the efficiency, effectiveness and economy of the Government by:
 - (a) promoting, developing and implementing policies, mandatory and advisory standards, guidance and procedures for proper recordkeeping and management of public records throughout their entire life cycle from creation to final disposal;
 - (b) advising on the best practices and providing or arranging training in records management for public agencies;
 - (c) ensuring that public agencies follow the recordkeeping and records management standards and procedures issued by the Authority; and
 - (d) establishing and implementing systems and procedures for the appraisal, acquisition and transfer of public archives for preservation.
- (2) The Authority acquires, manages, preserves and makes available for access and use records acquired from public and private sources selected for preservation as public archives.
- (3) The Authority encourages and supports archival activities and the archival community in the identification, appreciation, management, use and preservation of archival heritage.
- (4) The Authority may do all things as necessary for or incidental or conducive to the better performance of its functions required by this Ordinance.

Section 8 - Appointment and Dismissal of the Government Archivist and Staff

- (1) For the purposes of this Ordinance, there is established an Office of the Government Archivist.
- (2) The Government Archivist is the head of the Public Archives and Records Authority.
- (3) The Government Archivist must possess recognized professional qualifications and knowledge, and at least 10 years relevant experience in managing public archives and records to perform the duties and responsibilities required by this Ordinance.
- (4) The Chief Executive appoints the Government Archivist by open recruitment and on recommendation of the Archives and Records Council and provides the Government Archivist with adequate resources including professionally qualified staff and funding required to perform the functions and duties required under this Ordinance.

- (5) The Government Archivist is subject to the ordinances, regulations, administrative rules and terms and conditions of services applicable to public officers.
- (6) The Government Archivist holds office for a term of 5 years, subject to renewal based on good conduct and performance and on recommendation of the Council to the Chief Executive.
- (7) The Government Archivist may be dismissed by order in writing by the Chief Executive on recommendation of the Council if the Government Archivist has acted in contravention of this Ordinance or to the ordinances, regulations, administrative rules, and terms and conditions of services applicable to public officers. A full statement explaining the circumstances of dismissal must be made at the first opportunity to the Legislative Council.
- (8) All staff of the Government Records Authority other than the Government Archivist are employed or dismissed subject to such rules and conditions of service as apply to the Civil Service.

Section 9 - Functions and Powers of the Government Archivist

(1) *Records Management*

The Government Archivist is responsible for the oversight of records management systems and practices of public agencies by:

- (a) providing professional leadership, advice, guidance and services in the establishment and implementation of records management systems;
- (b) establishing or approving standards, procedures and codes of best practice for the life cycle management of public records, and ensuring compliance;
- (c) providing or making arrangements for the necessary training of records staff in public agencies;
- (d) drawing up general records retention and disposal schedules which cover public records common to most public agencies with sufficient authority for taking the disposal action specified at the due date;
- (e) providing advice and approval for retention and disposal schedules of records specific to each public agency with sufficient authority for taking the disposal action specified at the due date;
- (f) ensuring that the provisions in the records retention and disposal schedules are implemented;
- (g) making independent decisions in authorizing the disposal of public records with regards to the purposes of this Ordinance and relevant professional standards and practices; and

- (h) conducting records research, study, review, survey, inspection and audit; providing records related services and support; recommending measures to public agencies and monitoring their performance with respect to improving recordkeeping and records management systems and practices.

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

The Government Archivist appraises and nominates records regardless of their nature, form or security grading that are identified of possessing enduring value as public archives for preservation and public access.

(3) ***Records Transfer***

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

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

The Government Archivist is responsible for the management, provision of access, safe custody and preservation of public archives. To perform these duties, the Government Archivist is to:

- (a) take charge of the Public Records Office, the central government archives;
- (b) provide the Public Records Office with professionally qualified staff and suitable facilities, equipment, supplies and conditions for the management, safe custody and preservation of and access to its archival records;
- (c) arrange and describe archival records, prepare and make available to the public appropriate records guides, lists, indexes and finding aids to all open and closed archival records irrespective of their security grading, and perform any processes to facilitate records access and access applications by the public;

- (d) ensure that reasonable equipment and facilities for services such as consultation, reference, research, copying and certification relating to archival records are available to the public in the Public Records Office or any place of deposit that the Government Archivist may appoint under section 11 of this Ordinance;
- (e) ensure that reasonable equipment and facilities are available to duly authorized officers of the public agencies that created the archival records or its successor in function for inspecting and obtaining copies of archival records; and
- (f) determine the access status of archival records under sections 17(4), 17(5), 17(6), 17(7), 18(4), 19(5) and 21 of this Ordinance.

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

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

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

The Government Archivist may do all things including having access to all public records for the purpose of facilitating the acquisition, management, safe custody and preservation of archival records and promoting their access and use according to professional standards and best practices, and any other related matters this Ordinance requires, including:

- (a) prescribe rules to be observed by those wishing to consult public archives;
- (b) prepare and sell publications relating to public archives;
- (c) organize educating activities including seminars, workshops, visits and exhibitions to promote understanding, appreciation, preservation and use of public records and archives ;
- (d) provide certified copies of public archives as evidence in legal proceedings and for other purposes;
- (e) dispose of public records in the custody of the Government Archivist if they are not of enduring value, subject to agreement by the head of the public agency in which the records were created or its successor in function;
- (f) acquire private records as public archives by gift, purchase, bequest or deposit, and dispose of those private records if they are not of enduring value subject to agreement with the private donors;

- (g) enter into arrangements with other institutions for the joint management of conservation and restoration, reprographic or other technical facilities relating to records and archives; and
- (h) provide professional and technical advice and support to the private sectors that are involved in the management, preservation and promotion of archival heritage.

(7) ***Regulations***

The Government Archivist in consultation and agreement with the Archives and Records Council may make regulations by notice of the Gazette to:

- (a) extend the records closure periods for classified archives prescribed under sections 17(5), 17(6) and 17(7);
- (b) alter the existing restrictions and exceptions or declare new exceptions from the 20-year rule prescribed under section 18(5); or
- (c) alter the existing or declare new exempted records prescribed under section 22(2) of this Ordinance.

(8) ***Annual Report***

Within 6 months after the end of each financial year, the Government Archivist must submit to the Chief Executive a report, which includes the annual report by the Council, on the functions and activities of the Authority during that year. A copy of the annual report must be presented to the Legislative Council before it is published and made available to the public.

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

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

Section 10 - Delegation of Power

- (1) The Government Archivist may delegate in writing his or her power under this Ordinance to any appropriately qualified staff in the Authority.
- (2) In subsection (1), appropriately qualified staff means full time staff who have the professional qualifications, knowledge, experience and skills appropriate to exercise the power.

Section 11 - Place of Deposit

- (1) The Government Archivist may appoint a place of deposit for specified public archives other than the Public Records Office when it appears that the place:
 - (a) affords suitable facilities for the safe custody and preservation of public archives and easy access by the public, and
 - (b) is adequately funded for the purposes in subsection (1).
- (2) The Government Archivist must inspect the proposed place of deposit and make a report of its suitability to the Archives and Records Council before appointing the place.
- (3) The management responsible for the place of deposit prepares finding aids to the public archives and submits a copy of the finding aids to the Government Archivist.
- (4) If a place of deposit fails to maintain suitable equipment and facilities or to submit a copy of its finding aids or ceases to be adequately funded, the Government Archivist may revoke the appointment.

Section 12 - The Archives and Records Council

- (1) There should be an Archives and Records Council to:
 - (a) make recommendation to the Chief Executive on the appointment, contract renewal or dismissal of the Government Archivist;
 - (b) advise the Chief Executive and the Government Archivist on the operation and compliance of this Ordinance and the work of the Archives and Records Authority which affects members of the public in accessing public archives and using the services and facilities provided by the Authority;
 - (c) determine records access appeals under section 20 of this Ordinance;
 - (d) approve altering the existing restrictions and exceptions or declare new exceptions from the 20-year Access Rule prescribed under section 18(5) of this ordinance;
 - (e) approve altering the existing or adding new exempted records prescribed under section 22(2) of this Ordinance; and
 - (f) inspect any public records and suspend records disposal in the event of a prominent or controversial matter pending or during an investigation or judicial proceedings by issuing a records freeze notice to the concerned public agencies to stop the disposal of any related records which may be required as evidence.

- (2) The Council comprises not more than 11 members including
 - (a) The Government Archivist who is not entitled to vote at the Council meeting;
 - (b) 1 member appointed by the Chief Secretary for Administration;
 - (c) 1 member appointed by the Chief Justice;
 - (d) 1 member appointed by the Director of Audit;
 - (e) 2 members appointed by the Legislative Council;
 - (f) 1 member appointed by the Hong Kong Bar Association;
 - (g) 1 member appointed by the Law Society; and
 - (h) 3 members appointed by the Chief Executive from universities or professional organizations on archives and information management, information technology, audit or related fields who have the requisite knowledge and experience in research, management, preservation, access and use of archives and records or systems and technology that make them suitable for appointment.
- (3) Except for the Government Archivist who is the ex officio member of the Council, all members are appointed for a term of 4 years and eligible for reappointment for 1 further term.
- (4) A member may resign from office by a written notice given to the Chairperson of the Council at least 1 calendar month in advance.
- (5) A vacancy in the Council must be filled by a successor appointed by the relevant authority under subsection (2) within 2 calendar months.
- (6) A vacancy in the membership of the Council does not impair the power of the Council to act. The Council appoints its Chairperson and regulates its meetings.
- (7) The Council meets as often as it considers necessary but not less than 4 times a year.
- (8) The Council may appoint advisors or establish special expert committees to study or advise on matters which facilitate its performing the functions and duties under this Ordinance.
- (9) The Council must provide an annual report of its work for inclusion into the annual report of the Authority to the Chief Executive and a copy of the annual report by the Authority must be sent to the Legislative Council.
- (10) Administrative services of the Council are provided by the Authority.

PART III

Recordkeeping and Records Management Requirements of Public Agencies

Section 13 - Creation and Maintenance of Accurate, Complete, Reliable and Usable Records

Heads of public agencies assisted by their designated staff are responsible for:

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

Section 14 - Disposal of Public Records

Heads of public agencies assisted by designated staff are responsible for:

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

Section 15 - Transfer of Public Archives

Heads of public agencies assisted by designated staff are responsible for cooperating with the Government Archivist in:

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

Section 16 - Electronic Records Management

- (1) Unless specified otherwise all provisions on public records in this Ordinance are applicable to the electronic records created, received or kept by public agencies.
- (2) Where electronic means are used by staff or members of a public agency to conduct or communicate official business, official systems and devices should be used to record the official business conducted or communicated and a copy of the complete record must be filed in the public agency's official recordkeeping system.
- (3) If a private device is used, a copy of the complete record must be provided for filing in the public agency's official recordkeeping system within 14 calendar days.
- (4) Heads of public agencies must ensure that:
 - (a) Management of electronic records are incorporated in their recordkeeping and records management activities required by sections 13, 14 and 15 of this Ordinance;
 - (b) There is adequate technical capability to ensure the authenticity, reliability, integrity and usability of the electronic records created, captured, received, communicated or stored in their office against modification, unauthorized access, deletion or technological obsolescence;

- (c) recordkeeping and records management requirements, and preservation considerations are incorporated in the planning, development or redesign, implementation and migration of an electronic recordkeeping system; and
- (d) electronic records are disposed of or transferred to the Public Records Office according to their records retention and disposal schedules or as required by the Government Archivist under section 9(1) and 9(3) of this Ordinance.

PART IV

Access to Public Archives

Section 17 - The 20-year Access Rule

- (1) No public archives are closed to public access permanently.
- (2) Unclassified public archives must be made available for public access 20 years after creation or earlier except for an express provision in an ordinance that states to override this subsection or it is a decision of the Government Archivist made under section 21 of this Ordinance.
- (3) Classified public archives must be reviewed for public access 20 years after creation or earlier by the public agency that created the records or by its successor in function.
- (4) The records creating agency or its successor in function may request the Government Archivist to extend the records closure period of classified public archives after conducting an access review if the result of which shows a continuing need for restricting public access within the requested extended period based on one or more of the following grounds :
 - (a) protection of national security;
 - (b) protection of international relations;
 - (c) maintenance of public order;
 - (d) maintenance of public health;
 - (e) safeguarding public economy;
 - (f) safeguarding of public revenue;
 - (g) safeguarding public confidence and interests;
 - (h) protection of civil and political rights of any person;
 - (i) protection of physical safety and health of any person;

- (j) protection of trade secrets;
 - (k) protection of integrity of political or administrative processes; or
 - (l) disclosure is prohibited by law.
- (5) An extension of the records closure period up to 50 years from records creation may be prescribed by the Government Archivist to public archives based on one or more of the grounds under subsections 4(c), (d), (e), (f), (g), (j) and (k).
 - (6) An extension of the records closure period up to 80 years from records creation may be prescribed by the Government Archivist to public archives based on one or more of the grounds under subsections 4(a), (b), (h), and (i).
 - (7) Extension of records closure period up to 80 years may be prescribed by the Government Archivist to public archives on the ground under subsection 4(l) if the extension is required by an express provision in an ordinance.
 - (8) Where certain parts or items in an archival record are not suitable for public access, partial records disclosure may be provided unless such disclosure makes the disclosed content misleading or unintelligible.
 - (9) Public agencies must provide justifications to the Government Archivist in a written request for extending the records closure period of classified public archives and undertake to review the records for public access in a schedule agreed by the Government Archivist. Prior written consent of the Government Archivist must be obtained before the records closure period is extended.
 - (10) Calculation of the records closure is prescribed in section 4 of this Ordinance.
 - (11) Without prejudice to subsection (8), where any public archives are bound, sewn or otherwise attached to form a bound volume, file, or other compilation, the year of creation of the latest document may be taken as the year of creation for all the records so contained.

Section 18 - Exceptions from the 20-year Access Rule

- (1) Census schedules nominated as public archives may be open for public access 100 years after creation as prescribed under section 31 of this Ordinance.
- (2) Public archives under the control of the Public Archives and Records Authority that have been published at any time or anywhere or have been disclosed lawfully to the public must be open to public inspection irrespective of their age.
- (3) Heads of public agencies may permit a third party to have full or partial access to public archives before the expiry of the 20-year closure period with prior written confirmation provided to the Government Archivist.

- (4) The Government Archivist has the discretion to withhold access under section 21 of this Ordinance or to provide access to a closed archival record having regards to the restrictions prescribed in section 17(4) and any other relevant factors.
- (5) The Government Archivist in consultation and agreement with the Archives and Records Council may by notice in the Gazette according to section 35 of this Ordinance alter the existing restrictions prescribed in section 17(4) or alter the existing or declare new exceptions from the 20-year Access Rule under this section.

Section 19 - Access Application for Closed Public Archives

- (1) Any person may apply to the Government Archivist for access to a closed archival record which is preserved in the Public Records Office or a place of deposit appointed under section 11 of this Ordinance before it reaches the records closure period irrespective of its security classification.
- (2) On request of the Government Archivist, the requested closed archival records are reviewed by the head of public agency that created the records or by its successor in function and access may be refused based on the restrictions prescribed in section 17(4)(a) to (l) of this Ordinance.
- (3) Access to closed archival records containing information which falls under section 17(4)(c) to (k) may be provided with or without conditions attached if it is considered that the disclosure is in the public interest and the benefit of disclosure outweighs the expected harm.
- (4) Where an application for access to closed public archives is refused or conditions are attached to records disclosure by the head of the public agency that created the records or its successor in function, the head of that public agency or its successor in function must provide reasons in writing to the applicant through the Government Archivist.
- (5) The Government Archivist may review any requested closed archival records for the purpose of determining their access status where no suitable records creating agency or successor in function is identified.
- (6) Finding aids and indexes to closed archival records must be made publicly available to facilitate access application.

Section 20 - Access Appeal

- (1) Appeal to a decision on access application may be made to the Archives and Records Council in writing within 60 calendar days after the applicant is notified of the decision against which he or she wishes to appeal.
- (2) The Council may confirm, vary or set aside any decision, direction or requirements in respect of the access application. The appeal decision by the

Council given with reasons in writing must be consistent with the purposes and provisions of this Ordinance.

- (3) The applicant will be informed of the decision of the Council through the Government Archivist within 60 calendar days after the appeal is received from the applicant or within the time as the Council may specify otherwise.

Section 21 - Withholding Access by the Government Archivist

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

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

PART V

Exemptions

Section 22 – Exempted Records

- (1) Sections 13(3), 14, 15, 16 (1), 16(2), 16 (4)(a) and 16(4)(d) , 17, 18, 19, 20 and 21 of this Ordinance do not apply to:
 - (a) ballot or voting papers for any elections;
 - (b) records and material acquired by public agencies by means other than transfer or arrangements with other public agencies and that form part of their permanent collections of their archives, museums, galleries or libraries;
 - (c) patient records of any hospitals and clinics operated under the Hospital Authority, the Department of Health or any public agencies;

- (d) student records, examination records and papers, research projects, papers, assignments, teaching aids and reference material of any schools, colleges, universities and teaching institutions which are defined as public agencies; and
 - (e) private records unless and until they have been become public records or nominated as public archives by the Government Archivist.
- (2) The Government Archivist in consultation and agreement with the Archives and Records Council may by notice of the Gazette alter the existing or declare new exempted records according to section 35 of this Ordinance.

PART VI

Sanctions

Section 23 - Non Compliance with Recordkeeping and Records Management Requirements, Unauthorized Removal and Destruction, Willful Mutilation of Public Records and Archives, and Unreasonable Denial of Records Access

- (1) Any staff or member of a public agency who fails to create or manage public records according to the recordkeeping and records management requirements pursuant to sections 13, 14, 15 and 16 of this Ordinance commits an offence and is liable on conviction to a fine at level 6 and imprisonment for 2 years.
- (2) Any person who removes or destroys any public records or archives without proper authorization or who willfully mutilates any public records or archives commits an offence and is liable on conviction to a fine not exceeding HK\$200,000 or to imprisonment for 3 years.
- (3) Any person who without a reasonable cause denies access to public records and archives authorized by this Ordinance commits an offence and is liable on conviction to a fine at level 5 or to imprisonment for 1 year.

Section 24 - Illegal Export of Public Records and Public Archives

- (1) Any person who exports original public records and public archives outside the Hong Kong Special Administrative Region without prior written consent of the Government Archivist commits an offence and is liable on indictment to a fine not exceeding HK\$500,000 or to imprisonment for 3 years and the records are to be put at the disposal of the Government Archivist.

PART VII

Financial Provisions

Section 25 - Administrative Expenses and Funding

The administrative expenses of the Authority are charged on a consolidated fund including:

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

Section 26 - Fees

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

Section 27 - Accounts

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

Part VIII

Regulatory Provisions

Section 28 - Legal Validity of Public Records and Archives

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

Section 29 - Copyright

- (1) Making available or providing a copy of public archives for inspection, internal processing, preservation or educational activities by the Government Archivist does not infringe any government copyright or private copyrights.

- (2) The provision of copies of public archives by the Government Archivist does not involve the transfer of any copyright to the recipients.
- (3) The publication of copies, verbatim transcripts or literal translations of public archives in which copyright of the Government subsists is prohibited except with the written consent of the Government Archivist and subject to the conditions and payment of fees as may be required by the Government Archivist.

Section 30 - Protection of Personal Data

- (1) The acquisition and transfer of archival records containing personal data to the Public Records Office or any place of deposit appointed by the Government Archivist under section 11 of this Ordinance and the use of archival records for internal processing, preservation and the provision of public access for research and statistical purposes without the data subject being identified from the results of the research or statistics do not contravene Data Protection Principles 1 and 3 of the Data Protection (Privacy) Ordinance, (Cap. 486).
- (2) To preserve authenticity and integrity of archival records, personal data in archival records before or after they are transferred to the Public Records Office or a place of deposit appointed by the Government Archivist under section 11 of this Ordinance must not be erased or blocked.
- (3) For the purpose of meeting data correction requests, a note of correction containing the verified information may be added in the appropriate place of archival records.

Section 31 - Census and Statistics Records

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

Section 32 - Code on Access to Information

Nothing in this Ordinance is construed to eliminate any right to request and obtain information from the organizations to which the Code on Access to Information applies.

PART IX

Miscellaneous Provisions

Section 33 - Private Records

Where it appears to the Government Archivist that any private records, or any part of them, are of historical importance and it is in the public interest that they be acquired,

the Government Archivist, after consultation with the owner of the private records, may acquire the records or any part of them and declare them to be public archives.

Section 34 - Protection against Civil and Criminal Liability

No action for civil or criminal liability lies against members of the Archives and Records Council, the Government Archivist or any person designated by the Government Archivist in giving access to or supplying a copy of public archives or of any act done in good faith without negligence under a requirement of this Ordinance.

Section 35 - Regulations

The Government Archivist with approval of the Archives and Records Council may make regulations and prescribe matters required or permitted by this Ordinance for carrying out or giving effect to this Ordinance.

Section 36 - Power of the Chief Executive to Give Directions

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

Section 37 - Transitional Provisions

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

Section 38 - Repeals and Amendments

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