

The Right to Information – the Right to Records

The Relationship between Record Keeping, Access to Information, and Government Accountability

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Introduction

‘...the concentration of power and the subjection of individuals will increase amongst democratic nations ... in the same proportion as their ignorance.’

-- Alexis de Tocqueville, *Democracy in America*, Part II, Book IV

The passage of access to information legislation in a country is often seen as a signal of a shift away from a culture of secrecy and concealment toward a culture of openness and transparency. Access laws are designed to promote accountability and transparency in government by providing citizens with a legally enforceable right to obtain full and accurate information about the activities and decisions of their government.

Ultimately, the success of access legislation rests firmly on the ability of governments to create and maintain – and citizens to seek out and obtain – reliable, trustworthy and accurate government records. Access to ‘information’ in fact means access to ‘records’: to the documented decisions of government and the evidence that supports and sustains public-sector work. Without effective management of the records of government, then, it is not possible to provide quality access to reliable and useful information.

When citizens seek answers using ‘access to information’ legislation, they are not expecting a public servant to provide that information verbally. They expect to receive the original records, the evidence of the decisions and actions. When a journalist asks for information about the government’s decision to construct a highway across a nature preserve, he wants to see the actual documents created during the decision-making process, not just a summary of the decision. When a doctor wants to see what information the hospital has about a patient’s medical treatments, she wants to see the patient’s actual medical records to understand previous treatments and operations, not just a description of her present health status.

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Citizens want their government to be effective, honest, open and accountable. They want to access government services easily and to have full and accurate information about publicly funded activities. And, for the most part, governments want to be efficient, effective, accountable and successful. For citizens to ensure their needs are met, they must participate in the governance process, and if governments are going to achieve public success, they must meet the needs of their citizens. Neither the government nor the governed can achieve these goals without the creation, protection and dissemination of reliable information.

Corruption thrives when citizens have limited access to information about what their government is doing. Reliable, trustworthy records are their means of determining whether revenue collected on their behalf is spent on services that benefit them. And government fails when public servants cannot access their own records and so confirm their decisions, actions, and intentions. The public's right to know and the government's need to function both rely on accountability and transparency – on efficient and effective record keeping.

Unfortunately, record keeping has long been a low priority in governments around the globe, in both the developed and developing world. Public officials and politicians often prefer to focus their energies on action and decisions rather than the record-keeping infrastructure required to support and sustain their work. But just as a building constructed without an adequate architectural and engineering foundation will soon collapse, a government that operates without an adequate information and records management foundation will soon deteriorate into chaos and, in extreme circumstances, corruption.

Record keeping and accountability are becoming even more challenging in the 21st century, as countries around the world grapple with the implementation of information and communications technologies. It has been argued that the computer has brought a more significant paradigm shift to society than any other technology since the invention of the printing press. The most dramatic change may be the way in which people, and their institutions, communicate with each other and record those communications, whether for immediate business use or for memory and posterity.

This paper examines the importance of record keeping to the protection of citizens' rights, as governments around the world consider the need for access legislation as a means of encouraging a more open and inclusive governance process. This paper considers the following essential issues:

- the concept and purpose of record keeping
- the nature of record keeping in the electronic environment
- the importance of legislative frameworks for accountable record keeping
- the importance of developing effective record-keeping systems
- the need to recognize the importance of indigenous knowledge and its relationship to record keeping.
- the challenge of accountable record keeping and relationships between the public and private sector.

What is record keeping?

The Universal Declaration of Human Rights guarantees the right of every person to a nationality, which cannot be arbitrarily removed. In the case of a specific group of Kurds in Syria, this right has been dramatically compromised. About 150,000 Syrian-born Kurds have been denied the right to Syrian nationality, after an extraordinary census in 1962 removed citizenship from 20 percent of the Kurdish population in the country, arguing that anyone who could not prove they had been resident in Syria before 1945 would not be allowed to claim Syrian citizenship.

These Kurds, who do not have citizenship in any other country, are given red identity cards, which identify them as ineligible to vote, own property, or have their marriages legally recognized. Another group of Syrian-born Kurds are not even issued identity cards and are not listed in population registers. Indeed, they are referred to as 'maktoumeen' which means 'unregistered' or 'not appearing in the records.'

Without an honest, open and accountable record-keeping system, governments can slip into inappropriate or – at worst – corrupt practices that restrict citizens' rights and, ultimately, endanger their welfare and future.²

Record keeping has been defined as

the process of creating, capturing, organizing and maintaining the records of an individual or agency.

Those records – the documentary evidence of actions and transactions, of communications and decisions – need to be managed in such a way that the information they contain is captured fully and accurately, protected for as long as it is needed, and then disposed of securely or preserved for its ongoing value, be it as evidence, as information, or as part of the historical memory of the institution, the people or the society.

The process of record keeping is aided by the professional task of records management, which can be defined as

a consistent and coherent process of managing records from the time of their creation (and before, through the design of record-keeping systems) through to the preservation and use of records for operational purposes and as publicly accessible archives.

Records are the evidence that people existed as citizens of their country and that their government acted in good faith on their behalf. Records are also evidence of a citizen's interaction with government. Without that evidence, citizens cannot protect themselves and governments cannot prove the integrity of their efforts.

² Human Rights Watch, *The Silenced Kurds*, Vol. 8, No. 4 (E), (October 1996).

In one developing country, the government's personnel records system was in complete disarray for many years. When one long-retired government employee stopped receiving his regular pension, his elderly son travelled from their home village to the capital to attempt to reinstate the payments. After six months of waiting, the son was no closer to resolving the problem, because the government was unable to find his father's personnel records and so confirm his eligibility for the payments.

In this situation, the basic process of record keeping had deteriorated to the point where – with the best will in the world – the office staff in the government department were simply unable to find the necessary information; past neglect and lack of resources had left the organization in a nearly irretrievable state of chaos.

Health care is another area where the lack of adequate records can have a directly adverse effect on the lives and well being of citizens, especially on the poor and uneducated. In many countries, hospital and health care records are incomplete, inaccessible, and poorly maintained. There are cases in which, because of the absence of records at the time of assessment of the condition, patients are given inappropriate tests, drugs or treatments. For example, multiple caesarean operations are given, at great risk to mothers, because there is no record of how many have been given before. In another example, patients are prescribed medication that is known to have an extreme adverse reaction, but this crucial information is not available to the prescriber. Similarly, sick patients are repeatedly given the same painful or uncomfortable tests because the results of previous tests are lost or misplaced.

For clinicians and health professionals working in hospitals and major health centres, well-managed medical histories are required for all patients, not only to deliver effective treatment to individual but also to provide the data from which information is extracted and aggregated for health care planning, delivery, and monitoring purposes at the local, regional, or national level.

An accountable and effective record-keeping program is critical to the successful provision of access to information to the public. Many Commonwealth countries have established or are developing effective records management programs, including Canada, Ghana, the United Kingdom, The Gambia, Tanzania, Australia, Malaysia, Singapore, and Belize.

The National Records Service in The Gambia has worked directly with the Accountant General's Department to ensure that accounting records are properly arranged, listed and stored, so that they can be easily accessed by accountants and auditors when required. The state's accountability for the management of its finances is dependent on the proper management of these records.

To achieve this goal, the National Records Service has built a new Records Centre specifically for financial records and established order and control over a mass of accounting records from previous years that had been allowed to degenerate into complete disorder. The National Records Service oversees the continued operations of the Records Centre and is charged with ensuring that such disorder does not recur.

In the same country, the National Records Service supported work to restore order to a records store maintained by the Department of State for Justice. This storage facility that contained records providing the legal source of evidence of land and property title, intestate estates, marriage, company registrations and trade marks. Prior to this work, the records were stored in such poor conditions that they were in danger of deteriorating beyond use. Had that been allowed to happen, the state's evidence of, for example, marriage registrations, leases, and trade marks would have been lost forever.

The Gambia offers only one example of the many initiatives under way in Commonwealth countries to improve their record-keeping systems, but such work is still undervalued by governments and so support – including finances, personnel, and facilities – is often very limited.

Programs such as those undertaken by The Gambia and other Commonwealth countries

- are based on effective and comprehensive legislation and regulations
- are harmonized across the institution and managed as a cohesive whole, not as a series of disparate, ad hoc systems
- follow clearly identified and formally approved policies and procedures
- are strategically oriented with the goals of efficiency and accountability in mind
- manage all types of documentary evidence, regardless of form or medium, including such diverse items as paper-based records, electronic records, visual images, maps and plans and sound and moving image recordings
- incorporate a recognition of indigenous knowledge and the culture and traditions of information exchange and record keeping in its society
- adhere to professional standards and codes of ethics for practice.

In recent years, the High Court and Magistrates Courts in The Gambia have provided a model of good practice in managing case files and court records. As records have become better managed, the judiciary has become more efficient in the delivery of justice and has laid a solid foundation for the computerization of case and court management, particularly in the High Court. Strong leadership and ownership of the reforms by the Chief Justice of The Gambia, along with the presence of a committed and well-trained Principal Registrar, have ensured that records management has been given the necessary importance in the judicial reform program.

Agencies such as the Judiciary of The Gambia experience success in electronic information management when they recognize that a first requirement of any computerization program is to define an information and record-keeping strategy that takes account of all key stakeholders and makes the business case for change.

When developing a record-keeping system, governments must consider not only the short-term challenge of creating information in response to daily activities but also the long-term requirement to protect evidence that (1) supports the decision-making process, (2) ensures the continued operation of public services, and (3) renders the government accountable to the public for its actions.

Poorly managed court records are a particularly great threat to human rights. Delays and miscarriages of justice occur because of lack of records. Again, the poor are more likely to be affected. It has been known, for example, for prisoners on remand to remain in prison for many years because the records of the charges against them have been lost or mislaid and there is no mechanism for their cases to be brought before a court.

The lack of control over the security and management of court records increases the scope for corruption, and thefts or the removal of documents, evidence, and files are common in some countries. In jurisdictions where many court records are regarded as public records, and are open to inspection by citizens, this basic right to access is denied because the records cannot be found.

Records are the basis for accountability, and in environments such as the judiciary, the protection of records is critical to the provision of justice for all citizens.

Too often, governments perceive the care of records as the care only of historical records for cultural purposes. National Archives— ideally the stewards of all the records of government – are often linked with museums and art galleries, identified as centers of culture and entertainment. While there is an essential and important public component to a nation’s public archives, it is not just a place for historical or genealogical research or a source of exhibition materials or “old” records.

A National Archives is and should be recognized as an administrative unit of government able to improve efficiency, ensure accountability and reduce public expense through the effective management of records. As noted earlier, records management is a consistent and coherent process of managing records from the time of their creation (and before, through the design of record-keeping systems) through to the preservation and use of records for operational purposes and as publicly accessible archives. While most organizations “keep” records, the active management of those records, as important information sources and as assets of the government, is critical to ensuring their reliability as evidence of actions and transactions.

The National Archives – and any archival institution – does and should manage records throughout their life cycle,

- from their creation as a tool of business and their management in the office of the records creator as a **current record**,
- to their appraisal for continuing primary value as evidence of government activities and their management in a records centre as a **semi-current record**, and finally
- to their disposal if no longer needed (as an obsolete record) or preservation as **archives** if they have enduring value.

The figure below outlines this cycle, which is a cornerstone of the effective management of records within any organization.

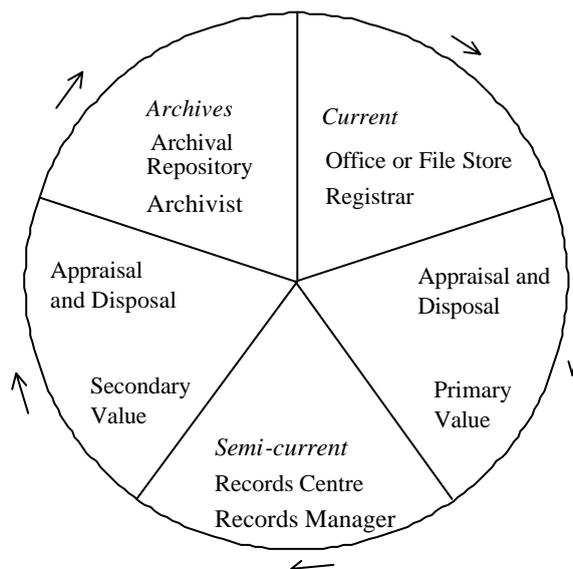


Figure 1: The Life Cycle of a Record

Record keeping in the electronic environment

The rapid development and use of information and communication technologies has transformed the way that organizations look at transparency and openness. Access to information legislation and related privacy laws have emerged in part because citizens and governments are concerned to protect their rights and document their responsibilities in an age of continual change in the process of communication and data gathering.

Information and communications technologies have also increased the speed with which records are created and used. Citizens now want access not just to records that are more thirty years old but, more often, to records that may only be thirty days old. The life cycle concept is ever more critical, as record keepers must ensure that all stages in the management of records are undertaken efficiently, as a smooth and effective continuum of care, so that access can be provided in a timely fashion.

Technological advances have also made it possible for records and information to be readily available to the public in digital form, challenging the process of managing those records even more. The ability with which governments can change computer systems, for example, means that computer-generated records may become obsolete, or the systems needed to open computer files and access information may be replaced without regard for protecting the electronic information created. The development of web-based information resources and the move to electronic government ('e-government') around the world are signs of the growing importance of computers in the conduct of government business.

In the United States, a country known around the world for the high level of computerization, electronic records have caused deterioration in record-keeping processes in some government departments. As a military historian has noted,

"The basic reason for the collapse of record keeping is that the computer and electric records were introduced into the federal workplace in the 1980s in a fashion that destroyed the old system with which I presume most readers of H-DIPLO are familiar. Before the computer every office had a typing pool. The typists made copies of their work -- first carbons, then photocopies. These were collected and filed according to the agency's rules and ultimately retired to the Archives. With the computer almost all officials became responsible for their own typing. Out went the typing pool and no other system for collecting documents took its place, whatever the regulations may say. The appearance of electronic mail has only compounded the problem in ways too obvious to require mention I will mince no words. It will be impossible to write the history of recent diplomatic and military history as we have written about World War II and the early Cold War. Too many records are gone."

Poor or non-existent management of electronic records is having a significant negative effect on the protection of human rights and the enforcement of government responsibilities in the present day, but we must also recognize the effect such neglect will have in years to come, as we have no evidence on which to understand the past actions of our governments and our societies. History and memory will be lost forever if electronic records are not managed appropriately.³

³ Eduard Mark, United States Air Force, quoted on the H-War listserv by HWar Editor David Silbey [\[mailto:hwar@comcast.net\]](mailto:hwar@comcast.net), Sent: April 24, 2003 11:17 PM, To: H-WAR@H-NET.MSU.EDU, Subject: COMMENT: Collapse of the Federal Recordkeeping System.

In her 1999 throne speech, the Governor General of Canada set out that government's clear intention to move toward an electronic environment:

By 2004, ... [Canada will be] known around the world as the government most connected to its citizens, with Canadians able to access all government information and services on-line at the time and place of their choosing.⁴

Around the world, citizens want to do more and more business electronically, and governments are responding as much as their country's resources and infrastructure allow. In many parts of the world, financial and other limitations are slowing the progress of e-government, but at the same time these countries are in the ideal position of being able to learn from the 'mistakes' of nations such as Canada and other developed countries, which continue to struggle to develop adequate mechanisms to protect electronic records.

As governments embrace the opportunities brought by information and communication technologies, therefore, they must also build national information policies and strategies. They need to address the record-keeping issues behind e-government and electronic records creation and management. They must accept the reality that the products of computer technologies – the electronic data and disks and tapes and CDs – are extremely fragile, and their life span is as yet unknown.

For example, preservation experts believe that data preserved on using CD technology has a life span of little more than 15-20 years.⁵ Magnetic tapes are easily erased and damaged and deteriorate quickly if not stored appropriately. Records preserved using one type of technology – such as 5 ¼" floppy disks, 3 ½" floppy disks, zip drives, data tapes, or optical disks, may be inaccessible if the hardware and software used to create them is no longer operational. And what government wishes to become a 'museum of technology,' keeping old computers and software running so that it can retrieve otherwise inaccessible older records? Governments need to address the real challenges of electronic records care and ensure that their systems protect information and records, regardless of the medium or technology used.⁶ With the increasing tendency to replace 'old' technology and equipment regularly, often without transferring data and records from old systems to new systems, the ability to maintain access to records and information is increasingly constrained in the digital environment.

Around the world, there is still very limited professional or technological capacity to manage electronic records, and governments seem to be focusing on immediate results and not on the strategic importance of preserving digital information over the long term.

⁴ Quoted in Ian E. Wilson, 'Toward a Vision of Information Management in the Federal Government,' Address presented to the Records Management Institute, Ottawa, Canada, November 10, 1999.

⁵ Ibid.

⁶ Interestingly, one of the most stable media available today – aside from good quality paper – is microfilm, which has a life span of up to 100 years, depending on the technology used for production.

Rather, they are focusing on the dramatic benefits of digital systems without acknowledging the very real, and very serious, challenges of protecting information and evidence in electronic form.

Without effective programs to manage electronic records, the goals of e-government may be lost. Resources will be wasted, and the inadequacies of technology will undermine the government's aims of accountability and transparency. As Canada's National Archivist, Ian Wilson, noted in 1999

I believe very strongly that if we do not exercise foresight today, we may find ourselves stepping into another crisis in the not too distant future when the information which serves as the backbone of our programs and services – information which is so dependent for its continued accessibility upon rapidly changing technology – simply won't be there. Or if it is there will be difficult to access, difficult to trust and virtually impossible to use.⁷

When electronic records are not managed effectively, the following serious consequences result.

- Records containing vital evidence are not protected against falsification or loss.
- Records and information are not migrated to new hardware and software environments and so do not remain accessible.
- Electronic records are not related to paper records in a meaningful way.
- Critical paper-based documentation may not be retained, resulting in a complete loss of organizational information if electronic systems fail.
- The authenticity and reliability of all records – paper-based and electronic – may be questioned if the management systems are seen to be flawed and inconsistent.
- The integrity of the record and its value as legal evidence is compromised.
- The administrative and operational costs of government escalate as systems have to be revised and restructured.
- The government's memory – and its ability to remain accountable to the public – disintegrates.

Without the management of all records, including the identification of valuable information, destruction of unneeded records, and protection of vital data, whether electronic or paper-based, governments simply cannot provide access to the information their citizens want or need. Thus governments cannot remain accountable for their actions nor can they be transparent in their operations. The implementation of access to information legislation without the support of effective records management programs is a recipe for failure.

⁷ Wilson, 'Toward a Vision of Information Management in the Federal Government.'

A system administrator in a sub-Saharan country, when asked about the steps to be taken to avoid problems resulting from Y2K, replied that he would simply turn off his server on the evening of 31 December 1999 and turn it on again the following morning. The country in question was one of a very few countries that subsequently admitted to having a Y2K problem. The system that stored electronic income tax records failed on 31 December 1999, rendering all computerized records inaccessible. Back up tapes had been made on a bi-weekly basis and stored in a locked office on site. However, the proprietary data format encrypted the data stored in the records. As a result, the records could not be retrieved independently from the software; data recovery experts had to be employed to extract the records. Funding from international donors had to be secured to rebuild the database of income tax records.

A whole data set for a Ministry, held in a Personnel Management Information System, was lost because of a failure to keep a back up copy. The data had to be reconstructed from paper records and staff audits.

The failure of governments to address the record-keeping issues related to automation can lead to disastrous consequences for government administration and for the protection of the rights of employees and the public.

To manage electronic records effectively, governments need to look beyond immediate technological practices to the legislative, administrative, and professional underpinnings of effective and accountable government, and recognize the long-term consequences of their action, and inaction.

Legislative frameworks

The first critical step in managing electronic records – and indeed all records – effectively is to ensure the development and maintenance of a strong legislative and regulatory framework for record keeping. Without consistency in the practice of creating, managing, and keeping records; there can be no accountable or transparent mechanisms for the provision of access to records. An essential part of this accountability is to assign to the National Archives or to the Departmental Records Office formal, legislated responsibility for the management of records throughout their life cycle.

Access legislation

Many governments around the world have implemented access to information legislation. Such legislation is critical to the establishment of accountable and transparent operations. Access legislation must state that access to government information is a right, not a privilege. The legislation should ensure that the government will not have discretion to decide what will or will not be made available, except for certain specific categories of records, such as those critical to national security. Access legislation should shift the burden of proof from citizens, who must explain why they should have access, to government, who must explain why they should NOT provide records or information.

Critical to access legislation – as with any legislation – is the inclusion of penalties for abuse, neglect or mismanagement. The Canadian Access to Information legislation, for example, was first passed in 1983. By 1998, the government realized it needed to amend the act to establish penalties for the deliberate mishandling of information. Clause 67.1

addressed in clear terms the problem of obstruction of the right to access. The clause stated that

- (1) No person shall, with intent to deny a right of access under this Act,
 - (a) destroy, mutilate or alter a record;
 - (b) falsify a record or make a false record;
 - (c) conceal a record; or
 - (d) direct, propose, counsel or cause any person in any manner to do anything mentioned in any of paragraphs (a) to (c).

Further, the revision incorporated strict and enforceable punishments for the offence, confirming that

- (2) Every person who contravenes subsection (1) is guilty of
 - (a) an indictable offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding \$10,000, or to both; or
 - (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding six months or to a fine not exceeding \$5,000, or to both.⁸

Records legislation

In the early 1990s, the province of British Columbia, in Canada, implemented wide-ranging freedom of information legislation, which encompassed not just the provincial government but also hospitals, school boards, local municipalities, and professional associations. But the government did not have in place any related records legislation that required the protection and effective disposition of public records.

In a small coastal community in British Columbia, the local hospital found itself unprepared for the implementation of the act. The head of the hospital ordered the janitor to remove the stockpile of unprocessed, inaccessible records stored in the basement and burn them. The janitor took the records to the beach and set them on fire, only to have the local fire department arrive and extinguish the fire (and charge the janitor for not having a burning permit). The halfburnt records – including extensive personal information about hospital patients – ended up being swept into the ocean and washing back up onto shore up and down the coast.

Without ensuring that records are protected by law from inappropriate management or unauthorized destruction, governments and other agencies cannot ensure that the public interest is served, even with the passage of access to information legislation.⁹

⁸ Canada, *Access to Information Act*, S.C. 1999, c. 16, s. 1; this legislation can be viewed electronically at <http://laws.justice.gc.ca/en/A-1/8.html>.

⁹ This example, and related discussion about record keeping, is discussed more thoroughly in Laura Millar, *The End of 'Total Archives'?: An Analysis of Changing Acquisition Practices in Canadian Archival Repositories* (Ph.D. dissertation, University College London, 1996).

Access legislation alone will not protect the record. Access legislation requires – or should require – that, with limited and explicit exceptions, any record created by government and still in existence will be made available to the public upon request. But access legislation does not require that any record must be created or that any record must be kept, or for how long. Without a requirement that governments create and protect records of important actions, transactions, and decisions, the public has no recourse when such information cannot be made available.

Along with access legislation, governments must develop effective and comprehensive records and archives legislation. Such legislation must define the record-keeping process and ensure that government is required to manage public information in an accountable, transparent, and effective fashion. Comprehensive and up-to-date records and archives legislation is a critical prerequisite of effective records care and, consequently, of accountable records management. Records and archives legislation establishes the infrastructure within which appropriate records and archives systems can be created and implemented.

While many governments have been implementing access legislation, however, far fewer have also revised or modernized their records legislation. Thus in many countries records legislation – often known as the *Public Records Act* or the *Public Archives Act* – is often seriously out of date. Often such legislation does not even recognize the importance of managing records throughout the life cycle, let alone address the need to manage new types of records and archives in an electronic age.

Historically archives legislation would assign to the Public or National Archives the responsibility for protecting the historical record; specifically, the institution would be charged with “acquiring, preserving, and making available” the records of government and society. Implicit in such a statement, however, was the idea that the Archives was at the end of a process; that someone else was looking after the records in offices and departments and that the records would flow, naturally and inevitably, to the archival facility for permanent retention. Traditionally, archives legislation that focused on the historical and research use of records resulted in ad hoc decisions about what is kept and what is destroyed, based on research trends or historical interests not on the needs of citizens and government.

As the quantity of paper in government offices increased, however, and as electronic information systems have come into existence, valuable records cannot be protected, and unneeded records destroyed, unless someone – ideally the professionally trained archivist – intervenes in the process of creation and identifies those records worthy of permanent retention. Otherwise, the Archives ends up either having to sort through boxes and boxes of garbage to find a few files of critical value or, worse, receiving no records at all since they have been lost or destroyed long before making their way to the archival facility.

In one developing Commonwealth country, the Records Centre has held over 10,000 linear feet of files for more than fifteen years. The records were deposited by government departments wanting to clean their offices prior to a move or needing to free up cramped office space. Records were piled into boxes in no discernible order, and cabinet minutes were found next to dog licences and extra copies of government publications.

In the absence of an effective records management program, and without legislation allowing the National Archivist to identify valuable records and authorize the destruction of obsolete files, everything in paper form was transferred to storage, in an environmentally unstable building with minimal security and limited shelving. Now the boxes are falling onto the floor and the still-unidentified records are spilling out, to be damaged by humidity, water, and insects. The Archivist will have to mount an extremely expensive and time-consuming salvage operation to rescue what small percentage of records have ongoing value, including personnel and human resources files, senior government directives, and policy statements at the highest level.

Such inattention to the evidence of government is wholly inappropriate, but without the statutory authority to ensure all records of government are protected and well managed, the National Archives is a powerless institution, a dumping ground for any manner of information, whether valuable or not, and scarce resources have to be used to clean up messes that should not have developed in the first place.

A nation's *Public Records Act* or *Public Archives Act* must define the record-keeping process and confirm that this process must be supervised by a body separate from those responsible for executing the duties of government. The National Archives, or National Archives and Records Service, is the key agency responsible for the care of records. This agency serves as an information auditor, responsible for protecting the documentary evidence that shows that a government is following the rule of law, documenting its actions in a transparent fashion, maintaining evidence of its operations and so remaining accountable to its citizens.

Countries such as Canada and the United Kingdom, which both have powerful records legislation, are able to serve the records management needs of the government while also acting as "watchdog" over the public sector's activities. Indeed, the United Kingdom has undertaken many effective initiatives, including the development of policies for the management of electronic records and the development of record-keeping standards, which provide a high level of government accountability despite the fact that the government has still not enacted its planned access to information legislation.¹⁰

¹⁰ For more information on the situation in the United Kingdom, the Public Record Office offers valuable resources. Go to <http://www.pro.gov.uk/recordsmanagement/standards/default.htm>. See also <http://www.pro.gov.uk/recordsmanagement/erecords/website-toolkit.pdf> and, on the topic of managing private office records, <http://www.pro.gov.uk/recordsmanagement/standards/privateoffice.htm>. See also the electronic records management systems evaluation scheme, developed in 2002, at <http://www.pro.gov.uk/recordsmanagement/erecords/2002reqs/2002testscripts.htm>. Also of interest is the Public Record Office's 'Electronic Records Generic Requirements to Sustain Electronic Information over Time,' available at <http://www.pro.gov.uk/recordsmanagement/erecords/generic-reqs.htm>.

In order to ensure that it can adhere to its responsibilities under access legislation, government must as a high priority undertake a detailed review of its existing records and archives legislation. Records laws must allow for

- the requirement that all actions and transactions of government be documented in an accountable fashion
- the effective and planned management of all government records throughout the life cycle and regardless of the medium or technology used for their creation
- the oversight of all public-sector record-keeping activities by the National Archives
- the application of internationally accepted standards for records care
- the development of effective internal policies and procedures for records care
- the provision of adequate physical storage and protection of records, regardless of medium
- the destruction of records only according to established schedules and only with the prior authorization of the National Archivist
- the implementation and maintenance of professional standards and schemes of service for the employment of any personnel responsible for records-related activities in government.

Without such provisions, records and archives legislation will remain limited and, ultimately, ineffective. The link between access legislation and records legislation is clear and undeniable, and governments need to take action to ensure they can protect records so that information may be made available.

Privacy legislation

Article 12 of the United Nations Universal Declaration of Human Rights states that “no one shall be subjected to arbitrary interference with his privacy.” Governments are responsible not just for making information about their actions known but also for protecting the right of individuals to their own privacy and to live a free and independent life.

People should be able to trust that their government will

- collect personal information from people only with their prior knowledge and consent
- use personal information only for the purposes for which it was collected and nothing else
- prevent the disclosure of personal information to a third party
- prevent the disclosure of personal information to other government institutions and authorities except if required by legislation

- establish mechanisms to ensure that third parties cannot have unauthorized access to private information held by government and cannot misuse that information
- ensure that information about a person is accurate and that it cannot be altered except to change incorrect information, with the knowledge and authorization of the individual involved
- protect records and information from accidental destruction or loss
- remove personal information from government records when it is no longer needed, except if it is to be retained for archival purposes
- ensure that records and archives legislation, and all other relevant legislation, adequately governs the time frames and terms under which personal information will be retained
- establish an appeals mechanism so that citizens with concerns about the management of personal information may take their case to an ombudsman or to the courts and know they will receive a fair and balanced hearing.

Access legislation often includes a privacy component, or governments may develop parallel privacy legislation. Either way, governments have a responsibility to ensure the information and records they create and collect about individuals are as well managed as any other records in their care. Again, access and privacy legislation is related directly to the creation and management of records

Other records-related legislation

In addition to laws related to access, privacy and records, governments need to examine all other laws and regulations that affect the creation, management, and preservation of records. Below is a short list of some of the key types of legislation that relate to access, records and privacy in government. Included are laws relating to

- standardization of hospital and medical practice
- provision of education
- creation and protection of information or data
- admission of evidence in a court of law
- recording of births, marriages, and deaths
- enforcement of human rights
- law enforcement, including surveillance and record keeping
- environmental protection and supervision
- Internet development and the electronic dissemination of information
- protection of copyright and intellectual property rights
- regulation of commerce and finance, including the conduct of business using electronic technologies

- registration of companies
- registration of trademarks and patents
- provision of social security services
- property transactions
- regulation of telecommunications.¹¹

One could argue that all government activities involve record keeping, and therefore all legislation will have an impact on records and information. That said, every government will have need to review its own legislation to ensure that record keeping, and therefore accountability, are adequately addressed.

Developing effective record-keeping systems

Implementing access legislation can have an enormous effect on record keeping in government. It is critical when considering access legislation that governments realize the need to develop and maintain an adequate infrastructure for record keeping and put in place measures to allow for the work to be done. When record-keeping systems are weak or unsupported, governments cannot meet the requirements for access to information. On the contrary, without quality record-keeping mechanisms,

- information can be manipulated, deleted or lost
- citizens cannot prove unequal or unjust treatment
- human rights violations are difficult to challenge
- the public cannot make an informed contribution to the governance process
- individuals cannot satisfy themselves that the information held by government about them is appropriate and correct.

The role of the records manager

The records manager is the specialist who is and should be responsible for developing and implementing such systems. The records manager – sometimes also called the record keeper and in most governments under the overall guidance of the National Archivist – is the professional responsible for setting record-keeping standards and policies, planning strategic directions, designing information systems, educating civil servants and the public about records issues, serving as auditor of public-sector record keeping activities and promoting the proper care of records across government.

The challenge in many parts of the world is that the National Archivist is not given the support he or she needs to undertake this critical work. For example, as noted earlier, the

¹¹ The Association of Commonwealth Archivists and Records Managers (ACARM) has published a study of records-related legislation in Commonwealth countries around the world. See Dagmar Parer, project coordinator and report compiler, *Archival Legislation for Commonwealth Countries* (London: ACARM, 2003), 117 pp. For more information about this publication, which can be ordered through ACARM, go to <http://www.acarm.org/activities/legislation.html>.

National Archives may be responsible for the historical records of the government but not have the mandate to oversee the process of records management; as a result, the National Archives often receives vast quantities of unsorted and unidentified records.

On the other hand, other National Archives may have the mandate for records management but may have inadequate staff resources, no storage facilities, and an inadequate budget. Some National Archives are charged with record keeping in all media but are never consulted when policies are developed with regard to information and communications technologies – the source of electronic information and records. It is extremely difficult, if not impossible, for a National Archives to ensure the security and protection of electronic records if they have no say in how those records are created or managed.

National Archivists are striving to raise awareness of the key role of information management as part of the delivery of accountable and effective government services. Success will only come in this area if governments establish an accountability framework for information management so that it is managed as a vital asset, just as information technology, personnel and finances are managed as government assets.¹²

The necessary infrastructure will include policies and procedures to develop and manage record-keeping programs across government.¹³ As United States Archivist John Carlin has noted about his country's National Archives and Records Administration (NARA),

[t]he National Archives is not a dusty hoard of ancient history. It is a public trust on which our democracy depends. It enables people to inspect for themselves the record of what government has done. It enables officials and agencies to review their actions and helps citizens hold them accountable. It ensures continuing access to essential evidence that documents

- the rights of American citizens
- the actions of federal officials
- the national experience ...

¹² A small number of articles have been written relating record keeping to accountability and access to information, particularly in developing Commonwealth countries. Two interesting contributions to the discussion are Verne Harris and Christopher Merrett, 'Toward a Culture of Transparency: Public Rights of Access to Official Records in South Africa,' *American Archivist* 57 (Fall 1994): 680-92, and Nathan M. Mnjama, 'Freedom of Information Legislation in ESARBICA States and its Implication on Records Management Practices,' *African Journal of Library, Archives, and Information Science*, 10, 1 (2000): 43-54. Also of interest is the Canadian government publication resulting from the review of the federal access to information legislation, completed in 2001. See Government of Canada, Access to Information Review Task Force, *The Access to Information Act and Record-Keeping in the Federal Government* (Ottawa: National Archives of Canada, August 2001), available electronically at www.atirtf-geai.gc.ca/paper-records1-e.html.

¹³ See Sue McKemish, 'The Smoking Gun: Recordkeeping and Accountability,' Paper presented as the keynote address at the 22nd Annual Conference of the Archives and Records Association of New Zealand, 'Records and Archives Now – Who Cares?', Dunedin, September 1998. The paper is available electronically through the Records Continuum Research Group website, at <http://rcrg.dstc.edu.au/publications/recordscontinuum/smoking.html>.

NARA ensures for the Citizen and the Public Servant, for the President and the Congress and the Courts, ready access to essential evidence.¹⁴

As Canadian records and information analyst Andrew Lipchak has noted, archivists and information specialists need a strategy to strengthen information and records management programs, so that these mechanisms accomplish the goals of good governance, accountability and transparency.

As Lipchak has argued, National Archivists need to open up channels of communication within and across government, create a shared vision of the critical importance of good records management for effective governance and generate support within government for this vision.

Once this shared vision is in place, the National Archivist then needs to build the framework for action, by

- assisting with the revision and updating of key records-related legislation
- developing infrastructures for record keeping that link operational needs with records management and the use of technology
- developing or adopting and formalizing appropriate standards, policies and practices for the care of records throughout the life cycle
- assisting with the selection of appropriate information and communications technologies and the management of the products of those technologies, in order to ensure the preservation and accessibility of electronic records over time.

National Archivists should also continue to raise awareness among civil servants and information specialists about the importance of quality record keeping, and they need to ensure that their goal of strategic records management for accountability and transparency remains a high priority throughout the public sector.¹⁵

To achieve these goals, National Archivists need senior government support for their work. Without such support, the National Archives will remain marginalized. Worse, the critical task of protecting the documentary evidence of the country, whether in paper or electronic form, will languish.

¹⁴ John Carlin, *Ready Access to Essential Evidence: The Strategic Plan of the National Archives and Records Administration 1997-2007*, at <http://www.nara.gov/nara/vision/naraplan.html>. Quoted in McKemmish, 'The Smoking Gun,' p. 12.

¹⁵ Records and information consultant Andy Lipchak has written several valuable documents on this topic. See for example 'Evidence-based Governance in the Electronic Age: A Summary of Key Policy Issues,' written in 2002 for the International Records Management Trust and available electronically at <http://www.irmt.org/evidence/policypaper.pdf>. Countries such as Australia have made record keeping a top priority; for information about initiatives in the Australian government, see <http://www.naa.gov.au/recordkeeping/dirks/summary.html>. See also the Australian standard for record keeping at <http://www.naa.gov.au/recordkeeping/rkpubs/advices/advice58.html>.

Only by ensuring that the process of records creation and management is effective, efficient, and accountable can governments ensure that they provide their citizens with an open, accessible and ‘people-friendly’ bureaucratic environment. The ultimate goal of a government should be not just to ensure access to information laws are in place and effective but – more critically – to establish a government system that is so easily accessible to citizens that such laws are only called upon in exceptional cases, not as a rule. To achieve this goal, the government must support the work of the National Archivist, the country’s record keeper.

Record keeping and indigenous knowledge

In the province of Alberta, in Canada, as in many other parts of North America, a traditional method of record keeping among native peoples for centuries was the “winter count”. Sometimes created by weaving a blanket of wool and fibres, sometimes by painting buffalo hide, and sometimes by writing on bark or cloth, the “count” was decorated with figures of animals and hunters, depictions of storm clouds or rainfall, and other images, added in stitches, beadwork, or drawings. Not just “pictures”, these images were records of weather patterns over time, of the number and type of animals caught each year, the identity of the successful hunters, and sometimes the fate of hunters who lost their lives in pursuit of buffalo or other large game. The winter count was an ongoing record – a calendar – maintained by select members of the native tribe. Often the “document” was updated over the cold months of winter, when it was not possible to hunt – thus the name “winter count.”¹⁶

Record keepers around the world also recognize the vital importance of balancing the management of recorded information with the protection of indigenous information. Many societies have other non-records-oriented ways of communicating and documenting their actions. Those traditional and indigenous processes must be acknowledged so that governments also protect the non-records information critical to understanding the citizens and their society. Such information may include oral traditions, such as those found in native cultures around the world. In some countries; totems and carvings are created to depict family lineages or historical; songs, stories, and dance are also “preserved” in many parts of the world through transmission from parents to children or from elders to villagers.

¹⁶ The National Anthropological Archives at the Smithsonian Institution in Washington, DC, is one of many institutions with extensive examples of winter count blankets. To learn more about these artifacts, see the Smithsonian Institution’s National Anthropological Archives website at http://www.nmnh.si.edu/naa/whatsnew2002_08.htm. Additional information can be found at the National Museum of the American Indian, at <http://www.nmai.si.edu/>. In Alberta, the Glenbow Museum and Archives in Calgary also holds many winter count blankets and provides information about this method of record keeping. See, for example, a winter count which has been digitized for online viewing at <http://www.glenbow.org/archhtm/winter.htm>.

In India, the traditional method for initiating the registration process for a particular university was to insert an advertisement in the national newspapers, such as The Times of India, announcing that registration was open. In the late 1990s, such an advertisement would generate about 10,000 applications from potential students around the country. In 2001, the university decided to post its announcement on the university's website, which had recently been developed and was accessible through the Internet. In response to the electronic posting, the university received fewer than 500 applications.

Without recognizing and supporting traditional means of communication, governments and other agencies risk alienating their citizens and excluding them from public processes, including the dissemination of information.

This recognition of non-documentary means of communication is critically important as electronic technologies become more pervasive in society. In many countries, particularly in the developing world, citizens do not have access to computer technologies or familiarity with such means of communication. Governments must recognize the reality of the 'digital divide' and the importance of supporting traditional communications processes. Such forms of communication need to be protected for as long as necessary to serve the needs of the citizens and ensure government operations continue to be accessible and accountable regardless of medium or technology.

Record keeping and the private sector

In Australia in June 1997, the Auditor General reported on serious deficiencies in the process involved in engaging a private agency, the Victorian Metropolitan Ambulance Service, to provide ambulance and first aid services to the public. These deficiencies led to significant financial losses to the state of Victoria and led to a police investigation into questions of corruption. The Auditor General found that the ambulance service could almost never produce key documentation supporting critical management decisions, which was a serious barrier to the audit investigation and would no doubt also be a critical impediment to the proposed police investigation.

Fortunately, the Auditor General also found that the current Chief Executive Officer of the ambulance service had initiated a range of actions aimed at improving agency's effectiveness, including the establishment of key record-keeping initiatives, such as the creation of a contracts register, the development and adoption of a contracts administration manual outlining policies and procedures for contract management, and a formal requirement for the creation and management of key records supporting the administration and financing of the service.

As more and more public-private partnerships are established, governments must ensure that citizens' rights are protected by developing standards for communication, information exchange and record keeping. Otherwise, the public interest will not be protected when private agencies take over formerly public-sector responsibilities.¹⁷

¹⁷ This case is discussed in detail in McKemmish, 'The Smoking Gun.' For a fascinating study of the ethics of disclosing personal information – created by individuals in the private sector – see Heather MacNeil, *Without Consent: The Ethics of Disclosing Personal Information in Public Archives* (Metuchen: Society of American Archivists, 1992).

Quality record keeping is not limited to the public sector. The private sector – businesses, NGOs, aid agencies, and other organizations – also create, manage and use records. Governments need to recognize the importance of protecting private-sector information, particularly when it relates to the rights of citizens and the duties of government.

For example, there is a tendency around the world today to establish public-private partnerships in the delivery of services such as construction, transportation, health care and communications. Governments have a responsibility to oversee the standards set for private sector initiatives that affect public sector services, and they also have a responsibility to ensure that the tasks undertaken remain appropriate, accountable and transparent. Thus governments must establish record-keeping policies and standards that the private sector must follow in order to remain accountable. Governments should also ensure that citizens have a right of access to this private-sector information if and when it affects citizens' rights and public services. Sometimes access to information covers private sector organizations, such as in South Africa, but sometimes these private records are not protected for public accountability.

Conclusion

'Libraries, archives, museums and cultural institutions throughout Bosnia have been targeted for destruction, in an attempt to eliminate any material evidence ... that could remind future generations that people of different ethnic and religious traditions once shared a common heritage in Bosnia. The practitioners of ethnic cleansing are not content to terrorize and kill the living; they want to eliminate all memory of the past as well.'

Andras Riedlmayer, 1994¹⁸

The success of any government's relationship with its citizens depends on ensuring their needs are met and that the citizen-state relationship is based on mutual trust and respect. Public servants are stewards of information, not keepers of it. Writing about government accountability in the United States, American analyst Robert S. Barker noted that

Accountable government depends ultimately on responsible citizens or, more precisely, responsible voters, who take public affairs seriously, inform themselves about the issues and the candidates, debate vigorously, vote regularly, and have the moral sense to distinguish right from wrong. Reporting and disclosure requirements and open-meeting laws have their place, but they are meaningless to a complacent, cynical or self-indulgent citizenry. Accountability, like liberty, requires eternal vigilance.¹⁹

¹⁸ 'Killing the Memory: The Targeting of Libraries and Archives in Bosnia-Herzegovina', *Newsletter of the Middle East Librarians Association*, No. 61, Autumn 1994.

¹⁹ Robert S. Barker, 'Government Accountability and its Limits,' *Issues of Democracy, An Electronic Journal of the US Department of State*, 5, 2 (August 2000). Available electronically at: <http://usinfo.state.gov/journals/itdhr/0800/ijde/ijde0800.htm>

The power of citizens comes from their ability to work constructively with their democratically elected government, and from their right to question government actions and their belief that their questions are heard and their concerns recognized.

Ultimately, then, the strength of a society is drawn from its ability to create a respectful and constructive sense of identity, where the government and the governed work together to create a successful community. Such strength comes from an honest remembrance of the past and a positive, cooperative, approach to the future. Records – the foundation of knowledge in so many societies in the world – are the cornerstone for the construction of that honest, respectful memory.

A government that is able to create, manage, protect, disseminate and use records and information effectively will create an environment in which

- citizens can ensure that their human rights are respected and upheld
- citizens have access to information about government activities
- citizens can question decisions in an informed manner
- governments can find crucial information easily and quickly
- citizens can place information about government activities in context, so a full understanding of events is possible
- governments can demonstrate the process involved in decision making and so remain accountable
- citizens can help ensure that public services are delivered efficiently and adequately
- governments and citizens can investigate and redress any alleged abuse or mismanagement
- governments can demonstrate compliance with international agreements on human rights
- the nation can preserve its memory and identity.

Records are a critical asset of government. They can be fragile and mutable, but ultimately they are a precious resource – the heart of society's memory of itself.