

EXECUTIVE SUMMARY

Direct Investigation Public Records Management in Hong Kong

Background

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

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

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

Our Findings

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

I. Lack of legal backing

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

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

II. Lack of effective measures to ensure compliance

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

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

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

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

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

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

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

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

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

III. Limited coverage of current regime

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

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

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

IV. Workload and staffing

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

V. Lack of transparency

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

VI. Need for review regarding records closure and disclosure

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

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

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

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

VII. Failure to manage electronic records

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

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

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

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

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

Our Recommendations

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

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

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

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

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

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