



INTERNATIONAL COUNCIL ON ARCHIVES
CONSEIL INTERNATIONAL DES ARCHIVES

GUIDELINES

ICA / CLM

Principles for Archives and Record Legislation

DRAFT

2004

In this publication unless the context otherwise refers –

“access” includes the meaning of access and use

“archives” includes records and documents appraised to have enduring value for permanent preservation. It may also mean the organization responsible for managing archives and/or records.

“documents” and **“records”** carry the same meaning as recorded information generated in business activities that are kept as evidence of the activities.

“National Archives” refers to a national organization with the authority to take care of archives and /or records

“public records”, **“state records”** and **“official documents”** have the same meaning indicating those records created, received and maintained by government agencies or other institutions within the public domain as opposed to private records from non-government agencies, institutions, families or individuals.

“state” is equivalent to a country as a political entity

PREPARED BY

The ICA Committee on Legal Matters 2000-2004 – Adopted ??? and approved by the Annual General Meeting of the INTERNATIONAL COUNCIL ON ARCHIVES (ICA) of ????

DISTRIBUTION

Principles for Archives and Records Legislation is distributed free of charge to all members of the ICA. It is made available through the ICA web site www.ica.org.

COPYRIGHT

© International Council on Archives, 60, rue des Francs-Bourgeois, 75003 Paris, France.

REPRODUCTION & TRANSLATION

Reproduction by translation or reprinting of the whole or of parts for non-commercial purposes is allowed on condition that due acknowledgement is made.

Table of Contents

1. Introduction
2. Archives Legislation or Records Acts
3. Definition of Records and Archives
4. Scope
5. Inalienability and Imprescriptibility of Public Records and Archives
6. Records from the Private Sector
7. Establishment, Responsibilities and Structure of the Archives Institution
8. Advisory Body
9. Reporting Responsibility
10. National Archival Coordination
11. Records Management
12. Appraisal and Disposal
13. Transfer of Archives
14. Arrangement and Description
15. Access
16. Preservation
17. Sanctions

1. INTRODUCTION

Legislation is a set of binding principles and rules stipulated through formal mechanisms to grant power, confer rights and specify limits that regulate the conduct and behaviour of a society. Archives and records legislation establishes the legal and administrative base that allocates functions, power and responsibilities among accountable bodies within the country, and expresses the rights and expectations of citizens with respect to recorded information and documentary heritage.

Archives legislation provides the mandate of the archival authority, sets out the rules for its operation, defines what part of the collective memory of the country should be retained and preserved, and for whom and under what conditions the preserved records could be made available. Although some may argue that legislation does not necessarily ensure compliance, without the elements of an archival authority being clearly established by law, the identification, preservation and access to archival heritage will not be certain.

The varied history, legal tradition and experience in different countries have no doubt created differences in the content, interpretations and applications of archives legislation. However, we all have the same need for clear, updated and workable legislation to protect and provide access to archives, and to cater for new development and changes such as technological innovations, new social or business orientations and new records related laws that have competing priorities and emphasis.

This publication is an update of a document which bears a similar title prepared by ICA/CLM in 1996. It is written as a response to the rapid growth of electronic records and information, the heightened demand for government transparency and ready access to recorded information, and the enactment of various new records related legislation in many parts of the world. Despite the changes taken place, the author assumes that it is the shared mission of every National Archives to ensure the creation, identification and preservation of authentic, reliable and usable records of enduring value, and make them accessible to the largest possible extent according to the interests of the country and its citizens. The archival principles to be discussed in the following paragraphs aim to give effect to this shared mission.

Although the focus of the publication is succinct archives legislation addressing the fundamental issues essential for establishing and maintaining a national archival authority, many of the archival principles outlined are of general application to public archives at provincial level. Each country, having regard to its own history, legal tradition, administrative culture and social and political reality, may have its own ways to achieve the entirety or part of these archival principles. Whether in reviewing existing archives legislation or drafting a new law, it is recommended that only the essential principles and practices should be firmly stated in law. The more flexible and easily amended regulations and policy directives may be used to facilitate interpretation and application of the law.

2. ARCHIVES LEGISLATION OR RECORDS ACTS

A country may choose to tackle issues relating to records and archives in a single piece of legislation or in several laws but the statutory provisions and definitions should always be clear and consistent.

Archives legislation is closely associated with the management of current records and decisions about their creation, maintenance, access and disposal. This is especially true in dealing with electronic records whose authenticity, reliability, usability and durability hinge upon proper system planning even before the records are created, and their sound management throughout the life cycle. A country may choose to tackle issues relating to records and archives in a single piece of legislation or in several laws. Some may extend the mandate of the National Archives to include certain management aspects of records in their active stage. Others may prefer an integrated approach by establishing a National Records Administration with jurisdiction over the management of records in continuum. Regardless how the legislation is shaped, the factors to be addressed demand clarity and consistency. Moreover, to ensure that the archives legislation is accurately interpreted, it should include clear definitions of all the technical terms used.

3. DEFINITION OF RECORDS AND ARCHIVES

There is no single definition for records and archives. These terms must be defined and used without ambiguity in the archives legislation, and they must also be compatible with other related law.

Legislation may make a distinction between records and archives. Records may sometimes be synonymous with documents. In some countries, records are defined as recorded information regardless of its form or medium created, received and maintained by an agency, institution, organization or individual in pursuance of its legal obligation or in the transaction of business that they take part or as evidence of such. Archives may refer to records under the control of the authority designated by the archives legislation or as records selected for permanent preservation because of their continuing value. A generic term may sometimes be used for both records and archives with a distinction made between current and historical records.

Examples

Whenever records and documentary material are mentioned in this Act, it refers to any kind of records, written as well as in any other form, which contain information and have their origin in the functions performed by an institution or an individual, whether written records, maps, plans, photographs, films, slides, sound recordings, machine-readable material, tapes or any parallel material. (Iceland, Section 3)

Les archives sont l'ensemble des documents, quels que soient leur date, leur forme et leur support matériel, produits ou reçus par toute personne physique ou morale, et par tout service ou organisme public ou privé, dans l'exercice de leur activité. La conservation de ces documents est organisée dans l'intérêt public tant pour les besoins de la gestion et de la justification des droits des personnes physiques ou morales, publiques ou privées, que pour la documentation historique de la recherche. (France, Section 1)

Public records”, “state records” and sometimes, “official documents” are used interchangeably in archives legislation indicating those records created, received and maintained by government agencies or other institutions within the public domain as opposed to private records from non-government agencies, institutions, families or individuals. As the right and ways of access to records and archives often depend upon how these terms are defined in the legislation, consistent and clear definitions are essential, and as far as possible, they should also be compatible with the terms used in related laws.

The definition of a public or state record under an archives legislation should meet the essential criteria of provenance, purpose and value. It should cover recorded information created, received, and maintained by a government organization or any organization performing public functions and services on behalf of the government as evidence of such functions and services. It should preferably include any aids and supplementary data necessary to understand and use such information. An enumeration of different kinds of documents that are considered to be records/archives may illustrate, but not replace a proper legal definition. The definition needs to remain valid regardless of the form or medium of the record. An enumeration of possible forms of a record tends to become obsolete when technology develops a new media.

Example

“Records” included all books, paper, maps, photographs, machine readable materials, or other documentary materials, regardless of physical forms or characteristics, made or received by an agency of the United States Government under federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legislative successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government because of the informational value of the data in them.” (US Federal Legislation)

Document in the meaning of this Act shall be recorded information, regardless of medium, received or produced in the performance of the public duties of the Confederation, and all aids and supplementary data necessary to the understanding and use of such data. Archives shall mean documents taken into safe-keeping by the Federal Archive or independently archived by other bodies according to the principles of this Act. (Swiss Federal Act, Section 1)

4. SCOPE

Archives legislation must define the scope and extent it applies. Apart from government bodies, consideration should be given to include organizations that perform public functions.

Legislation must define the scope of the bodies to which it applies. Legislation for records or archives should make clear whether it covers all the bodies of the government with or without exceptions that discharge the legislative, judicial and administrative functions of the country, and if it also extends to include public corporations, quasi-government agencies and others that perform public functions. For the latter, a further elaboration of the scope of the public bodies and quasi government agencies should be included. Further, provisions to include dissolved public institutions and the extension of statutory control to new public bodies should also be considered.

Example

Records in any form whatsoever received or created by an administrative authority...or by an institution or person whose rights or duties have passed to an administrative authority...(and an) administrative authority is an organ of a legal person established under public law, or, any other person or body in whom or in which some public authority is vested. (Netherlands, Section 1)

In the legislation of the United Kingdom, public bodies included, “their staff, together with public services, enterprises and institutions and their respective staff” and “public bodies before or after the entry into force of this Act”. The specific inclusions provide clarifications of the definition of public record and the breadth of the law. Sometimes there may be a need to exclude from the legislation certain bodies or certain records. These should be clearly specified in the legislation.

Another important consideration is how easy it should be to extend the coverage and exclusion under the legislation, and how it should be carried out. If it is the intention to alter ambit in the future without resorting to amending the legislation or enacting new laws, the legislation should provide a mechanism to include and exclude bodies and records that it intends to cover.

Examples

A Commonwealth institution, or a person having to act on behalf of a Commonwealth institution, may, with the concurrence of the Director-General, determine that a Commonwealth record, or each record in a class of Commonwealth records, being a record or class of records in the possession of the Commonwealth institution or relating to the functions of the Commonwealth institution is

a record that is not required to be transferred to the custody of the Archives under section 27; or

(a) a record to which the Archives is not to be entitled to have access under section 28 or is not to be entitled to have access under that section otherwise than on specified conditions to be observed by the Archives... (Australia, Section 29)

Without prejudice to the Lord Chancellor’s power of making orders under paragraph 4 of this Schedule, Her Majesty may by Order in Council direct that any description of records not falling within the foregoing provisions of this Schedule (not being Welsh public records) as defined in the Government of Wales Act 1998) shall be treated as public records for the purpose of this Act but no recommendation shall be made to Her Majesty in Council to make an Order under this sub-paragraph unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament. (United Kingdom First Schedule Section 7(1))

5. INALIENABILITY AND IMPRESCRIPTIBILITY OF PUBLIC RECORDS AND ARCHIVES

The National Archives should have the right to inspect, replevin, recover and instruct protection of public records which are or believed to be estrays through an established mechanism.

Public records and archives of a country should be taken as public property in the public domain through a process governed by law. Records and archives relinquished from official custody without lawful authority or if the authority is subsequently revoked should not lose their quality as public property. The National Archives should have the right to inspect, replevin, recover and instruct protection of public records which are or believed to be estrays. It may be useful to include provisions for reproduction of estrays where return of records is not feasible.

Given the world-wide trend of privatization, corporatization and outsourcing of government functions and services, archives and records legislation may require explicit records disposal before such administrative or organizational changes to ensure that the records created before such changes retain their public nature unless provided otherwise in law. Some legislation incorporate provisions that prohibit or impose control on the export of records that are considered to be or have been archives in the legislative framework concerning cultural property. In short, it is important for the National Archivist to be given the right and a mechanism to “declare” or “schedule” records he or she considers to be or have been public archives with retrospective effect and take appropriate recovering or protection measures.

Example

Les archives publiques sont insaisissables, inaliénables et imprescriptibles.
Lorsqu'il est établi que des archives sont d'origine publique et détenues par les personnes physiques ou morales, l'Etat les revendique sans limitation de temps. (Algeria, Section 6)

6. RECORDS FROM THE PRIVATE SECTOR

The National Archives should be given responsibility and flexibility to acquire archives from private sources for proper preservation or to enrich its collection through legal means.

Archives legislation should identify the responsibility of the National Archives for the acquisition and care of private records that warrant permanent preservation. While the responsibilities may or may not be extensive, the National Archives should be given the flexibility to acquire records from private sources for proper preservation or to enrich its collection through legal means. The degree to which the National Archives acquires private material partly hinges on the division of collecting responsibilities among cultural institutions in each country. The manner in which the archives legislation is exercised may also be affected by the kind and extent of intervention in the private economy chosen by each government. Regardless, the archives legislation should encourage communication and cooperation to preserve private records of national, regional and local significance.

Archives legislation in some countries impose explicit controls on private archives that are of main public interests. While such controls may not affect ownership, the goal is to ensure proper preservation and thus the owner may not be allowed to destroy, change or export the archives without approval of the National Archives. Sometimes, the National Archives may have the right or the priority to either copy or buy the archives at a price fixed by the owner if the latter has the intention to export the archives.

Example

"Private archives or records (...) may, by agreement made with the owner, be accepted for preservation and maintenance with the National Archives. (Finland, Section 20)

7. ESTABLISHMENT, RESPONSIBILITIES AND STRUCTURE OF THE ARCHIVES INSTITUTION

Archives legislation should provide for the establishment of a National Archives with clear mission and broad functions that enable it to play a key part in making policies for and management of records throughout their entire life cycle.

Archives legislation should provide for the establishment of a National Archives and state its mission and major functions in acquiring and preserving the society's documentary heritage and making it available for public access and use. With the increasing reliance on electronic records in documenting decisions and conducting business transactions, the need for establishing a close link between the National Archives and records creators, managers and users is becoming more imminent than ever.

To ensure that adequate, reliable and authentic records are created, maintained and preserved, and to avoid duplication in management efforts, the National Archives should participate, at the front end, in planning, policy-making and developing the infrastructure of electronic records and information systems, and implementing appropriate recordkeeping rules and practices. The collaboration or integration of records management and archival activities is sometimes effected through restructuring or extending the role of the National Archives to become a National Records Administration with jurisdiction over records throughout their entire life cycle.

Regardless of how the National Archives is structured, it must play a key part in the overall management of records and information of the public administration. Its mission statement in legislation should be comprehensive and broad with the major functions listed to spell out the mission without limiting the mandate. A too detailed enumeration of specific functions and responsibilities may restrict the evolution of the archives as the environment changes.

The formal authority to take action on professional issues about archives and records should be vested with the senior professional, usually the National Archivist, acting under the overall constitutional responsibility of the government represented by a Minister or higher. The mandate of the National Archivist should include not only areas of acquisition, preservation, access and use of archival records but also the creation and maintenance of adequate, accurate and usable records in agencies covered by the archives legislation.

Although it is not the task of the archives legislation to define internal organization or detailed administrative arrangements, it is essential that the legislation authorizes the appointment of the head of the National Archives and defines the statutory duties and responsibilities. To ensure quality management of archives and records, the recruitment, training, promotion and the professional qualifications of middle and senior archivists, and the classification of records staff both in the National Archives and working in government agencies should be addressed in specified regulations or staffing standards.

Examples

The objects and functions of the National Archives of Canada are to conserve private and public records of national significance and facilitate access thereto, to be the permanent repository of records of government institutions and of ministerial records, to facilitate the management of records of government institutions and of ministerial records, and to encourage archival activities and the archival community. (Canada, Subsection 4.1)

The Authority (State Records Authority) has the following functions:

- (a) to develop and promote efficient and effective methods, procedures and systems for the creation, management, storage, disposal, preservation and use of state records,
 - (b) to provide for the storage, preservation, management and provision of access to any records in the Authority's possession under this Act,
 - (c) to advise on and foster the preservation of the archival resources of the State, whether public or private,
 - (d) to document and describe State archives in their functional and administrative context,
 - (e) such other functions as are conferred or imposed on the Authority by or under this Act or other law.
- (New South Wales, Section 66)

8. ADVISORY BODY

An advisory body may be created to strengthen relationships with the government and private groups to ensure that the National Archives remains responsive to public needs

The archives legislation should permit the National Archives to create an advisory body that is useful in strengthening relationships with public and private groups that have an ongoing interest in the growth and development of the National Archives. Responsibilities of the advisory body should not go beyond the provision of advice as the direct responsibility and accountability of the National Archives is to the state of which it is a part. The primary role of the advisory body is to ensure that the National Archives remains responsive to the community.

9. REPORTING RESPONSIBILITY

The National Archives should be established within the main stream of public administration under an influential minister or above to lead and control records and information management in departments and agencies.

Modern National Archives are accountable for the selection and preservation of relatively recent records of the country and they also have a central role in managing current records. Thus the archives legislation should place the National Archives within the main stream of government departments and agencies under the jurisdiction of an influential minister or above with suitable authority to lead and control records and information management across the government. It should enable the National Archivist to intervene directly with the heads of other departments and agencies. Placement of the National Archives outside the government or as a purely cultural institution may not be desirable as it will not involve the archives adequately in the ongoing programs and decision-making of the government.

Examples

The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. (US Federal Legislation, Section 2103)

The Lord Chancellor may appoint a Keeper of Public Records to take charge under his direction of the Public Record Office and of the records therein and may, with the concurrence of the Treasury as to numbers and conditions of service, appoint such other persons to serve in the Public Record Office as he may think fit. (United Kingdom, Subsection 2.1)

The National Archivist of Canada shall be appointed by the Government in Council and shall have the rank and salary and all the powers of a deputy head of a department. (Canada, R.S., c.1(3rd Supp). 3(2))

10. NATIONAL ARCHIVAL COORDINATION

National Archives should be given a leadership role within the community of archival institutions, both inside and outside governments (public and private sector) to facilitate the development of a national archival system or network.

Legislation regulating a national archives system should take into account the structure of the country and the degree of autonomy enjoyed by different authorities within the country. In some circumstances, there may be the need to establish by law a coordinated national system where public archives services are linked to different levels of government, central, provincial or municipal, etc. Provisions enabling the National Archives to play a leadership role within the community of archival institutions, both inside and outside the government should also be considered. These will facilitate the development of a national archival system or network that facilitates information exchange and policy implementation.

Example

Au cadre de l'activité du Directeur Général des Archives de l'Etat appartient la coordination de l'activité archivistique sur le territoire de l'Etat. (Poland, Section 21)

11. RECORDS MANAGEMENT

Archives legislation should direct the National Archives to develop, approve and review advisory and mandatory standards and regulations for adequate and accurate recordkeeping in departments and agencies, and audit their management of records from creation to ultimate disposition against mandatory requirements to ensure authenticity, integrity and usability.

The quality of a record, regardless of its physical form, depends to a large extent on how it was generated and maintained by the records creating agency. Archives legislation should direct the National Archives to develop, approve and review advisory and mandatory standards and regulations for adequate and accurate recordkeeping and other management functions of records from creation to ultimate disposition to ensure their authenticity and integrity and usability.

The prominence of electronic records with their inherent physical attributes is an important factor requiring legislated authorization for the above. To ensure the ongoing preservation and accessibility of electronic records through time, the requirements of archival functions must align with the recordkeeping requirements even before such records are created. Without proper management and control of records at the front end of their life cycle, their authenticity, reliability, usability and durability cannot be assured, and those of archival value will not be readily identified and safeguarded.

The delivery of advice and instructions from the National Archives may be through other central agencies of the government, but the role of the National Archives in establishing standards and regulations for records held by public administration should be granted in law. Further, the archives legislation should establish the authority and role of the National Archives to inspect, instruct, and report on the creation, maintenance and use, retention, and disposal of records held by the public administration to ensure compliance with the mandatory records standards and regulations. It is useful to clarify the role and responsibilities of other government agencies or bodies covered by the act in respect of records management.

Examples

The Director shall conduct research and studies, develop and establish standards and procedures, for record making and record keeping, selective retention of records, scheduling of records for disposal, storage, security and preservation of records and their retirement to records centre or the National Archives. (Nigeria, Subsection 8.3)

The Federal Archives shall advise Federal agencies designated in paragraph 1 on the management of their records. (Germany, Subsection 2.10)

Each public office must make and keep full and accurate records of the activities of the office. Each public office must establish and maintain a records management program for the public office in conformity with standards and codes of the best practices from time to time approved... (New South Wales, Section 12 (1) and (2))

12. APPRAISAL AND DISPOSAL

Archives legislation should stipulate that no public records should be transferred, migrated, altered, deleted or destroyed without the consent of the National Archives. The respective roles of the National Archives and government departments in appraisal and appropriate disposal of records should be defined and the ultimate authority specified.

All archives legislation should define the respective roles of the National Archives and the various government departments for continuous appraisal and appropriate disposal of records. The latter should involve not only destruction of records but also their transfer (custody and/or ownership) within and outside government jurisdiction, migration, alteration and deletion. The legislation should specify the objectives and formal responsibilities for records appraisal and disposal, and define the ultimate authority for these functions, which preferably should rest with the National Archives or the authority responsible for the National Archives. Archives legislation should unequivocally oblige all the records creating bodies it covers not to dispose of such records without the consent of the National Archives.

Examples

No record under the control of a government institution and no ministerial record shall be destroyed or disposed of without the consent of the Archivist. (Canada, Subsection 5.1)

The Federal Archives, after consultation with the offering agency, shall decide on the permanent value of the documents for the research in or the comprehension of German history, the protection of the rightful concerns of citizens or the provision of information for legislation, administration or jurisdiction. (Germany, Section 3)

The law may also specify particular types of records which are not to be eliminated, for example records dating from or before a certain date.

13. TRANSFER OF ARCHIVES

Legislation should require government agencies and public organizations to timely and systematically transfer archival records to the National Archives or relevant institutions as the National Archives directs. The National Archives may assume the role for the proper management, control and preservation of archival records regardless of their custody.

Archives legislation should require that government agencies and public organizations it covered, in due course, to transfer archival records to the National Archives or relevant institutions as directed by the Archives. Exemption for certain departments or certain types of records from the normal transfer arrangement may be included as necessary for reasons of costs, technology, statutory provisions or long-term operational needs, etc.

Systematic transfer of records of permanent value to the National Archives or organizations it designates should be accomplished according to agreed retention periods and transfer dates, and methods and rules prescribed by the archives. It may not be practical to require records transfer according to a fixed period of years after records creation because of the rapidly evolving environment surrounding records creation and use. The timely transfer and preservation of electronic records has become particularly important because of the fragile nature of the medium on which such records are maintained and the necessity of acquiring related information that permits use of the records.

Examples

Upon the conclusion of a President's term of office, the Archivist of the United State shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. (US Federal Legislation, Section 2203 f.1)

Documents shall be deemed no longer constantly required and hence must be offered to the Federal Archive... no later than ten years after the last addition to the records. Special categories of documents shall be... transferred immediately after drafting or signature... The Federal Archives' instruction shall govern the details. (Swiss Federal Act, Section 2)

Le Conseil superieur des archives decide souverainement du transfert aux Archives historiques nationales de tous les documents qu'il juge avoir une valeur historique, qu'il s'agisse d'un ministere ou d'une autre administration publique. (Egypt, Section 5)

Further, if an agency covered by the archives legislation is defunct and the functions have not been transferred to an ongoing institution, it should be clear that the archival records of the defunct agency should be appraised by the National Archives for transfer arrangement. The legislation may also provide for the proper management, control and preservation of records appraised to have permanent value by the National Archives whether or not they are to be transferred to the National Archives or its designated places.

Example

The Archivist shall be entitled from time to time to inspect any public records that are for the time being in the possession or under the control of any Government office and give such instructions as to their safe preservation and such advice as to their efficient and economical administration and management as he considers necessary. (Fiji Islands, Section 9)

14. ARRANGEMENT AND DESCRIPTION

The National Archives should be given the leadership in developing and promulgating archival arrangement and description standards.

The National Archives should be assigned a leadership role in developing and promulgating arrangement and description standards for the management of archives regardless of physical medium to facilitate their access and use. Detailed provisions are often left to regulations, instructions or internal manual.

Example

The National Archives may issue regulations concerning...archives descriptions and archives inventory... (Sweden, Section 11)

15. ACCESS

Access to public records, subject to prescribed conditions and exemptions for the protection of privacy, copyright and official secrets should be granted as a right preferably in a single legislation. Restrictions to record access should not be forever. A specified authority may grant exceptional access to closed records or change the closure period.

The freedom and liberty of access to records, subject to prescribed conditions, should be provided in legislation as a right of every citizen, and foreigners may have equal access right. It will be desirable to have a single legislation or a single set of regulations that governs access to all official records including archives throughout a country. If such cannot be achieved, the archives legislation should take into account existing legislation on access to information, protection of privacy, data protection, and copyright with the aim to establish clarity and certainty, and ensure no erosion of access rights already exist. If the archives legislation does not override conflicting provisions in other laws, it will help to have the provision that allows the archives legislation to prevail unless there is express repeal or specific action taken to avoid that result.

Access consideration should not determine the institutional location of records or their transfer dates to the archives. The same access conditions should preferably apply whether they are archives under the control of the National Archives or they are current records under the control of other departments and agencies of the administration.

While access may be refused in circumstances where archival records are in bad material condition, for protection of national security, public interests and privacy or in respect of individual donor agreements, such restrictions, however, should not last forever. Different categories of records may require a different access date, which may be based on a certain fixed time period after record creation/closure or other criteria. Legislation should promote access at the earliest possible date according to the impact of release and the attached conditions, if there are any, on the use of the information contained.

The archives legislation should also specify the authority that may grant exceptional access to closed records or decide upon extending closure for an exceptional longer period. It may be vested with the authority responsible for the archives and/or delegated to the National Archivist. This power should be exercised within a process that provides a further opportunity for citizens to appeal the decision. Legislation on access must be developed and implemented with a balance that ensures that records continue to be created, preserved and available for use.

The archives legislation should establish provisions concerning copyright in records held by the National Archives if no equivalent provisions exist in the copyright law. Such provision should permit the National Archives to make the records available for inspection and to provide copies for research and study without breaching private copyrights that may subsist in them.

Examples

In order to encourage the free interchange of opinion and the enlightenment of the public, every Swedish subject shall have free access to official documents. The right of access to official documents may be restricted only if restriction is necessary having regard to (exceptions)... (Sweden, Sections 1 & 2)

Tout fonctionnaire ou agent charge de la collecte ou de la conservation d'archives en application des dispositions de la presente loi est tenu au secret professionnel en ce qui concerne tout document qui ne peut etre legalement mis a la disposition du public. (France, Section 2)

Documents which already in the public domain before transfer to the Federal Archive shall remain in the public domain. (Swiss Federal Act, Section 3)

16. PRESERVATION

Legislation should recognize the role of the National Archives in proper preservation and conservation of archival records by providing it with appropriate resources, equipment and facilities, and allowing it to prescribe necessary standards and instructions to government or public offices.

Preservation should be defined as one of the most basic functions of the National Archives in storing and protecting archives to ensure their authenticity, reliability, usability and durability. Proliferation of electronic records and their susceptibility to easy modification and erasure has made the task more complicated than ever. Legislation should recognize the role of the National Archives in proper conservation and preservation of archival records by providing appropriate resources, equipment and facilities, and prescribing necessary standards and instructions to government or public offices to protect physical and intellectual security of records in their custody.

Given that most data protection laws grant the data subject the right to rectify personal data, archives legislation may need to include provisions to guard against erasure or blocking of personal data in archival records, whose authenticity should be preserved whether or not the information contained therein is verifiable.

Example

If an affected person becomes aware that the archived documents contain information about him or her which he or she considers incorrect, he or she may have this noted but shall not correct the data... The note of objection shall be added to the documents at the appropriate point. (Swiss Federal Act, Section 5)

In addition, if the copyright law does not provide for the National Archives to make copies of copyrighted material in its holdings for preservation purpose, an equivalent provision should be included in the archives legislation.

17. SANCTIONS

Sanctions to enforce the fundamental principles of archives protection and preservation should be provided by law.

Archives legislation or other related laws should provide for sanctions to enforce the fundamental principles of archives protection and preservation. Most archives legislation contains a general clause prohibiting the damage, mutilation, destruction, removal from custody, etc. of public archives. Sometimes, it is left to the responsible authority to provide any regulation for penalties.

Example

Celui qui, ayant une obligation particuliere de proteger les documents d'archives, procede a leur endommagement ou destruction, est soumis a une peine d'emprisonnement jusqu'a trois ans. (Poland, Section 52)