

# ACCESS FOR ALL: GOVERNMENTS, GOVERNANCE, AND ARCHIVES

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Millions of words have been written about the links between good government, accountability, and access to information. Access to information in a government equals access to records. But what is a record?

A government records law should—and usually does—begin with a definition of record. Defining records is a very controversial part of any legislation, and in this paper I want to explore why. The parts of the definition we will look at are:

- the physical form of the materials,
- the parts of the government to which the definition applies,
- the difference between personal papers and official records,
- the applicability of the definition to other parts of the legal code,
- the authority to determine what is a record.

Then we will look at the consequences of defining materials as records:

- the authority to inspect,
- the authority to appraise,
- the authority to compel transfer,
- the right of access.

Finally we will briefly consider the problems in enforcing a records law and the importance of the public to enforcement. Through this examination I hope to demonstrate why having an archival law with a good definition of “record” protects the rights of citizens, protects the documentary heritage of the nation, and supports good government and accountability.

## I. Defining records

Physical form. In the minds of archivists, it is well established that materials of any physical type can be records. Other people, including those who draft or interpret legislation, may not be as clear on that point. For example, whether electronic documents (particularly email but also databases) are records has been the subject of intense debate in many countries. A famous case in the United States that turned in part on this issue was the lawsuit to prevent the destruction of the Reagan White House electronic mail backup tapes. The government argued that paper printouts of email were sufficient for the historical record; the court found that electronic versions are not simply duplicates of paper printouts, but that they contained additional information beyond the paper copies. The court concluded that the electronic version was a record. The court stopped the destruction and the Archives preserved the email tapes.<sup>1</sup>

There have been many other challenges to physical form. Is a videotape made by a national broadcasting company a record? Is an audiotape of a meeting a record if a transcript has been made? What about a database? The deputy president of the national archives of

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<sup>1</sup> For an overview of the email litigation, see Jason Baron, “The PROFS Decade: NARA, E-mail, and the Courts,” in Bruce Ambacher, ed., Thirty Years of Electronic Records. Lanham, Maryland: The Scarecrow Press, Inc., 2003.

Germany, for instance, argues that databases are not records in the German system.<sup>2</sup> That means that the records laws would not cover the databases and the national archives would not be required to preserve them, although it could do so by choice.

Whether a format is included in the definition of records has many consequences. It affects who holds it: if it is a record, it must be in government custody; if it is not it can be anywhere. It affects preservation: if a scanned version of a document is not considered a record, then the archives may be forced to retain the original—a photograph, a paper copy—if the record is required. And crucially it affects who can see it, because access laws, both freedom of information and privacy or data protection laws, begin by stating that a citizen can or cannot see certain records. If the physical type is not a record, the access law does not apply.

What is the best practice here? Should a records law list every physical type that is a record? There are two schools of thought on that. One is that all the principal formats should be listed.<sup>3</sup> The second is that one cannot amend a records law every few years to add a new technological format, so it is better to use only broad language that will be interpreted over time—probably by a court—to determine what physical types are considered government records.<sup>4</sup> Whichever of the two options is chosen, a records law must include enough general language (for example, “materials, regardless of physical form or characteristics”) to make sure that any physical format can be included as a record format.<sup>5</sup>

Applicability across government. A second major issue in the definition of records is whether the definition applies to records of all parts of the government, both at a particular governmental level (horizontally) and at all vertical levels.

In many governments the records laws do not apply to the head of government or chief executive. We will consider the issues of the records of the chief executive when we discuss personal papers below. In governments that follow a separation of powers principle, the records laws may apply to the executive branch but not to the legislature or the judiciary. And many records laws are unclear as to whether they cover special governmental bodies such as committees and contractors.

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<sup>2</sup> “.like databases, libraries are not records.” Angelika Menne-Haritz, “What Can Be Achieved with Archives?” in The Concept of Record: Report from the Second Stockholm Conference on Archival Science and the Concept of Record. Stockholm: Riksarkivet, 1998.

<sup>3</sup> An example is the Jamaica archives law that lists all physical types of records: “‘official records’ means all papers, documents, records, registers, printed materials, maps, plans, drawings, photographs, microforms, cinematograph films and sound recordings of any kind whatever.” Jamaica, Archives Act 1982

<sup>4</sup> An example of a generic physical definition is the Zimbabwe archives law: “‘record’ means any medium in or on which information is recorded.” Zimbabwe, National Archives Act, 1985

<sup>5</sup> An example of an archives law with a list plus a generic statement from the United States: “‘records’ includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics” United States, 44 USC 3301

*Legislative records.* Germany and the United States provide two contrasting examples of the applicability of records law to legislative records. In Germany, the federal records law applies equally to the agencies and to Parliament. Parliament maintains a separate archives from the national archives but it operates under the same records law.<sup>6</sup> In the United States, by contrast, the definition of records in the national records law is limited to agencies of government, thereby excluding the legislative branch and the top level of the judicial branch of government as well as the president and his immediate office. The national records law does reference the legislative branch, but simply says that the legislature shall transfer its noncurrent records to the national archives, “subject to the orders of the Senate or the House of Representatives, respectively.” The national archives has no right to inspect or appraise the records. Instead, an Advisory Committee on the Records of Congress, including representatives of both houses of the Congress, the Archivist of the United States, and members of the public, is charged with oversight of the management and preservation of the records of Congress.<sup>7</sup> Most importantly, the legislative branch also exempted itself from the Freedom of Information Act, which means that the public has no stated right to access to Congressional records. For example, a Congressional commission just finished studying the airplane attacks of 9/11. Because it was a legislative commission, when it turned its records over to the National Archives this summer it specified that the records be closed for four years—unlike a commission in the executive branch whose records would be eligible immediately for review under Freedom of Information Act.

*Judicial records.* Records of the judiciary, like those of the legislature, often are an exception to records law. In the United States, the lower courts are considered agencies covered by the records law, but higher-level courts are not. In fact, of course, some powerful lower court judges can and do sometimes decide to retain records instead of turning them over to the national archives. Traditionally legislatures have been disinclined to pass a records law for the whole judiciary.

*Committees and commissions.* The applicability of the definition of records to the bodies that lie at the edge of government, such as advisory committees, commissions, and so on, can be difficult to determine. Recently I reviewed the records laws of the twenty countries that have had truth commissions during the last quarter century to determine whether the records laws cover the commission. The variety of arrangement was quite astounding. In some cases the records law clearly covered the commission (for example, in Nigeria) and in some cases clearly not (for example, in Argentina). In others I simply could not tell.<sup>8</sup>

*Consultants and contractors.* In my study of truth commissions I also considered whether the records of consultants and contractors were covered by a definition of records that would require their materials to be turned over to the contracting government office. Here I found almost no information about actual practices. However, as more and more national governments decide to contract for services that had previously been performed by government employees, the government may need to specify that those records produced by the contractor in the course of carrying out that function are government records and the definition of records applies. In the United States, contractors have run huge laboratories handling atomic energy research for many years, and records questions of all types have

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<sup>6</sup> Email, Klaus Oldenhage to author, 2004-02-18

<sup>7</sup> 44 U.S.C. 2118 on legislative records; 44 U.S.C. 27 on Advisory Committee.

<sup>8</sup> “Final Acts: A Guide to Preserving Records of Truth Commissions,” Johns Hopkins University Press, forthcoming.

repeatedly surfaced about them, from the disposition of the records of the lab directors to the applicability of the Freedom of Information Act to the lab records.

*Lower levels of government.* In countries with a unitary system of government the national definition of records applies at all levels of government. The latest study of which I am aware, one done for a 1995 archival development conference in Tunis, asked national archives whether current archival legislation applied to records and archives below the federal/central government level and whether the national archives had any authority over public archival institutions below federal/central level. The report grouped responses by region, so it is impossible to tell what the situation in specific countries is. In Asia and Oceania as a whole, two-thirds of the countries reporting had records legislation that applied below the federal/central government level and sixty percent had authority over public archival institutions below the federal/central level.<sup>9</sup> If records law is to apply universally within the country, it is essential that it be carefully written to withstand an enormous variety of challenges and interpretations.

Records and personal papers. The difference between records and personal papers is one of title: who owns the document? Whoever owns the document can also determine its very existence and the access to it. The issue arises in two very different contexts: the documents created by top-level officials of the government and those created by government officials handling routine business.

As you may know, the United States had a great controversy in the 1970s over the records of the President. At that time, the national government's definition of records did not apply to the records of the president. Instead, the presidents considered all their documents to be personal papers and they took them away at the end of their term in office. When President Richard Nixon resigned in 1974, he made an arrangement with the federal government that could have led to the destruction of important parts of the papers. This brought an instant public outcry. The Congress rapidly passed a law taking the Nixon papers as federal property,<sup>10</sup> and eventually the Presidential Records Act of 1978 was passed. The 1978 Act defines Presidential records, clarifies that the records of all future presidents are the property of the government, and provides specific public rights of access to them.<sup>11</sup>

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<sup>9</sup> Michael Roper, "The Present State of Archival Development World-Wide," paper presented at the Inter-Regional Conference on Archival Development, Tunis, May 1995, copy in author's possession.

<sup>10</sup> 44 U.S.C. 2111 note, Presidential Recordings and Materials Preservation Act. This is the legislation passed to enable the government to take the Nixon Presidential records.

<sup>11</sup> Presidential records, U.S. Presidential Records Act. 44 USC 2201:

(2) The term "Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term--

(A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code; (ii) personal records; (iii) stocks of

A particular problem in most of the debates over the records or personal papers of chief executives, including those in state and local governments, is what to do with documents about their purely political activities. Although this issue is not completely resolved, there is general agreement that there are some “public political” functions, such as meeting with party leaders on strategy for legislation, and some “private political” ones, such as making personal monetary contributions to political campaigns. I was a member of a national archives review team that looked at some of the Nixon presidential materials to give guidance to the reviewers on what was personal, what was political and therefore personal, and what was official. I can report that these distinctions are not easy to draw.

The question of what are records and what are personal papers also arises repeatedly with the materials in the offices of high-ranking heads of departments and ministries. If there are records laws that apply to the records of the department, then the question is one of distinguishing between the two types of materials: records and personal papers. A recent case in the US turned on this question. Henry Kissinger as US Secretary of State from 1973 through 1976 had his secretaries listen in on his phone calls, take notes, and type up almost verbatim transcripts. Kissinger took these transcripts with him when he left government in January 1977. Twenty years later, an NGO requested the Department for State to secure the return of these records so that they could be made accessible. After the NGO threatened to sue the Department and the National Archives for failing to carry out their duties in the records law to retain government records and review them for access by the public, the Department came to an agreement with Kissinger, and a copy of the transcripts was provided to the Department of State.<sup>12</sup>

Two more groups of high-ranking officials where the distinction between personal and public is difficult are the members of the legislature and the judges. In the United States, the only legislative records that fall under statutory control are the records of the Congress acting as a body and the Congressional committees. The federal records law is silent on what happens

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publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) The term "personal records" means all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes--

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President's own election to the office of the Presidency; and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

<sup>12</sup> Press Statement, U.S. Department of State, “Former Secretary of State Kissinger Provides Department with Document,” 2001-08-09; see also <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB135/index.htm>, the website of the National Security Archive, a non-governmental organization which threatened the suit.

to the records created in the individual offices of the members of Congress. In fact, the pattern is enormously mixed. The current preference appears to be for a member of the legislature to give his or her office records to a university, usually one in their home state or one they attended. There are no controls over the destruction of the materials or on access for future users. The US National Archives does not attempt to obtain the papers of the members.

The disposition of the records created in the offices of judges is also often excluded from records laws. In the United States, both Supreme Court justices and lower court judges customarily regard many of the papers they create as their personal property. Supreme Court justices often donate their papers to the Manuscript Division of the Library of Congress; these donations then specify what access may be granted to the papers. The papers of judges of lower courts are dispersed to archives and manuscript collections all over the country.

It is very difficult to craft language to distinguish between records and personal papers. If it is attempted, there are two approaches. One is to define only the records of the chief executive or the member of the legislature or the judge. This course means that anything not falling within the records definition is assumed to be personal property. The other is to define both records and personal papers.

Turning from the top officials of the government to the regular civil servant, the distinction between records and personal papers is also a complex issue. Here, however, the records laws apply to the agency that employs the person, and the question is one of making distinctions. Annex 1 has some questions that could be asked when making such determinations.

Applicability definition with respect to other parts of the legal code. A fourth major area that must be considered in the definition of records is how broadly the definition is to be applied with respect to other parts of the legal code. In particular, will the definition of records for archival purposes also be used as the definition of records for access acts or for privacy acts? To avoid confusion and assure consistency in record-keeping practices, it is desirable that one definition of records exists. In the U.S. federal government, the Freedom of Information Act did not specifically refer to the definition of records in the Federal Records Act (FOIA) and therefore it does not apply in Freedom of Information cases. Instead, the courts have interpreted the definition of record in a variety of FOIA cases, including a decision of the Supreme Court on a test of determining what is an agency record. The impact of the two competing definitions has been confusion among bureaucrats required to implement both laws.

Oddly, over time an advantage to this two-track situation has appeared. During the past thirty years some significant narrowing of the coverage of the FOIA has occurred, as agencies with powerful friends in Congress have managed to get themselves exempted from the Act (most notably the operational files of the Central Intelligence Agency). This retreat has not affected the operation of the federal record law, however, since it is running on its own track. The agency records that are exempt from access through the FOIA continue to be covered by the records law.

Authority to determine what is a record. Another consideration in defining public records is a clear statement of who is the official who has the authority to determine what is a record within the scope of the definition. One of the issues that was raised in the Kissinger case

discussed above was who has the authority to determine what is a record. If the head of an agency is the authority, then confronting a powerful individual—such as a departing head of the agency--seeking to walk off with records is very difficult.

Additional difficulties arise if the application of the definition of records is left in the hands of the agency head. First, if the agency head determines that certain materials are not records, the archivist may have no authority to inspect, examine and appraise them, no matter how significant the archivist may believe the materials to be. In one instance when I was the US National Archives, an agency first proposed a records schedule disposition of a series of records but then withdrew it from consideration saying the materials were not records. There was nothing that the staff of the National Archives could do, because the Archives did not have the legislated authority to define what is a record. The result is a diminution of the archivist's ability to protect records of historical value. Second, if the agency wants to throw away certain documents but the records law says that records can only be thrown away with the permission of the national archives, the easiest way around this control is to declare that the particular items that the agency wants to destroy are not records. This can result in the loss of important parts of the nation's heritage. Third, if the access law and the records law use the same definition of records, a decision by the agency that materials are not records means the access law does not apply and disclosure can be avoided. That diminishes the right of the public to know what has transpired in government.

In all these instances, the motivation for the agency head to declare material NOT record is strong. The archivist, on the other hand, has a much broader view of records across the government and a longer time perspective on the potential uses of the records. The best practice is to establish legislatively both the definition of the records and the authority of the archivist to apply the definition to records.

## II. Consequences of the definition

Once the determination has been made that the materials in question are records, many other legislated authorities come into play. Four of them are the authority to inspect records, the authority to appraise records, the authority to compel transfer of records, and the right to have access to records.

Authority to inspect. Inspection has several purposes. One type of inspection, and the most common, is to obtain information to prepare or evaluate a records schedule or to appraise a specific body of records for transfer. A second type of inspection is to determine whether records have been destroyed without authorization from the archives. A third type of inspection is to review whether agencies are creating the kinds of records that are required in accordance with records laws. For example, if the government requires minutes to be kept of official meetings, the archives needs the authority to review the records and see whether such minutes actually exist. Fourth, some inspections are undertaken to ensure that the physical conditions in which the records are stored are appropriate.

The right of the archives to inspect should be codified. In a number of instances public archivists have confronted an agency that refused to permit the archivists to examine the agency's records. Such a bar usually arises when an archives wants to inspect the records of an agency that is normally prohibited from opening its files, for example, a police agency, a health care institution, a tax revenue office. It is useful for the legislative language to confirm that the public archives has the right to inspect for the purpose of carrying out

archival activities. This part of the legislation should also specify to whom the report of any inspection should be made.

Authority to appraise. The records statute should state explicitly that appraisal is the judgment of the archives and that its word is final. This is particularly important if the public archives is buried within a bureaucracy of a larger department, with the possibility that a higher-level official will overrule the professional judgment.

Why is this specific assignment of responsibility important? Because it states clearly to the public who should be held accountable for what is saved and what is tossed. But how would the public know what the archives is deciding? In the United States, the federal records legislation requires the National Archives to publish notice of intent to authorize destruction, either by a records schedule or for a specific body of records and give “an opportunity for interested persons to submit comment thereon.”<sup>13</sup> In most instances, there are no comments from the public at all. However, in a few cases a proposed disposal brought some letters to the Archives, and they were individually answered. In at least one instance, the concern was great enough that the Archives hosted a public meeting to discuss the proposal, and in that instance, too, the proposed disposal was changed based on the public response.

Why is there not more comment? For many reasons. First, the proposals are published in the government’s regulatory publication, which is not easy reading even if you are familiar with it. Second, the records described are those to be thrown away, which means that they are not very interesting to read about. Third, most people truly do not care what is saved or tossed, unless the record happens to relate directly to themselves. Fourth, some people probably think it is hopeless to get the government to change its mind on disposition, even though it has occurred. What usually happens is that the historical associations and other nongovernmental organizations have someone monitor the list of proposed destructions and, if there is something that attracts the monitor’s attention, this information will be conveyed to the group’s membership to decide whether they want to write to the Archives about it.

The real impact of the publication rule, however, is that it teaches archivists to have peripheral vision for problems. As you appraise records, you have to think about the public and its interests in the records, because your decision to destroy will be made public. This

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<sup>13</sup> An example of the publication of proposed disposals of records, from the U.S. Federal Register: September 29, 2004 (Volume 69, Number 188):

National Archives and Records Administration. Notice of availability of proposed records schedules; request for comments. [on or before November 15, 2004]

(9) Department of the Treasury, Internal Revenue Service (N1-58-04-6, 1 item, 1 temporary item). Audio digital recordings and screen image captures used to randomly review the customer service provided to the public by agency taxpayer assistants.

(11) National Commission on Libraries and Information Science, Budget and Finance (N1-220-04-5, 2 items, 1 temporary item). Electronic spreadsheets relating to budgetary and financial matters. Proposed for permanent retention are recordkeeping copies of annual budget files.

makes you acutely aware of the goal of appraisal, which is to select for preservation those records that will have future uses for research by the public.

The requirement to publish also protects that archives after the publication is completed. Then if the public complains that something was thrown out, the archives can rely on the fact that publication did take place and the opportunity for comment was provided to the citizens.

Authority to compel transfer. Transfer of records within the government is a transfer of the responsibility for the protection and preservation of the records and the responsibility to control access. Agencies delay the transfer of records for a variety of reasons: continuing use of the records (an argument often used for land records, for example), lack of trust in the archives on either preservation or access grounds, lack of respect for the requirements of the records management system, or to avoid explaining to the archives that the records have been lost or destroyed. The examples of stalled transfers are too many to recount.

Two issues make it especially important that the right to compel transfer be included in the archives law. First, the change of a government means that one set of political leaders departs and another arrive. It is essential to protect the public record by transferring the chief executive's records to the archives at that time. While transitions within a single political party or faction may be amiable, transfers between parties rarely are. Generally the senior political leaders will see the retention of the records in an archives as preferable to retention in the office that is about to be inhabited by someone from another political persuasion.

Second, the electronic records of the government will not survive unless they are under constant care, in controlled environments, and regularly inspected and migrated to new software systems. Furthermore, electronic systems must have documentation with them to enable future preservation work to occur. The longer one waits for the transfer, the more likely it is that the tapes will be unreadable and the documentation incomplete or lost.

Records legislation should require the timely and systematic transfer of records. While there may be a general transfer period--for example, twenty or thirty years--the legislation should authorize the archives to set a shorter time period if the fragility of the records warrants it.

Right of access. If the access legislation uses the definition of records in the records law, then the materials defined as records are eligible for review under the access legislation. This typically will apply whether or not the records are in the hands of an agency covered by the access law or in the national archives.

National archives usually do not have the authority to remove classifications (secret, top secret, and so forth) on records. But many other records are transferred to an archives by an agency, and it is important that the archives have the authority to make the access determinations on these records, rather than referring every access request back to the agency of origin. The national archives may, as agencies often fear, have a more relaxed attitude towards the release of documents than the agency of origin might have, but ultimately the head of the national archives and the head of the agency are both publicly responsible for their access decisions.

### III. Enforcing the law

The problem for an archives in enforcing a records law within a government is that the agency and the archives are both part of the same government and, as such, normally have very limited means to force each other to take specific actions. The only recourse for either party is an appeal to a body with authority over both agency and archives; that may be a judicial agency within the government, the chief executive, or the legislative body.

Here is where the role of the public becomes significant. Journalists and NGOs, historians and filmmakers, all can and have used the existence of records laws to compel compliance. Let me give you just two US examples. One famous lawsuit was brought to prevent the destruction of records of the Federal Bureau of Investigation, and it was brought by both the children of persons whose case files were involved and by academics. Basically, the complainants said that the records schedules that the national archives had issued were too old and did not reflect current FBI records. They sued to compel the FBI and the National Archives to reappraise the records and develop a modern records schedule—in other words, to do what the law required. As a result, the FBI and the National Archives did the biggest appraisal job in the history of the National Archives, with the result that many records were retained that would have been destroyed.<sup>14</sup>

Another case affected an EASTICA member. Film in the United States federal government is a records format. An historical researcher interested in the U.S. occupation of Okinawa filed a Freedom of Information request for films of the occupation. The films were provided to her. She then learned that the National Archives had decided that the films depict local life not government activities and they could be given to the Okinawa Prefectural Archives. The researcher sued, saying that the appraisal was not properly done. The judge decided that the Archives' decision to dispose of the Okinawa films "was based on erroneous factual premise" and ordered that the Archives reappraise the records. The Archives did and decided to keep the film and make a copy for Okinawa.<sup>15</sup>

The public's stake in the definition of record is enormous. The definition influences preservation of the nation's documentary heritage, it influences access to records; it influences accountability and, through that, effective governance. Public vigilance and public actions help an archives enforce the records laws.

Transparency International is an NGO based in Berlin that raises awareness about the damaging effects of corruption, advocates policy reform, works towards the implementation of multilateral conventions and subsequently monitors compliance by governments, corporations and banks. It focuses on prevention and reforming systems in an effort to make long-term gains against corruption, and it declares that "a principal tool in the fight against corruption is access to information." In its 2003 Global Corruption Report it wrote:

Given that the systems the chief archivist manages and the records he or she holds provide the paper trails crucial for exposing mismanagement and corruption, we must question why these posts are so junior and so under-resourced. *Let us ask why the post of chief archivist is not accorded constitutional protection, and why it is not placed on*

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<sup>14</sup> The author was part of the appraisal team. Among the many articles on the case, see one by an appraisal team member, James Gregory Bradsher, "The FBI Records Appraisal," The Midwestern Archivist, Vol. XIII, Number 2, 1988.

<sup>15</sup> "Court Hears Case on National Archives' Plans to Dispose of Films from U.S. Occupation of Okinawa," NCC Washington Update, vol. 3, #37, 1997-09-04; "National Archives Decides to Keep Contested Okinawa Film," NCC Washington Update, vol. 4, # 11, 1998-03-27.

*a par with a supreme court judge or a supreme audit institution, so vital is its role in guaranteeing both accountability and public access.*<sup>16</sup>

Through the adoption of sound archival laws and through their effective administration and with the participation of civil society monitors of government actions, archives can play a central role in ensuring good government and accountability.

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<sup>16</sup> Jeremy Pope, “Access to information: whose right and whose information?”  
[http://www.globalcorruptionreport.org/download/gcr2003/03\\_Access\\_to\\_information\\_\(Pope\).pdf](http://www.globalcorruptionreport.org/download/gcr2003/03_Access_to_information_(Pope).pdf)

## ANNEX 1

### CRITERIA FOR DETERMINING WHETHER ITEMS ARE OFFICIAL RECORDS OR PERSONAL PROPERTY

1. Creation. Was the document created by an employee of the agency (institution) on agency time, with agency materials, at agency expense? (If not, then is very likely is not an “agency record,” on that basis alone.)
2. Content. Does the document contain “substantive” information? (If not, then is very likely is not an “agency record,” on that basis alone.) Does it contain personal as well as official business information?
3. Purpose. Was the document created solely for an individual employee’s personal convenience? Alternatively, to what extent was it created to facilitate agency business?
4. Distribution. Was the document distributed to anyone else for any reason, such as for a business purpose? How wide was the circulation?
5. Use. To what extent did the document’s author actually use it to conduct agency business? Did others use it?
6. Maintenance. Was the document kept in the author’s possession or was it placed in an official agency file?
7. Disposition. Was the document’s author free to dispose of it at his personal discretion? What was the actual disposal practice?
8. Control. Has the agency attempted to exercise “institutional control” over the document through applicable maintenance or disposition regulations? Did it do so by requiring the document to be created in the first place?
9. Segregation. Is there any practical way to segregate out any personal information in the document from official business information?
10. Revision. Was the document revised or updated after the fact for record-keeping purposes?

