

EXAMINING THE SIGNIFICANCE OF THE LEGISLATIVE FRAMEWORKS AND SUITABLE PRACTICE FOR SAFEGUARDING PUBLIC RECORDS IN SWAZILAND

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Abstract

The failure to implement proper records safeguarding initiatives in Swaziland government ministries headquarters has led to valuable public records not being transferred to the Department of Swaziland National Archives (SNA). This paper sought to investigate the records management statutory framework and practices in the Swaziland Government Ministries and the SNA, in order to identify gaps in records care framework that would impact on the effective and proper care of records. A two-pronged approach was used that is document analysis and a survey. A survey of 21 government ministries' headquarters and the SNA was conducted. A total population of 89 members of staff, including senior officers from the SNA were purposively selected. This included mainly people who dealt with the management and care of records in the various government ministries and the SNA. The study used qualitative and quantitative methodological data collection techniques to complement each other and obtain in-depth analysis. The findings reflect that government ministries are making a remarkable effort into the care of public records. However, the absence of legislation that caters for the proper management of records throughout their life cycle, as well as considering issues pertaining to the management and care of electronic records, has been a major challenge. The study further revealed that the majority of the government ministries and departments did not have policies relating to the management and care of records. The study recommends the amendment of the SNA Act No.5 of 1971, the development of ministerial records management policies that will incorporate issues relating to the care of all ministerial records and the implementation of a records preservation programme that shall capacitate all officers responsible for the management and care of public records.

Keywords: *Public Records; Legislation; National Archives, Swaziland*

Introduction

In order to ensure that records and archives are appropriately managed and preserved, there has to be a legal instrument mandating governments to protect their records for accountability and historical reasons (Parer, 2000). Archival

legislation provides the crucial framework that is the binding principles and rules that permit records and archives services to operate with authority in dealing with government organisations. The archival institutions both national and provincial in Southern Africa are assigned to facilitate the effective management of records to determine records of archival value for posterity (Ngoepe & Keakopa, 2011). Pareer (2000) states that “archival legislation reflects the decisions made about how a country or jurisdiction intends to manage its records” (p. 1). The legislative framework includes primary legislation that is the Act that provides the broad structure of how to manage the records, and secondary legislation that is the legislative regulations, policies and procedures that stem from the Act to help with its execution. “All archives legislation will be a combination of the two” according to Pareer (2000) and it is important to have equity between the primary (acts and decrees) and secondary legislation (rules and regulations). However, laws are required and some may contend and say that archival legislation does not automatically ensure compliance. Yet, the absence of this legal framework that establishes records and archival authority will not assure the identification, preservation and access to archival records. Apart from the primary and secondary legislation, standards and procedures are required for implementation of procedures and guidelines.

The Study Background

The Swaziland National Archives (SNA) was established in 1971 and placed under the Deputy Prime Minister’s portfolio until 1990. It has since been moved to various ministries and was not appropriately placed and it lacked recognition and adequate funding. Pareer (2000) highlights that, “how an archive is established and administratively placed within government is strategically important”. The SNA is now placed under the Ministry of Information, Communications and Technology (MoICT). The institution had in the past been an end-player in the management of records, serving only as a recipient of closed/inactive records. A government circular memorandum of 17 March, 2010 placed all government registries under the SNA (SNA, 2013). The SNA was mandated with ensuring the proper management and care of all public records throughout their life cycle. The quality of management of records, at the early stages of their life and throughout their life cycle, influences their long-term existence as authentic and reliable records. It was only after its transfer to the MoICT that the SNA expanded its records and archives management mandate, in line with international standards and best practice (SNA, 2013).

In Swaziland, like many other countries, government is the largest records generating entity. However, most of the records produced by the Swaziland government ministries normally reach the SNA in a bad state (Tsabedze, 2012). As the SNA has only recently in 2010 been assigned the duty of records management of government records throughout their life cycle. The proper management of public records ensures the continued access to a nation’s

documentary heritage is dependent on legislative framework (acts, regulations, rules and policies). Legislations governing archival and records management in most of the Eastern and Southern Africa Regional Branch of the International Council on Archives (ESARBICA) countries are outdated. This makes it difficult to adopt new technologies and implement management strategies pertaining to records and archives (Ndenje-Sichalwe, 2010).

Failure to implement proper records preservation initiatives in the headquarters of Swaziland government ministries has resulted in many invaluable public records not finding their way to the National Archives as the Swazi nation's documentary heritage and if they do, their lifespan is normally short (Tsabedze, 2012; SNA 2008). Challenges of low budget, poor storage, poor handling, lack of skills, loss of valuable records and failure to transfer records to the SNA after their retention periods have elapsed have continued to be a threat to the usable life of valuable public records (SNA 2008). Ngoepe and Keakopa (2011) emphasise that:

Archival institutions are not recognised by government and the broader public sphere. As a result, in some instances, archival institutions are seriously under-resourced because their significance is largely unacknowledged.

Statement of the problem

In Swaziland the National Archives Act No. 5 of 1971 is the primary legislation for records and archives management. This Act empowers the Director to ensure the proper custody, care and filing of archival materials, the inspection and destruction of archives and the transfer of archives from government offices to the National Archives once their active use period has elapsed (Swaziland Government 1971). The media and the Swaziland Auditor General's report 2014 indicate corruption and fraudulent behaviour due to lack of keeping records for some government projects resulting into loss of government property, financial and physical resources. "In spite of the existence of an Anti-Corruption Commission (ACC) in the Kingdom of Swaziland, corruption persists as a major problem in the country which brings with it significant negative consequences on the economy and society" (Hope, 2016). There is a need for proper implementation of appropriate legislation together with standards, policies, regulations, guidelines and fully functional processes. An African proverb states "when the drummers change their beat the dancers must also change their steps". Therefore, comprehensive records and archives management laws are a critical factor for sound records management practices.

Given the above problem, the study highlights the importance of legal and policy frameworks required to support the management of records and archives in Swaziland. The study discusses the Archives Act No. 5 of 1971 regarding the

effective management of records and archives in Swaziland. Therefore the study aims to achieve the following:-

- Analysis of the current legislation (primary) that is the Archives Act No. 5 of 1971 and the National Archives and Records Bill of 2010 to identify the gaps and challenges.
- The examination of policy and legislative framework (secondary) pertaining to records and archives preservation in Swaziland government ministries and the SNA.
- To make recommendations based on the findings.

Overview of Archival Legislation

It is of prime importance to ensure that the archives legislation exhibits the archival principles for establishing the purpose and the objectives of the archives. In the past, archival legislation in most Commonwealth countries has been influenced by the Public Records Act of 1958 of the United Kingdom. This Act emphasized the primary responsibility of the National Archives, which is to ensure their continued availability for research purposes (Parer, 2000). Archives legislations essentially covered aspects pertaining to controlling the destruction of ephemeral records and transfer of valuable records to the National Archives as well as conferring the right of public access. These acts according to Hurley's (2015) generational framework are namely "the first generation acts". However, legislation did not always commission archives to regulate active records that were in frequent use and in the place of origin as well as semi-active records in the organisations or records centres (Parer, 2000). According to Hurley (2015) "the archives authority was seen as a passive recipient of records deemed to be of permanent value once the government had finished with them". The second generation acts include records management of the active and semi-active records, giving the archive the authority to control record keeping throughout government and specifies public rights of access after a stated period of time (Hurley 2015). Hurley (2015) emphasizes "third generation acts will say what the principles are which govern good recordkeeping, they will lay down the outcomes which must be achieved and the expectations...which must be satisfied".

The emergence of electronic records has created a radical change in the way records are kept and managed. This changed and has been the primary reason for countries to update their archives legislation to make provision for the management of electronic records and clearly outline how their creation, accessibility and disposal will be controlled. It is important that archival institutions have a clear legislative mandate for establishing and prescribing record-keeping requirements (Parer, 2000).

A study conducted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in 1985 prompted the review of many concerning archives legislations. The reason for reviewing legislation, was to accommodate the changes brought about by electronic records management, as well as the records continuum model, as articulated in Australia and the need for archivists to address the keeping of records across the entire continuum (Parer, 2000). A number of countries have revised their legislation since the UNESCO study including Australia, New Zealand, Canada, USA and many others. The International Council on Archives(ICA) (2004) state that “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, there is a similar need for clear, applicable, comprehensive and modern laws that cater for new developments especially technological ones as well as new organisational orientations including records related laws like access to information laws. Anderson (2013) highlights that:

There are many laws that require records to be kept, but they may have definitions that are not consistent and are sometimes even conflicting, because the laws have been developed at different times, for varying purposes, or there is a lack of standardised definitions in the national legislative environment, or both. Thus there is a need to work towards review and harmonisation within national boundaries.

Revision of legislation is essential to give greater emphasis to record management standards and the need for government departments to be accountable. Legislative standards are recognised by a number of governments as a necessary part of good records management practices (Pareer, 2000).

A brief background to records and archival legislation implementation

The inability of registries and archival institutions to effectively execute their records management responsibilities has been haunting the development of public sector records management programmes for a long time (Kemoni, 2007). According to Ngoepe and Keakopa (2011), the ineffectiveness of the archival institutions is a result of a number of elements including:

- The lack of proper implementation of the existing legislations and policies.
- Out-of-date archival legislation
- Archival institutions not being recognised by government and their placement within government ministries.

Records management programmes have been ineffective in Southern Africa, also due to the lack of an integrated strategy to ensure compliance with archival legislation and support for decision-making in the public sector (Ngoepe 2014). In addition, Ngoepe (2014) believes that one of the factors that culminate in the poor implementation of proper records management programmes is the absence

of relevant records management models, hence the need to customize the models to meet the specific needs and records management requirements of governmental bodies. However, Okello-Obura (2011) states that in Uganda “not much effort have been made to engage legal and policy makers on the need and value of functional legal and policy provisions for records and archives management”. According to the Nelson Mandela Foundation, National Archives and Records Service and University of Witwatersrand (2007), it is important to design records management programmes that support organisational strategic objectives and add value to the development of the organisation.

In the government of Swaziland, failure to implement proper records management practices has resulted in compromised public accountability (Tsabedze, Mutula & Jacobs 2012). Hope (2016) highlights that:

Corruption thrives on a lack of reliable information. Governments should therefore guarantee the right of everyone to have access, on request, to official non-state secret documents held by public authorities.

In order for transparency and accountability to prevail, records need to be managed throughout their life cycle. However, anecdotal evidence shows this scenario is changing since the SNA has assumed responsibility for the management of records in government registries. The SNA is mandated with ensuring the proper management and care of public records in all government ministries and departments throughout their life cycle. Records with enduring value are transferred to the SNA for long-term preservation.

The operations of the SNA are governed and guided by the Archives Act No. 5 of 1971, which is currently under review through the National Archives and Records Bill of 2010. Having been placed in an appropriate government ministry (MoICT) the national archive assumed its rightful responsibility. The SNA has embarked on a number of reform programmes aimed at improving the records and archives management practices in the 21 government ministries and the SNA (anecdotal). Apart from the main legislation, Pareer (2000) states that:

Government agencies need comprehensive assistance, in the form of standards and guidelines, if their records are to be used fully as a business information resource for government and to survive as future archives.

Methodology

This study used document analysis and a survey to collect data. Both qualitative and quantitative methods were used, to complement each other and to obtain in-depth analysis. A survey was used to collect data using an interview schedule and questionnaires. The purposive sampling technique was used to select the population of the study. Only personnel dealing with the management and care of records in the 21 government ministries and the SNA were included in the study.

The population of 87, included Registry Officers, Secretaries to Principal Secretaries, Secretaries to Ministers, Principal Human Resource Officers and the Director, Senior Archivist and Records Management staff of the SNA. A semi-structured interview schedule was used to collect data from the Director of the National Archives, the Principal Archivist and the Senior Archivist, in order to acquire data about the impact of administrative issues on the management of records and archives. Of the 84 questionnaires that were distributed 57 were returned yielding a response rate of 67.8%.

The Swaziland Archives Act No. 5 of 1971 and the Swaziland National Archives and Records Management Bill 2010 was examined using the Association of Commonwealth Archivists and Records Managers guide for “Archival Legislation for Commonwealth Countries” by Pareer (2000) as a yardstick. The guide was chosen as Swaziland is a commonwealth country and the guide is internationally accepted for outlining modern best practices for archival legislation principles which can be used to examine the legislative framework as well as a concrete guide for updating records and archives legislation. By looking at facets of the present and future archival legislation that should:

- Reflect the needs of the country with respect to its records
- Safeguards the interests of the public with respect to records
- Reflect best practice
- Reflect and authorizes the role and responsibilities an archives will have, and the services it will provide (Pareer, 2000). The present legislation needs to reflect the effect of emergent issues of the electronic environment, convergent technologies, the internet, and e-government. This raises the questions regarding:
 - Management of electronic documents and records, virtual files, multimedia and compound documents.
 - What is a ‘record’ in the new technology environments? (Pareer, 2000)

Findings of the Study

The findings of the study are discussed below. To bring together data from the two-prongs (document analysis and survey) crystallisation was used. Crystallisation is to “bring together and formulate the reality that emerges from the various data-gathering techniques and data analyses” (Wagner et al., 2012).

Levels of skills and knowledge in records management

Training and the relevant skills required to properly manage and take good care of records are critical in ensuring continued availability and access to public records. As well as helping staff to understand the legislation that regulates records management and the safeguarding of public records. The need for staffing and professional training in records management is one of the important areas in

understanding the depth and breadth of records management (Kalusopa, 2011). Nsibirwa (2012), emphasized the need to employ staff with relevant qualifications and skills, in order to ensure that they make a positive contribution towards the protection and proper care of collections.

According to the interviews, the Swaziland government Scheme of Service states that the minimum entry requirement for records and archives management staff was a diploma in archives and records management. The questionnaire reveals that twelve (21%) of the respondents had qualifications from tertiary institutions only one (1.8%) respondent had a Bachelor’s degree in archives and records management, three had a diploma in archives and records management, 19 (33.3%) had a certificate in archives and records management and 20 (35.1%) had no records management qualification a majority of those 10 (17.5 %) were over 50 years (see Table 1 below). Nearly half of the respondents that did not meet the minimum entry requirements of the Scheme of Service had certificates from tertiary institutions. However, since four (7%) of the respondents with certificates and five (8.8%) without records qualifications are within the age group of 31 to 40 years, they are still trainable according to the civil service training policy which states that civil servants can be trainable up to the age of 45 years (Swaziland Government, 2000).

Table 1: A cross-tabulation of the age of respondents and records management training

N=57

Respondent records management training level	Age group of Respondent										Non-response		Total	
	20-30		31-40		41-50		51-60		Over 60		Count	%	Count	%
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%
Certificate	4	7	4	7	8	14	3	5.3	0	0	0	0	19	33.3
Diploma	0	0	2	3.5	4	7	2	3.5	0	0	0	0	8	14
Degree	0	0	1	1.8	0	0	0	0	0	0	0	0	1	1.8
Other qualification	0	0	0	0	2	3.5	6	10.5	0	0	0	0	8	14
No RM qualification	2	3.5	5	8.8	3	5.3	9	15.8	1	1.8	0	0	20	35.1
Non-response	0	0	0	0	0	0	0	0	0	0	1	0	1	1.8
Total	6	10.5	12	21	17	29.8	20	35.1	1	1.8	1	1.8	57	100

(Source: Field data)

Legislative framework

The management and preservation of records and archives in the public sector must be governed by law. The Act affords the broad structure of how to manage the records and the legislative regulations, policies and procedures help with its implementation.

However, in this study, Table 2 below shows only six (10.5%) of the respondents stated that they had legislation that regulate the way they manage records in their ministries and 41 (72%) either did not have records management legislation in their ministries or were not sure about the existence of any legislative framework that governs the management of records in their ministries and 10 (17.5%) did not respond.

Table 2: Existence of records management legislation

Records management legislation	Count	%
Yes	6	10.5
No	18	31.6
Unsure	23	40.4
Non-response	10	17.5
Total	57	100

N = 57

(Source: Field data)

From the six respondents (see Table 3 below) who had legislation for records management in their ministries, four (66.7 %) were aware of the contents of the legislation and two (33.3%) were not aware of the contents of the legislative framework. Yet, Kalusopa and Mampe (2012) state that it is important for government entities and their employees to be aware of their legal and regulatory obligations, in order to ensure their compliance with these requirements for records. Kalusopa and Mampe (2012) add that some legislation provides detailed information on how long records should be preserved, as well as how to govern the different formats that records may be stored in.

Table 3: Availability of records legislation and awareness of contents of legislation

N=6

Records legislation available	Respondent awareness of legislation contents						Total	
	Yes		No		Unsure			
	Count	%	Count	%	Count	%	Count	%
Yes	4	66.7	2	33.3	0	0	6	100
Total	4	66.7	2	33.3	0	0	6	100

Maseko (2010) states that a sound legislative framework like the Swaziland National Archives Act No. 5 of 1971 provides for the establishment of a national archival institution that is mandated [through its mission statement] with ensuring the long-term preservation and access to all national documentary heritage, regardless of format or media in and about Swaziland. Similarly, Kalusopa and Mampe (2012) state that the regulatory framework for records management in Botswana assigned the accountability and responsibility for the management of all official records to the Director of the National Archives. Although the National Archives Act No. 5 of 1971 that establishes the SNA states the main objective and scope of the institution is the custody, care and control of public archives only, one of the short-comings of the archives law in Swaziland is that it does not cater for the management of records in their active and semi-current stages, neither does it address the issue of electronic records management and related systems to manage records in electronic format. Section 3 of the National Archives Act No. 5 of 1971 provides for the proper storage and preservation of archival materials only (Swaziland Government 1971).The legislation is not comprehensive and the current Archives Act No. 5 of 1971 does not give the archives authority to manage records (Pareer, 2000) and fits in with the generational framework by Hurley (2015) as a first generation act. The first generation act basically:

- Establishes an archives authority
- Prohibits destruction without authority’s approval
- Permits access to transfer records unless restricted.

Yet, the principle of the Records Continuum advocates for a consistent and coherent regime of records management processes, from the time records are

created through to the preservation and use of records as archives. However, the Act has been under review since August 2010 with the development of the Swaziland National Archives and Records Management Bill (Swaziland Government Gazette Vol XLVII no 91). Pareer (2000) in the “Archival Legislation for Commonwealth Countries” highlights that:

The legislation will also be guided by the general political, economic, social, cultural and administrative environment; by existing records and archives legislation; and by the general level of records and archival development.

Therefore, the National Archives Act No. 5 of 1971 reflects what was going on in Swaziland during the 70s and the Bill should relate to current developments in Swaziland including emergent issues relating to the electronic records and their environment. The examination of the Act and the Bill are discussed and only major findings are highlighted.

It is important that clear and accurate definitions are used as they are codes used when interpreting archival legislation. The National Archives Act No. 5 of 1971, defines only a few terms and the Bill defines a lot of terms including format dependent terms. The Bill includes electronic records by using a broad definition of ‘records’ as well as format dependent terms namely data, electronic records systems, email, email message, email system and secure electronic signature. However, Pareer (2000) states that definitions should be format independent as technology changes rapidly. In addition, the Bill defines a number of terms that are not used in the body of the proposed legislation.

A lot of the facets that were not included in the current Act have been incorporated in the Bill regarding the scope of the legislation, the role of the public archives, and its governance and administration. However, although the National Archives and Records Bill of 2010 has not yet been presented to parliament for review, it still needs refining. The Bill also includes legal deposit collection in Part IV (Historical, public and general records) that contradicts the definition of records used:

Information created, received and maintained as evidence and information as evidence.... In pursuance of legal obligations or in the transaction of business regardless of physical form and characteristics.

Legal deposit is dissimilar as it is a requirement for published materials that is also usually applicable through different legislation for producers to deposit publications created at particular institutions for access and posterity.

Policy, procedures and regulatory framework

Policies play an important role in providing guidance and ensuring that standard records management procedures are followed and implemented (Ngulube 2003).

The study revealed shown in Table 4 below that a majority 42 (73.7%) of respondents state that their ministries and departments did not have policies that relate to records management. Fourteen (24.6%) stated that they had the policies and one (1.8%) did not respond. Within those 14 (24.6%) respondents whose ministries and departments had records management policies, seven (50%) had policies related to records preservation and the other seven (50%) did not have records preservation-related policies. The lack of awareness about preservation policies impacts negatively on records management practices in the government ministries. Tsabedze (2012), in a study on “Public sector records management in Swaziland”, found that 85% of the respondents in the surveyed ministries did not have records management policies. The results in the current study reflect a slight improvement, since it recorded 42 (73.7%) respondents that did not have records management policies in their ministries. This may be a result of the aggressive initiatives by the SNA to distribute the National Records Management Policy (NRMP) to government ministries and departments.

Table 4: Existence of records management (RM) related policies

N=57

Existence of RM policies	Count	%
Yes	14	24.6
No	42	73.7
Non-response	1	1.8
Total	57	100.1*

(Source: Field Data)

**The total percentage does not add up to exactly 100% because percentages have been rounded off to one decimal place.*

Standards and records management procedures

Legislation should be supported by international standards, procedural guidelines and instructions (Pareer, 2000). Though the ICA (2004) states that archives legislation should direct the National Archives to develop mandatory standards and regulations. The SNA uses the ISO 15489 in order to make the international records management standard comprehensible and easy to follow, the SNA developed a records management procedures manual. This manual is an essential guide for the operations of a registry, since it provides registry personnel with procedures that are geared towards the attainment of acceptable records management practices (Chaterera, 2013). In the current study shown in Table 5 below, 42 (73.7%) of the respondents stated that they had the records procedures manual, records management regulations or a combination of the two. These

results paints a good picture about the future of proper records management practices in Swaziland government ministries and departments. Chaterera (2013) had serious concerns with the results of the study on “Records surveys and the management of public records in Zimbabwe”, which reflected that only 35% of surveyed registries had procedures manuals. Chaterera (2013) added that the procedures manual was critical to the success of registry operations, without which service delivery could be compromised.

Table 5: Availability of records procedures manual and regulations in ministries

N = 57

Records procedures manual and records management regulations	Count	%
Records procedures manual	34	59.6
Records management regulations	5	8.8
Have both manual and regulations	3	5.3
Non-response	15	26.3
Total	57	100

(Source: Field data)

Conclusion and Recommendations

The loss and deterioration of valuable public records and archives in the headquarters of Swaziland government ministries, is a result of outdated legislation amongst other factors and the existence of ineffective policies that affect how records are managed. The Swaziland National Archives Act No. 5 of 1971 does not cater for the management of records in their active and semi-current stages, neither does it address the issue of electronic records management and related systems to manage records in electronic format.

Though the SNA is mandated to develop policies and guidelines from standards, the non-compliance with existing records management policies and procedures has resulted in the ineffectiveness of records management programmes in Swaziland government ministries and departments. This could be a result of the SNA mandate not stemming from primary legislation. Therefore, the government is unable to use legislation to ensure that its records and archives are appropriately managed and preserved over time for accountability and transparency.

Most of the officers working with records in the Swaziland government ministries do not manage records according to the requirements of international records

management standards as most staff were not qualified. According to the results of this study, 37 (65%) of the officers working with records in the ministries were either not sure or did not implement records management activities according to a records management standard. There is potential for the improvement of the records management practices in Swaziland government ministries. In 2012, the SNA launched the Records Management Procedures Manual which was meant to be a guiding tool for all government ministries and department on proper records management practices. According to Chaterera (2013), a records procedures manual is an essential guide for the operations of a registry, since it provides registry personnel with procedures that are geared towards the attainment of acceptable records management practices.

The following recommendations are submitted as building blocks for developing a records legislative framework for the Swaziland government ministries and the SNA. As the drummers change their beat the dancers will also have to change their steps:-

- The Swaziland National Archives should amend the Swaziland National Archives Act No. 5 of 1971, because it is now outdated. The new Act should incorporate clauses relating to the management of records throughout their life cycle and also address the issue of electronic records management and related systems to manage records in electronic format. The new legislation should not use format dependent terms to include electronic records but rather use the generic or brads terms to define them.
- Though the National Archives and Records Bill of 2010 has not yet been presented to parliament for review it still requires refining. The Bill should not include collection of legal deposit materials as they are published materials that are not related to records and archives.
- The SNA should facilitate the development of ministerial records management policies that will address specific ministerial records management requirements. These policies should incorporate issues relating to the preservation of all ministerial records. Ministries should be encouraged to ensure that all staff members are made aware of the records management and preservation policies.
- The SNA should develop a training programme that will capacitate all personnel dealing with management of records on records management standards and procedures. There should also be a policy for training and recruiting qualified staff in the records and archives management cadre.

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