



To: **Panel on Constitutional Affairs**
Legislative Council Secretariat

From: **Mr Simon Li**
Hong Kong Public Records Concern Group

Re: **Written Submission on the Management of Public Records**

Without Archives Law, Code on Access to Information is useless!

1. Records of the government are evidence of its activities, transaction and deliberation. Proper management and preservation of records are prerequisites for good governance and the basis for accountability. They are also an important part of the collective memory to the community.

We Have No Archives Law

2. Most countries or territories in the world have enacted “Archives Laws” to make sure that public servants take records seriously and follow rules in managing and preserving records as these governments have learnt valuable lessons from their experience that **without the archives law, records and archives of the government do not and will not survive.**¹

¹ The difference between “records” and “archives” : “records” are still in use by their creating agency and are being kept and managed by the agency concerned; “archives” are those records which have been appraised by an archivist to have permanent value and have been nominated for permanent retention in the Public Records Office.

3. But, our government still adamantly refuses to enact such a law though it, as early as in 1972, had agreed that the law should be and would be introduced.

We Also Have No Freedom of Information Law

4. Also, we do not have a **freedom of information law (FOI)** based on which access to government records and information is provided as a legal right that cannot be taken away easily. What we are given is just a *Code on Access to Information* granting us access right to government records still in use by Bureaux and Departments, i.e. government's current records. The *Code* is NOT a legal right like that provided by FOI in other countries. If request for records access is denied, there is nothing much one could do to reverse the decision. Despite its name, there are so many exemptions in the *Code* that it seems to impose more restrictions than rights. **This was why the implementation of the Code has met with strong criticism from the two Ombudsmen**

5. More importantly, it is imperative that this “freedom of information law” or “code” should be working together closely with an **archives law**. **Almost without exception, the successful and effective implementation of the information freedom law depends very much on the successful and effective implementation of the Archives Law.**

6. But unfortunately in Hong Kong, we do not have such a law!

What is an Archives Law

7. In general, archives law requires the government to create and maintain full and accurate records as evidence of their functions and activities. The law also provides that most government records, after fulfilling their administrative functions, should be passed onto the archives authority for assessment and the valuable ones will be preserved by the archives as an

important part of the community's collective memory and be made available for convenient public access.

Without the “backing” of an archives law, FOI is useless

8. The logic here is simple. Suppose members of the public, including the Honourable Legislative Councillors, request access to records and information created and held by the government by invoking the *Code on Access to Information* or even the *FOI* (which we still don't have), government officials will still have the “excuse” to send you away by saying that they do not possess the requested records/information, if they reckon that disclosure of such records will embarrass the Administration.

9. In countries where archives law is in force (our studies show that Hong Kong is a rare example that still has not enacted such a law), officials will have the **legal obligation** to account for the failure to produce records upon request from the public and will be punished in the Court of Law for having lost, destroyed or even failed to create and keep records in the first place. This is stipulated in the Chinese Archives Law and in the many other similar archives legislation implemented throughout the civilized world.

10. Worst still, in the absence of such a law, public officials in our government can destroy records without fear of being caught, punished or sanctioned. The current administrative records management guidelines so proudly and repeatedly claimed by the government as a success have been proven a sham. Among others, the recent destruction of records by ICAC and the premature destruction of Falun Gong records by the Immigration Department are shocking examples of such an irresponsible acts committed by our public servants.

Conclusion

11. It is definitely not too exaggerating to claim that without

the enactment of an archives law, basis for accountability will soon be destroyed, the foundation for democracy and good governance will never be established; and our collective memory will ultimately be depleted or eroded! Our society will soon become a society without memory, history, and culture!!

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Contact: **Mr Simon Li, Convenor, Hong Kong Public Records Concern Group**