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May 17, 2010

**Briefing Note for LegCo's Constitutional Affairs Panel**  
**For the Agenda Item: Code on Access to Information and**  
**Management of Public Records**

- I. **The Archives Action Group (AAG) established in 2009, is a voluntary group of professionals and private citizens who are concerned about the absence of archival legislation in Hong Kong.**

The AAG advocates the establishment of archives legislation for Hong Kong in order to

- 1) ensure the proper creation and management of public records,
- 2) ensure the proper transfer, preservation and use of public records as an essential part of our archival heritage,
- 3) ensure the enhancement and communication of the collective memory of our community, and
- 4) improve the efficiency and transparency of our government.

**II. Background for Archives Legislation:**

A. The Importance of Government Archives

- i. Records (in every format) are extremely valuable and important assets of both government and society
- ii. Records constitute memory and no government, society or person can function properly without reliable, authentic, and accessible memory.
- iii. Records are vital for the effective operation of government and delivery of public services to the people.
- iv. Records are vital to the awareness of a people's heritage, culture and identity.
- v. The preservation of selected pertinent records as archives is essential to document our history.
- vi. The preservation of selected records as archives is critical for the

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protection of the rights of individuals, corporations and government

### B. The Current Situation

- i. Most jurisdictions in the world, including China, Macau and Taiwan, have enacted archives legislation in order to ensure and protect the proper creation and management of government records and their preservation as archives.
- ii. Since 1989, when the Government Records Service (GRS) was established, the management of government records in Hong Kong has operated without statutory backing.
- iii. Hong Kong has never enacted legislation to ensure the identification and protection of its public archives.
- iv. Concerned parties have repeatedly called the Government's attention to this major shortcoming. The Government does not consider archival legislation and important priority.

### C. Result of the Current Situation

- i. The current system of the Government's record management is inadequate.
- ii. Attention has been called to this fact again recently in the Ombudsman's Executive Summary of the "Direct Investigation of the Effectiveness of Administration of Code on Access to Information (January 2010)."

### D. Current Problems

- i. The absence of legislation prevents the GRS from performing its functions to international standards.
- ii. The GRS lacks the powers, authority and professional capacity to perform its role effectively.
- iii. The absence of legislation means that there is no mandatory requirement to create records responsibly.
- iv. The absence of legislation also means that there is no monitoring or auditing of the way public records are managed.

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- v. Administrative guidelines issued by GRS are followed sporadically. This results in:
  - a) Lost records
  - b) Unauthorized destruction of records
  - c) Inconsistent appraisal and disposal arrangements for the selection and handing over of records
  - d) Mishandling of records.
- vi. Electronic Records - With the introduction of electronic records, the HKSAR Government's electronic records are not managed as an integral part of a government-wide archives and records management program.
- vii. The current administrative guidelines for recordkeeping do not apply to the records of government-funded organizations.
- viii. The Public Records (Access) Rules are also not applicable to the records of these publicly funded organizations.
- ix. Access to public records and archives should be the right of every citizen. In the current situation, access is not a right but is a matter for the discretion of each administration. There is no appeal mechanism to change decisions that deny public access to records.
- x. Our current system is not transparent, not accountable and has no binding legal framework for a records authority or the application of sanctions.

### III. TO SUMMARIZE:

- i. WITHOUT PROPER MANAGEMENT OF PUBLIC RECORDS AND ARCHIVES UNDERPINNED BY LAW, *THERE IS NO GUARANTEE* THAT IMPORTANT INFORMATION AND DECISIONS OF PUBLIC OFFICES ARE PROPERLY DOCUMENTED AND PROTECTED FOR PUBLIC ACCESS.
- ii. ACCURATE RECORDS OF HONGKONG'S HISTORY ARE AT RISK,
- iii. THE ACCOUNTABILITY AND TRANSPARENCY OF THE GOVERNMENT ARE AT RISK – PROPER ARCHIVE LEGISLATION CAN BOLSTER AND STRENGTHEN GOOD GOVERNANCE.
- iv. HONG KONG CITIZENS HAVE NO GUARANTEE THAT THEY CAN HAVE

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ACCESS TO IMPORTANT INFORMATION, WHETHER THIS IS CURRENT, OR  
ACCESSED ONLY AFTER A SPECIFIC PERIOD OF TIME.

- v. HONG KONG DOES NOT CONFORM TO INTERNATIONAL PROFESSIONAL  
GOVERNMENT ARCHIVAL PRACTICES AND STANDARDS

### IV. THE SOLUTION

**THE ARCHIVES ACTION GROUP STRONGLY RECOMMENDS ARCHIVE LEGISLATION  
FOR HONG KONG AS THE SOLUTION TO THE SHORTCOMINGS OF THE CURRENT  
SITUATION FOR THE FOLLOWING REASONS:**

- i. Archive legislation will provide a legally binding, transparent and  
accountable framework for the implementation of a government  
records policy
- ii. it will result in a cost effective use of resources in management and  
preservation of public records over time.
- iii. An Archives and Records Management Program backed by law will  
ensure a consistent, coherent and professional approach to records  
creation, use, maintenance, disposal, and transfer to the Archives  
records with enduring value.
- iv. Archive legislation will provide legal sanctions for breaches of the law.
- v. It will enable us to establish a records and archives authority with statutory  
powers to set standards, inspect records, monitor recordkeeping and  
ensure compliance.
- vi. It will define the scope of authority over records and archives.
- vii. It will set out records management responsibilities of government  
agencies and government funded bodies for all records inclusive of all  
formats, including hardcopy and digital records.
- viii. It will ensure proper management of public records and archives and their  
availability for public access over time according to clear and  
transparent rules and procedures.
- ix. It will provide a process of appeal when access to public records is

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denied.

- x. It will reduce expenditure over time for records storage, processing, and maintenance.
- xi. There will be indirect savings as a result of increased productivity and efficiencies in service delivery.
- xii. It will bring Hong Kong, our “world city” in line with international practice and enhance its reputation for good governance.
- xiii. It will bring Hong Kong in line with the China, Macau, Singapore, Japan and other international communities all of which have enacted archival legislation.
- xiv. It will improve the government’s ability to meet the needs of a knowledge based society.
- xv. It will raise the threshold for management, protection and professionalism in government recordkeeping.

**The Archives Action Group has drawn up a sample of the Legislation that we would like to see enacted in the HKSAR.**

**We will be happy to send any member of the Panel or LegCo a copy if you will furnish us with your email address.**

**Please send your enquiries to [sbgould@hkucc.hku.hk](mailto:sbgould@hkucc.hku.hk)**

**The working party of the Archives Action Group are listed on the following page.**

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### **Some (Active Working Party) Members of the Archives Action Group**

**Don Brech** – Consultant of Archives and Records Management; and former Government Records Service Director

**Danny Chin** – Area Manager of the Genealogical Society of Utah; and President of the Hong Kong Archives Society

**Filan Chua** – former District Court Judge

**Simon Chu** – Adjunct Associate Professor History Department of the Chinese University of Hong Kong; Secretary General of Memory of the World Committee for Asia/ Pacific, UNESCO; Secretary General of East Asian Branch of the International Council on Archives; former Government Records Service Director and former Vice Chairman of International Advisory Committee of the Memory of the World Program, UNESCO

**Cornelia (Nelly) Fung, J.P.** – private citizen; founder of Chinese International School and ISF Academy; historian by avocation

**Stacy Belcher Gould** – University Archivist, University of Hong Kong; and Hon. Archivist of the Royal Asiatic Society Hong Kong Branch, President of the Hong Kong Association of University Women

**Margaret Ng** – Barrister, member of Legco

**Helen Swinnerton** – Business Archivist; and Secretary General Designate of the Memory of the World Committee for Asia/ Pacific, UNESCO

**William Waung** – Adjunct Professor, School of Law, Chinese University of Hong Kong; Director of Hong Kong Maritime Museum; and Former High Court Judge