

Electronic records and the law: What governmental bodies need to know

What is a record?

The National Archives of South Africa Act, 1996 (Act No. 43 of 1996), defines a record as recorded information regardless of form or medium. Examples of **form** are correspondence files, maps, plans, registers, etc. Examples of **media** are paper, microfilm or electronic format. In South Africa we further distinguish between public and non-public records. Public records are those created or received in the course of official business by governmental bodies at central, provincial and local levels. Non-public or private records comprise all other categories of records - private papers, business records, church records, and so forth.

What is an electronic record?

Electronic records are generated electronically and stored by means of computer technology. Electronic records are also considered to include all components of an electronic information system, namely: electronic media as well as all related items such as input documents, printouts, programmes and metadata (background and technical information regarding the information stored both electronically and in hardcopy).

The National Archives of South Africa Act and the management of public records

Records are created for a purpose and, as evidence of transactions, they have on-going use as a means of management, accountability, operational continuity, legal evidence and disaster recovery. Those with archival value constitute the long-term memory of the institution that created them and, by extension, are an integral part of society's memory and the broader cultural heritage. In some cases records also have a bearing on the rights of citizens. A body's ability to function efficiently and give account of its actions could be affected negatively if sound records management principles are not applied. The National Archives

maintains electronic records with archival value on a permanent basis for subsequent use by the originating body, other bodies and organisations, researchers and the general public.

The National Archives of South Africa Act charges the National Archivist with the proper management and care of public records in the custody of governmental bodies. It specifies that no public record under the control of a governmental body may be transferred to an archives repository, destroyed, erased or otherwise disposed of without the written authorisation of the National Archivist.

It also requires the National Archives to perform the following objectives and functions:

- ◆ preserve public and non-public records with enduring value for use by the public and the State;
- ◆ make such records accessible and promote their use by the public;
- ◆ ensure the proper management and care of all public records;
- ◆ collect non-public records with enduring value of national significance which cannot be more appropriately preserved by another institution, with due regard to the need to document aspects of the nation's experience neglected by archives repositories in the past;
- ◆ maintain a national automated archival information retrieval system, in which all provincial archives services shall participate;
- ◆ maintain national registers of non-public records with enduring value, and promote co-operation and co-ordination between institutions having custody of such records;
- ◆ assist, support, set standards for and provide professional guidelines to provincial archives services;
- ◆ promote an awareness of archives and records management, and encourage archival and records management activities;
- ◆ generally promote the preservation and use of a national archival heritage.

What does the National Archives of South Africa Act say about electronic records?

The National Archives of South Africa Act firmly brings all electronic records created by governmental bodies under the authority of the National Archivist. This allows the National Archives to insist that mechanisms and procedures be put in place to ensure that archival records are identified while still functional and then preserved appropriately.

Section 13(b)(i)-(iii) of the Act specifies that the National Archivist shall -

- determine records classification systems to be applied by governmental bodies;
- determine the conditions subject to which records may be microfilmed or electronically reproduced; and
- determine the conditions subject to which electronic records systems should be managed.

How should electronic records be managed?

For the successful management of electronic records close co-operation and support is needed between the National Archives and governmental bodies. The National Archives has launched an electronic records management programme through which it strives to fulfil the obligations defined by the Act. Governmental bodies will, however, also have to establish policies and procedures to ensure that electronic records and their documentation are retained as long as needed for official use.

The National Archives' electronic records management programme is built on the following three-pronged strategy:

- ♦ Archival involvement in the design and maintenance of electronic records systems.
- ♦ The earliest possible transfer into archival custody of electronic records with enduring value.
- ♦ The identification of archival electronic records which should remain in the custody of the creating body.

The policies and procedures established by governmental bodies have to include provisions for:

- ♦ Application to the National Archives for the approval of records classification systems used in electronic systems. The National Archives provides guidance on the

compilation of classification systems.

- ♦ Application to the National Archives for the appraisal of all electronic records, as well as related documentation and indexes. The information in electronic records systems, including those operated for the Public Service by a contractor, has to be scheduled regarding its ultimate disposal as soon as possible, preferably before implementation of the system.
- ♦ Transfer of a copy of the electronic records and any related documentation and indexes into archival custody at the time specified by the disposal authority. Transfer may take place at an earlier date if convenient.
- ♦ The establishment of procedures for regular recopying, reformatting and other necessary maintenance, to ensure the retention and accessibility of electronic records throughout their authorised life cycle.
- ♦ Deletion of electronic records only in accordance with a disposal authority issued by the National Archivist. This should be done in a manner that ensures protection of any sensitive, proprietary, or national security information.

What services are offered by the National Archives?

The National Archives is developing standards and guidelines to help governmental bodies manage electronic records efficiently and effectively. At this stage the National Archives can assist clients in the following ways:

- ♦ Work with them to identify those electronic records in their custody which are of enduring value and, as such, need to be maintained and made accessible over time in order to meet administrative and/or archival requirements.
- ♦ Work with them to identify and authorise the disposal of electronic records in their custody which are not of enduring value.
- ♦ Assist in identifying the information or metadata which needs to be captured and maintained with electronic records of enduring value if they are to

remain identifiable and accessible over time.

- ♦ Provide advice on access to archival electronic records so that the access provisions of relevant legislation can be met.
- ♦ Assist with the development of classification systems, through the provision of appropriate advice.
- ♦ Provide advice on electronic systems and the National Archives' capabilities regarding preservation, management, access and migration.
- ♦ Arrangement for the safe storage of electronic media.
- ♦ Preparation of finding aids, facilitation of access and the provision of user support, whenever a researcher requires electronic records originally received from a client and held by the National Archives.

In short, the National Archives will assist in ensuring that electronic records systems are manageable, by helping to consolidate electronic records and identifying appropriate maintenance procedures. In addition, we can assist in determining appropriate disposal procedures for electronic records. Our aim is to ensure that our clients are not using their resources to maintain ephemera, or to manage records which are no longer required.

Further information

Further guidance on the management of electronic records can be obtained from:

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