

## **Constitutional Guarantee on Access to Information: a missed gravy train or opportunity?**

Records management has witnessed phenomenal growth and recognition in those countries that have enacted freedom of information legislation (FOI). This has given rise to debate regarding the important role of records management in promoting access to information. While it also illustrates the importance of records management in the governance process, the question we must ask is whether the recognition of records management by governments must wait until FOI is enacted? Also, studies have shown that some of the countries that are experiencing growth in records management are those that have made an effort to provide access to government information through constitutional guarantees.

This article explores various issues and questions relating to freedom of information legislation, records management and governance. For example, it explores the role that constitutional guarantees play in promoting access to government information. It argues that where constitutional guarantees exist, records management should exploit them to demonstrate the importance of records management in the governance process.

### **Introduction**

Records management does not exist because of FOI or vice-versa. The purpose of records management is to document and support the business process of an organisation. Nevertheless, the enactment of FOI in many countries has contributed towards the recognition of records management thus highlighting the relationship that exists between records management and FOI.

Recognition of records management has always been a problem. Some governments as well as action officers only become concerned

about it when records cannot be found or are not retrievable when they need them but do little or nothing to improve their management. The consequence is disorganised record systems that can neither support decision making nor the business process. With the enactment of FOI, this lacklustre view of records management seems to dissipate overnight. Governments begin realising that records have to be properly created, classified and managed in order to capture and provide evidence of business activities, decisions and actions. They also begin to realise the need to dispose of records at the right time by developing and implementing records retention and disposal schedules.

### **Constitutional guarantees and records management, the problem**

Some constitutional guarantees on access to information may explicitly bestow on the public the right to access government held information. Others passively do so through implying access to information for purposes of formulating ideas and self-expression. However, the central tenet is provision of access to government information, most of which is captured, maintained and used as records. Constitutional guarantees therefore symbolise government efforts to make their operations more transparent and open to the public.

Records managers on their part have done little, if anything at all, to promote records management by exploiting the constitutional guarantees provided by government. This is in spite of the fact that the 'need to know' which is associated with constitutional guarantees relies on evidence of transactions captured as information in the form of records. It is the responsibility of records managers to ensure that records are captured and properly

managed to protect the evidence contained in them. This means, they must ensure the records are properly classified, maintained and made available promptly when needed. Last but not least, they also need to ensure that disposition is informed, timed and complies not only with administrative and historic requirements but also statutory requirements of the country as well as all international treaties and conventions that may have been ratified.

Unfortunately, not all records managers including those from countries that have constitutional guarantees on access to information understand what these entail. Little do they understand the implications of these for record keeping.

### **Constitutional guarantees and records management: possible solutions**

In some countries, waiting for freedom of information legislation to drive records management initiatives might take for ever. The wait might lead to destruction of the very records that some records managers have at their disposal. The time has come for records managers to seize the opportunity provided by some governments to ensure proper management of records. In this regard, constitutional guarantees serve as a catalyst for the proper management of records. It is an opportunity records managers cannot afford to miss. They have to approach government and say '*you have given the people access to information on what you do in their name. Similarly, you need to give them access to the evidence that pertains to what your activities are, in other words, the records*'. Putting forward statements as these and linking them to the guarantee might awaken some individuals to realise the importance of records and the value they have towards fulfilling the needs of the guarantee. This in itself can lead to better recognition of the values records have to government functions and to the people.

What this means is:

*Records managers need to gain full knowledge of constitutional guarantees on access to government information. Gaining full knowledge needs to be coupled with adopting the guarantee as a marketing strategy for improved records management. The issue here is better management of records to meet constitutional provisions of enabling the public access to evidence of government transactions which exist in the form of records. Poor management of records leads to loss of the evidence that records capture.*

### **Conclusion**

There is no need for records managers to wait for enactment of freedom of information legislation to make governments appreciate the value records management has for business. Where constitutional guarantees exist records managers need to use them to market the need for improved records management. Enabling full realisation of the guarantees through promulgation of freedom of information legislation will be an added advantage for the records manager since they would have already made inroads into improved records management service through utilising the guarantees.

*Peter M. Sebina  
University College London  
(University of Botswana) ■*