Secrecy and Disclosure:
Freedom of Information and the Commonwealth

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Public Records:
Evidence for Openness

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Our data and record-keeping crisis has always been with us. There are a few things that are basic to development, growth and the very being of a nation - quality data gathering, storage and retrieval is one. Proper record keeping and archiving is another. These are the soul, body and spirit of a nation. At 50, we have never had an accurate census, people die daily in Nigeria and they are literally cast into the earth unrecorded. Thousands are born daily without records. No one in Nigeria can tell with certainty, how many policemen, soldiers or civil servants there are today in service.

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Editorial, The <u>Nation</u>, Lagos, *Data Disaster,* August 1, 2011
http://www.thenationonlineng.net/2011/index.php/editorial/14224-data-disaster.html

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Open Government – Freedom of Information and Open Data

Open Government is a significant part of the international development agenda for increasing openness, transparency, trust and accountability, as well as for reducing corruption in the public sector. The aim is to encourage public managers to take responsibility for the use of public resources and citizens to keep watch on what their governments are doing in their name. Open government is based on the principle that citizens have the right to access the documents and proceedings of their government to enable effective public oversight. In the Open Government environment, we can no longer consider Freedom of Information in isolation from the rapidly growing national and international drive toward Open Data. As we consider the implications of the way that public sector records are managed as evidence for Freedom of Information, we must also consider Open Data; both have to be considered in the context of privacy.

The success of Open Government, both in terms of reactive disclosure (Freedom of Information) and proactive disclosure (Open Data), rests ultimately on governments' ability to create and maintain reliable, trustworthy and accurate government records as evidence of government policies, actions and transactions, and on citizens' ability to access them. Public authorities need to know what information they hold, to be able to retrieve the information efficiently and to be accountable to their citizens through this information. Citizens need to know that they can trust the information that their governments provide, that this information will help to protect their rights and entitlements, that it will provide proof that justice has been delivered impartially, and that it can be used to help them scrutinise what their governments are doing. When citizens, journalists and other users make requests under FOI legislation, they expect to be provided with trustworthy and authentic information. When datasets are released through Open Government portals, citizens have the right to expect that the data will be accurate.

The UK Government is now the Co-Chair of the Open Government Partnership, a multilateral initiative launched in September 2011. The OGP involves collaboration between governments and civil society, with the aim of securing concrete commitments from governments to promote transparency and accountability, empower citizens, fight corruption and harness new technologies to strengthen governance. The OGP, which now

comprises over 50 governments, is rapidly becoming a significant factor in international development policy. The UK, as Co-Chair is driving forward an agenda geared toward Open Data, which is high on its own national agenda. The draft Right to Data White Paper, due to be published this month notes:

> *Data is the 21st Century's new raw material. Its value is in holding governments to account; in driving choice and improvements in public services; and in inspiring innovation and enterprise that spurs social and economic growth.*
>
> *In the past Governments have hoarded this profitable resource to themselves; drip-feeding information to citizens on their own terms. But in the last twenty years - the world has opened up. Citizens across the globe are proclaiming their right to data and for the first time the technology exists to make the demand for greater openness irresistible. We are at the start of a global movement towards transparency – and the UK is leading the world in making data more freely available.*

As yet there has been very little recognition of the need to address the management of records as evidence for openness either in relation to FOI or Open Data. The lack of attention to this vital issue is a largely unrecognised impediment to openness. This is an area in which the UK could lead within the OGP. Already, the US National Action Plan for the Open Government Partnership has recognised records management as a foundation for effective open government:

> *The backbone of a transparent and accountable government is strong records management that documents the decisions and actions of the Federal Government. The transition to digital information creates new opportunities for records management, but much of government still relies on out-dated systems and policies designed during a paper based world. To meet current challenges, the U.S. will: Reform Records Management Policies and Practices Across the Executive Branch. … The initiative will seek a reformed, digital-era, government wide records management framework that promotes accountability and performance.*
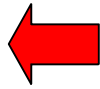
The Relationship of Records and Data

Information, which is the core of the contract between civil society and government, is derived from both data and records. Data managers, records managers and archivists are concerned with ensuring the authenticity, reliability, completeness and accessibility of the information they manage. They do this by creating a trusted environment for managing the creation, organisation, use, and preservation of data and records through a combination of laws and policies, standards and practices, enabling technologies, and qualified/ trained people. In this environment, the integrity of records and data is maintained, and the metadata (data about data) that provide context and usability are preserved. The trusted environment provides the basis for a contract between civil society and the government. The diagram that follows illustrates the creation of data and records in relation to government mandates and functions.
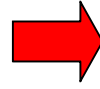
Information Contract between Civil Society and Government in a Trusted Environment

Civil Society
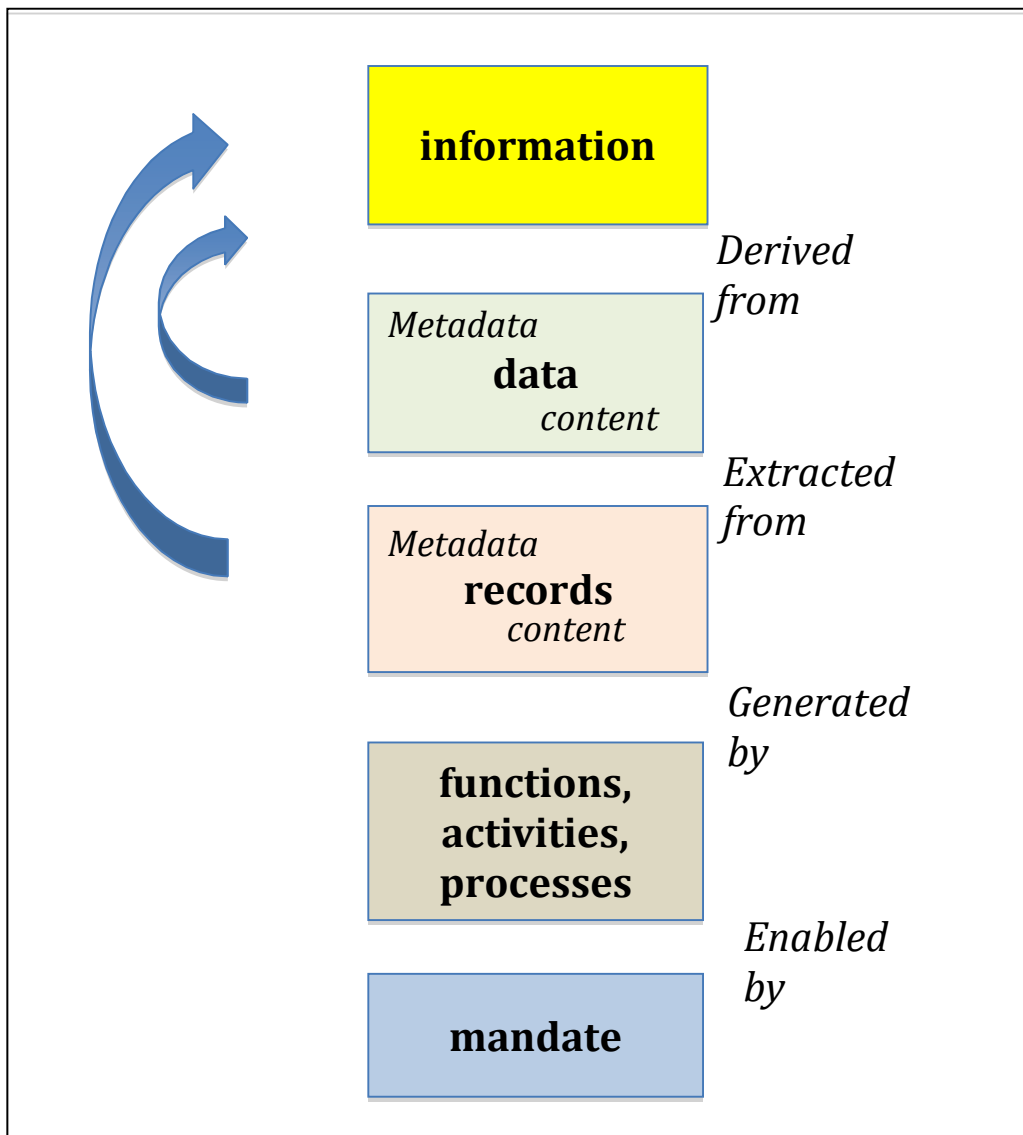- exercise rights
- hold accountable
- pursue economic opportunities

Information Contract

Government
- be accountable
- show transparency
- demonstrate openness

information

Derived from

Metadata
data
content

Extracted from

Metadata
records
content

Generated by

functions, activities, processes

Enabled by

mandate

There is often a lack of clarity about data and records and their relationship.

- *Records* are generated from functions, activities and processes (eg records documenting the results of a land use survey, the processing of applications for land settlement registration or pipe line construction projects). Well-managed records provide evidence of how a policy was developed or executed, how a decision was reached, how an application for a benefit was processed, how a study was carried out, etc. To tell the story, records must be capable of being related to one another and must be trustworthy as evidence of the decisions, actions and activities they document. They typically comprise content, context and structure. Put simply, books and published reports can be managed as individual items; records must always be managed in the context of the other records and information to which they relate. A sequence of records may be needed to provide an audit trail for a transaction or decision.

- *Data* are typically extracted from records (eg agricultural statistics extracted from surveys of land use records, location data extracted from land settlement registration records, environmental data aggregated from environment impact assessment records managed by selected pipeline companies). Where the data are extracted from records, the quality of the data depends on the quality of the records from which they are drawn, and whether they can be traced to the records from which they are derived. Making data available without context can undermine the utility of the information, compromise its value and in some cases make it unusable. Data can also be collected at source, and rather than from records, but even in this case it needs to be associated with metadata in order to be captured and preserved over time. Once data has context wrapped around it, it becomes a record. For instance, expenditure data becomes a basis for transparency and accountability when it is possible to demonstrate where it came from, who authorised it, who saw it and what was done with the funds.

At present, Freedom of Information legislation tends to be adopted and Open Data initiatives tend to be planned on the presumption that good records exist and that information can be provided easily from reliable, well-kept records. Very often this is not the case.

Contribution of Records Management to FOI

The Lord Chancellor's Code of Practice on the Management of Records, issued under section 46 of the Freedom on Information Act of 2000, provides an excellent summary of the significance of well managed records for FOI:

> *Freedom of Information legislation is only as good as the quality of the records and other information to which it provides access. Access rights are of limited value if information cannot be found when requested or, when found, cannot be relied upon as authoritative. Good records and information management benefits those requesting information because it provides assurance that the information provided will be complete and reliable. It benefits those holding the requested information because it enables them to retrieve and locate it easily within the statutory*

timescales or to explain why it is not held.

Poorly organised, fragmented or missing records can result in delays and obstacles to meeting FOI requests. Where records are not well managed, information can be manipulated, deleted, fragmented or lost, and records can become unreliable (not accurate, timely, complete, relevant, authentic). Without proper records management controls, citizens cannot prove unequal or unjust treatment, human rights violations are difficult to challenge, and the public cannot make an informed contribution to the governance process. Weak records systems can also lead to difficulties in determining which records can be subject to disclosure and which records should be exempt; unwarranted disclosure of security sensitive or personal information can have significant repercussions and cause high profile embarrassment.

In many countries, public records are not managed to meet international standards; often even basic management controls are not in place, particularly in the digital environment. Effective records management can offer assurance that records are created to document government activities, that the records are trustworthy and that they can be accessed easily when needed. Unfortunately, records management, as a control function, has received only minimal attention in the period since independence in former colonial territories, and internationally, even where Freedom of Information laws have been introduced.

For FOI to contribute effectively to the trusted environment, the FOI law must be aligned with related legislation, particularly the national records and archives law. In the Commonwealth context, the FOI legislation also needs to specifically over-ride the 30 year rule. The law must be supported by an implementation plan, adopted by the government, that considers the completeness, accuracy and accessibility of government records in all formats and makes all government staff aware of their responsibilities for managing records.

Contribution of Records Management to Open Data

Open data involves proactively disclosing government-generated information to be used freely and republished without restrictions. The open data movement aims to use the power of technology and the Internet to catalyse openness and transparency as well as to foster economic development. Open Data can, even when imperfect, give citizens the ability to monitor what their governments are doing and the money they are spending. For instance, geographic, budget and demographic data can be linked and represented visually on interactive maps to provide information about such issues as mortality rates, school enrolments or agricultural productivity, and to inform planning.

However, while data can be a valuable indicator, to be trusted it needs to be substantiated, and it is important to have some sort of standard for measuring its trustworthiness. Can the records from which the data are derived be trusted? Are they complete? Are they authentic? How were they generated, by whom and in what conditions? Is there sufficient contextual information to enable them to be understood? 'Traceability' (an organisation's ability to trace data back to the source records from which they are derived) is emerging as an important issue. For instance, payroll data has little meaning if the payroll is not based on

reliable personnel records as evidence of appointments, promotions and transfers; budget expenditure cannot be verified without audit trails linking evidence of payments and authorisations; election results cannot be trusted without reliable voter registration records. There is an opportunity to make a more substantial contribution to transparency, accountability, anti-corruption and citizens' rights by linking open data to the availability of accurate, reliable, trustworthy records as evidence.

In the US and the UK, the open data movement has been successful in large part because of the availability of large datasets and their relatively high degree of reliability. As the high expectations for open data are translated into developing country contexts, questions need to be asked about the completeness and veracity of the data available and the relationship of the data to records as sources of evidence. In countries where government records are not well managed, citizens accessing data through open data portals may be provided with unstructured, uncontrolled data; they may receive partial, incomplete or misleading information, and they may receive conflicting information from different sources. This can lead to misunderstanding and misuse of information, skewed findings and statistics, misguided policy recommendations and misplaced funding, all with serious consequences for citizens' lives. It can even create opportunities for cover-up of fraud and the deliberate manipulation of data.

Role of National Archives

It is the international norm that the lead organisation for developing and implementing a records management improvement strategy should be the national archives, working in partnership with others, especially the government's ICT organisation, the access to information office and the audit authorities. This is consistent with the principles adopted by the International Council on Archives, which state that: 'the archives should facilitate the establishment of policies, procedures, systems, standards and practices designed to assist records creators to create and retain records that are authentic, reliable and preservable'.

National archives should function as an essential administrative unit of government, able to improve efficiency, support accountability and reduce public expense through the effective management of records. They should serve as an information auditor, responsible for protecting the documentary evidence that shows that a government is following the rule of law, documenting its actions in a transparent fashion, maintaining evidence of its operations and so remaining accountable to its citizens. Many national archives around the world are not in a position to fill this role. They need to be empowered to do so. Open government initiatives may provide an opportunity to strengthen the role of national archives, for instance by providing opportunities for the appointment of information officers who are trained records management specialists.

Challenges of the Digital Environment

Digital records and data are extremely fragile, and new skill sets and regulatory frameworks are needed to ensure that they are managed effectively over time. The integrity of this

information depends upon a quickly changing array of hardware and software. The risk is that in the digital environment, to an even greater degree than in the paper environment, if records are not managed professionally, their integrity and value as legal evidence can be compromised. They may not be protected against fabrication or loss, may not remain accessible if they are not migrated to new software and hardware environments, may not be linked to related paper records to provide complete information, and may not remain accessible unless they are captured and held in a safe, neutral and professionally managed repository. They may be stored on personal drives, un-networked computers or unmanaged network drives, making them unavailable as a corporate resource. They may be held in multiple locations so that it is not possible to know which is the final or authoritative version.

Many governments around the world do not have the capacity to manage electronic/ digital records in relation to FOI laws or Open Data initiatives. There is a high risk that digital records will not remain accessible unless they are captured and held in a safe, neutral and professionally managed repository. The United States National Archives and Records Administration estimates that there is a six-month half life on a preservation opportunity: every six months the likelihood of being able to preserve the reliability and accessibility of the record deteriorates by half. Digital repositories developed to international standards do not exist in most parts of the world.

Governments and international organisations often decide that digitisation will be a quick means of making records accessible and ending dependence on paper records. However, digitisation initiatives often fail to put in place a strong management framework to ensure that the digital records created through the digitisation process meet requirements for legal admissibility, reliability, usability and cost-effectiveness over time. Requirements for image resolution, metadata fields, standardised indexes and classification structures, and retention and disposition schedules are not addressed. In some cases, they assume that the hard copy source records can be destroyed as soon as digital surrogates records are created, and this can put the organisation at considerable risk. In other cases, they do keep the hard copy records, but there is confusion concerning which records are the 'official' or 'original' records. These issues can have legal implications when requests are made for records under FOI laws.

Conclusion

Records, as evidence of government policies, actions and transactions, provide the basis for the rule of law and for transparency and accountability. They are fundamentally important for the success of FOI and Open Data initiatives. Weak and out-dated laws, policies, systems and processes for creating, capturing and preserving records, and poorly supported national archives in many countries across the world are major deterrents to open government. The UK Government has a significant opportunity to tackle this issue in its role as the Co-Chair of the Open Government Partnership.