



arts and culture

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

National Archives and Records Service of South Africa

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What is a record?

The National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996 as amended), 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. One can 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 national, 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 and Records Service 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. Records created in electronic and paper-based recordkeeping systems contain the

memory of governmental decision-making and its impact. The National Archives and Records Service has a responsibility to ensure that this memory is maintained and protected for centuries to come.

The National Archives and Records Service 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. The Act also charges the National Archivist with the responsibility to determine the records classification systems to be applied by governmental bodies.

What does the Act say about electronic records?

The National Archives and Records Service 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 and Records Service 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(2)(b)(ii)-(iii) of the Act specify that the National Archivist shall -

- 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.

Electronic records management and e-government

Government is committed to e-government as a strategy for better service delivery to the public. Sound records management is a critical success factor in the implementation of e-government and is part of the e-government framework and the national e-strategy. Through sound records management authentic and reliable evidence of transactions that will take place via the planned e-government gateway would be able to be captured and made available to the citizens. Sound records management principles form the basis for sharing and re-using of information as well as for providing access to information. Information is only valuable if it can be read in context and remains accessible. The National Archives and Records Service strives to ensure that, in the transition to e-government, evidence of transactions and the information contained in electronic records will remain accessible and understandable.

How should electronic records be managed?

The National Archives and Records Service endorses the SANS 15489 Records Management Standard as the required benchmarking tool for records management and, in terms of its statutory mandate, requires governmental bodies to put the necessary infrastructure, policies, strategies, procedures and systems in place to ensure that records in all formats are managed in an integrated manner. The National Archives and Records Service also endorses SANS 15801: *Recommendations for trustworthiness and reliability* and SANS 23081 *Metadata for records – Part 1: Principles* with a view that

they would guide governmental bodies in creating authoritative and reliable records.

The primary standard for creating and managing electronic records in office environments which is endorsed by the National Archives and Records Service is SANS (ISO) 16175-2:2014 Ed. 1.00: *Information and documentation - Principles and functional requirements for records in electronic office environments -- Part 2: Guidelines and functional requirements for digital records management systems*. The standard relates to the structured records systems such as those in which records are managed according to a file plan.

Any product that **complies** or **benchmarks** or **shows the functionality** as required in SANS (ISO) 16175-2:2014 or the European Commission's *Model Requirements for the Management of Electronic Records* (MoReq2010) or the *Design Criteria Standard for Electronic Records Management Software Applications* (US dod 5015.2), would ensure that an electronic records management application has the generic records management functionality required by the National Archives and Records Service.

The National Archives and Records Service requires governmental bodies to implement and maintain Integrated Document and Records Management Solutions that provide as a minimum the following records management functionality:

- managing a corporate file plan according to which records are filed;
- managing e-mail as records;
- managing websites as records;
- maintaining the relationships between records and files, and between file series and the file plan;
- identifying records that are due for disposal and managing the disposal process;
- associating the contextual and structural data within a document;
- constructing and managing audit trails;
- managing record version control;
- managing the integrity and reliability of records once they have been declared as such; and
- managing records in all formats in an integrated manner.

Not many governmental bodies have the capacity to implement fully automated

Integrated Document Management Solutions. This does not however mean that they should not manage their electronic records. If these records are created to aid in decision-making and to perform transactions that support a governmental body's activities, the body has a responsibility for the proper management of the records. If records generated in such an environment are not managed properly it could lead to the possible illegal destruction of records. To enhance their accountability, bodies should ensure that, even without the benefit of an Integrated Document and Records Management Solution, they exercise effective records management.

Detailed information regarding the management of electronic records is contained in the National Archives and Records Service's publications *Records Management Policy Manual*; *Managing electronic records in governmental bodies: Policy, principles and requirements*; and *Managing electronic records in governmental bodies: Metadata requirements*. These publications are available on the National Archives and Records Service's website or can, alternatively, be requested in hard copy from the Records Management Division of the National Archives and Records Service.

What services are offered by the National Archives and Records Service?

The National Archives and Records Service is developing standards and guidelines to help governmental bodies manage electronic records efficiently and effectively. At this stage the National Archives and Records Service 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 kept 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 file plans, through the provision of appropriate advice.
- Provide advice on electronic systems and the National Archives and Records Service's 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 and Records Service.

In short, the aim of the National Archives and Records Service is to ensure the proper creation, maintenance, use and disposal of records to achieve efficient, transparent and accountable governance. Governmental bodies should create and have access to complete and reliable information resources to enable the decision-making process to be in the best interest of the public.

Further information

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

The Records Management Division
National Archives and Records
Service of South Africa
Private Bag X236
Pretoria
0001
Tel: (012) 441 3357
Fax: (012) 323 5287
Fax to e-mail: 086 640 0605
E-mail: erecords@dac.gov.za
Website:
<http://www.national.archives.gov.za>

Useful training and good practice materials on electronic records management produced by the International Records Management Trust (IRMT) may be downloaded from the IRMT's website at <http://www.irmt.org/researchReports.html>