Advisory pamphlet No. 2

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

National Archives and Records Service
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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) (NARSSA Act), 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 digital 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 a digital record?

Digital records are records that can be viewed on a device, whether a desktop, laptop, tablet or mobile phone screen. Digital records exist either because a digital version has been made of paper record or because they were born digital. Born-digital records are records that have been natively created in digital format

A digitised record is a record that has been converted from a physical or analogue record to a digital representation.   Digitisation is one means of converting an original or source record and is usually carried out through scanning or photographing the source record.

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 NARSSA 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 archive's 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 digital records?

The NARSSA Act firmly brings all digital 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.

Digital / Electronic records management and the Fourth Industrial Revolution

Government is committed to Fourth Industrial Revolution (4IR) as a strategy for improved service delivery to the public. Sound records management is a critical success factor in the implementation of 4IR. The President of the Republic has appointed a Commission on4IR, to ensure that the country is ready for the current digital era. The Commission is charged with the responsibility to come up with a strategy that would ensure that the country benefits from the innovation and developments of the 4IR era,

while addressing the associated challenges. 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 digital transformation, evidence of transactions and the information contained in digital records will remain accessible and understandable.

How should digital 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 standards for creating and managing digital records in office environments which is endorsed by the National Archives and Records Service are the following:

- SANS (ISO) 16175-1:2020 *Information and documentation* - Processes and functional requirements for software for managing records — Part 1: Functional requirements and associated guidance for any applications that manage digital records. This standard/functional specification provides business with opportunity to manage digital records with more than one software application simultaneously because business is transacted and enabled today by a variety of software applications. NB: In the case of all governmental bodies, Paragraph 1.4 of this

standard is mandatory due to Part V, Section 11(1) in the Regulations (R1458, 2002.11.20) in terms of NARSSA Act viz. "No governmental body shall use a records classification system unless it has been approved by the National Archivist. The standard relates to structured records systems such as those in which records are managed according to a file plan. In most organizations business is transacted and enabled by a variety of software applications. This standard will provide an opportunity to local developers of software to develop South African Systems to fill gaps and compete with propriety software that has been US DOD 5015.2 or MoReq2010 certified, if they can proof their developments are based on this functional specification.

- SANS (ISO) 16175-2:2020 TS *Information and documentation* - Information and documentation — Processes and functional requirements for software for managing records — Part 2: Guidance for selecting, designing, implementing and maintaining software for managing records. In most organizations business is transacted and enabled by a variety of software applications. This standard will provide records professionals with guidance for decision making around selection, design, implementation and maintenance of South African Developed Software that meets the requirements of this standard.

Any product that **complies** or **benchmarks** or **shows the functionality** as required in SANS (ISO) 16175-1:2020 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;

- managing retention and restriction of records containing personal information in line with Section 14 of the Protection of Personal Information Act (Act No. 4 of 2013).
- 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;
- managing records in all formats in an integrated manner; and
- secure and safeguard personal information as required by the Protection of Personal Information Act (Act No. 4 of 2013).

Although some governmental bodies do not have the capacity to implement a fully automated Integrated Document Management Solution, governmental bodies must still put measures in place to manage their digital records in line with the NARSSA Act 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 digital 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 digital 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 digital 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 digital 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 digital records of enduring value if they are to remain identifiable and accessible over time;
- Provide advice on access to archival digital 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 digital media; and
- Preparation of finding aids, facilitation of access and the provision of user support, whenever a researcher requires digital 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 digital records can be obtained from:

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0001
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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 https://www.irmt.org/education-and-training/education-and-training-2