

Freedom of information and government records in Kenya, Uganda and Tanzania

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Freedom of Information (FOI) regimes can only be effective if government records are managed well. This article sets out the findings of research conducted in Kenya, Uganda and Tanzania to establish the level of alignment between those governments' FOI aspirations and their records management readiness for FOI. The article sets out a high-level regulatory framework for the effective management of government records in the ICT/e-government and FOI environments to highlight areas that could be addressed, in order to prepare for FOI in the three countries.

Keywords: freedom of information; records management; Kenya; Uganda; Tanzania

Introduction

Between February 2010 and September 2011, the International Records Management Trust conducted the *Aligning Records Management with ICT/e-Government and Freedom of Information in East Africa* research project, with funding from the International Development Research Centre. The project, conducted in the five East African Community (EAC) countries (Kenya, Uganda, Tanzania, Rwanda and Burundi), found that records management issues are not being addressed in relation to the Freedom of Information (FOI) initiatives that are being planned and implemented within the region, putting these initiatives at risk. In Kenya, Uganda and Tanzania, with support from local researchers, Dr Justus Wamukoya and I conducted interviews and inspections across government, in order to gather data on the planning and implementation of relevant initiatives and the extent of their integration or harmonisation. This article draws from my analyses of these findings¹ to provide an overview of FOI-related issues encountered in Kenya, Uganda and Tanzania. The interviews, inspections and analyses of the findings in Rwanda and Burundi were undertaken by Dr Wamukoya and Miss Anthea Seles. Local researchers contributed to the project throughout. These included Mr John Mreria with Mrs Agneta Akhaabi, Mr Eliakim Azangu, Ms Mary Kuchio, Mr Francis Mwangi and Mr Richard Wato in Kenya; Dr David Luyombya with Mrs Lilian Ariso, Mr David Mukembo, Mrs Joy Nantongo, Mrs Joyce Nyumba and Mr Sylvester Sennabulya in Uganda; Mr Charles Magaya with Mr Matthew Kilasi, Mr Peter Mazikana, Mr Peter Mlyansi, Mr Firimin Msiangi and Mr Yonafika Shaidi in Tanzania; Mr Emmanuel

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Methodology

The research was undertaken over four phases.

Phase one: background research

The background research included interviews with digital records management experts in numerous countries to provide an international context for the study. This phase of the research examined international experiences of the challenges of managing digital records and the good practice that has emerged. The review examined the approach to managing digital records in countries where there has been national recognition of the importance of records management in underpinning e-government and FOI. This phase resulted in an *International Situation Analysis*, written by Mr John McDonald and Dr Anne Thurston.²

Phase two: high-level investigation of user perceptions

During the second phase of the research, Dr Wamukoya and I gathered information as the basis for a qualitative assessment of records management in relation to e-government and FOI in Kenya, Uganda and Tanzania. The aim was to enable a comparative analysis of the laws, policies, governance strategies and evaluation mechanisms needed to ensure that records management requirements are in place and to determine gaps in national frameworks for managing government records. The analysis covered legal and policy issues, management structures and records management strategies. We visited Kenya in May 2010 and Tanzania and Uganda during July 2010. Meetings were held with staff members in government agencies to gather information on government projects and initiatives and to consider the challenges that the governments face in the areas of e-government and FOI. There was senior level interest in the project, and executives and Permanent Secretaries often personally attended meetings and provided access to key personnel. We were able to observe whether preparations had been made on the ground for addressing records issues in plans for e-government and FOI.

Leaders in the private sector and wider civil society also participated in the research. Observations on the current state of records management in the region, the accessibility of government information and the challenges posed by computerisation were gathered from private firms – for instance, the Kenya Commercial Bank, eManage Africa and Law Africa. Data gathered from these sources offered insights into the information collected from the government and provided alternative perspectives on the situation. Interviews with associations of journalists and Article 19 – the international organisation working to promote and defend freedom of expression – added useful information on FOI initiatives and potential barriers to implementation. This article is based on my analyses of the data collected throughout ‘phase two’ that related to FOI, which comprised part of the country reports.³

Phase three: examination of records management in court systems

This phase of the project involved examining the management of records in digital court case management systems in the five countries. The aim was to study the impact

of records management issues in greater depth within a specific context. Case studies were produced on each of the courts that were studied.⁴ Local researchers assessed the integration of records management in the systems' life cycle (project initiation, planning, requirements analysis, design, implementation, maintenance and review and evaluation) and the integration of records management functionality in the systems (creating and capturing records, managing and maintaining records, managing hybrid records, searching, accessing and retrieving records and retaining and disposing of records).

Phase four: comparison of findings across the country studies

The researchers met at Eldoret, Kenya, in May 2011. We explored the significance of the findings across the five countries and considered specific strategies for addressing the problems found across the region. At this meeting, we outlined the project deliverables, which we then developed and presented to a meeting of stakeholders at Arusha, Tanzania, in September 2011.

Records and freedom of information

The British Lord Chancellor's Code of Practice on the Management of Records (issued under the *Freedom of Information Act 2000*) indicates that:

FOI is only as good as the quality of the records and information to which it provides access. Access rights are of limited value if information cannot be found when requested or, if found, cannot be relied on as authoritative, or the arrangements for their eventual destruction or transfer to an archives, are inadequate.⁵

The success of FOI depends on the ability of government agencies to search, retrieve, redact and release information across formats and in line with exemptions. Poorly designed records' search and retrieval systems and poorly organised, fragmented or missing records can work in combination to introduce delays, which can cause high profile embarrassment and attract unwanted criticism. Poorly managed records can also lead to difficulties in assessing which records can be subject to disclosure and which should be exempt. The implications of the unwarranted disclosure of security sensitive or personal information can have significant repercussions for governments. The situation becomes more complicated when the requirements of an FOI law conflict with those of other laws and policies. A question could arise, for instance, concerning the extent to which an FOI law that provides for right of access to government information overrides an existing requirement not to open government records for 30 years. Failure to resolve these issues can lead to confusion and undermine efforts by governments to demonstrate that they are supporting their access, openness and transparency objectives. At the core of these issues is the erosion of trust in governments' programs and decision-making if records cannot be found, the accuracy of the information in the records cannot be trusted or the records have been lost or unlawfully destroyed. The issue of trust is exacerbated by the growing dependency of governments on records in digital form. Digital records are fragile, and their integrity is dependent upon a rapidly shifting array of hardware and software. Unless records are carefully managed and protected, governments will be unable to guarantee the availability, authenticity and usability of the records over time and across sites.

Freedom of information and records in Kenya

At the time of the study, the Kenya Government was considering enacting the *Kenya Freedom of Information Bill 2007*.⁶ The Bill provided for the establishment of an FOI Commission to facilitate access to information: this provision is also in the 2012 version of the Bill.⁷ The Bill would have a major impact on records management, in that it would require every public authority to establish a records management system for creating and preserving the paper and digital records needed to adequately document their policies, decisions, procedures, transactions and activities and to ensure that they are maintained in good order and condition.

The Bill provides for a period of three years from its enactment for every state agency to computerise its records and information management systems, in order to facilitate access to information. This provision raises several questions. There is a need to allow time for ministries, departments and agencies (MDAs) to put their records – whether paper or digital – in order. Computerisation and digitisation are costly and will not necessarily ensure ease of retrieval and access. There is a need for government-wide standards and guidelines on digitisation. This is a role that the Kenya National Archives and Documentation Service (KNADS) could fill, if it had the legal mandate and professional capacity to do so. These issues and the current disorder of government records in many MDAs prompted staff members in agencies, including the National Communications Secretariat and the Ministry of Lands, to express their opinions that Kenya is not ready for FOI. Some civil society groups consider open data to be an alternative to FOI, but the weak regulatory framework for records management raises questions about the accuracy of data extracted from government records.

The *Public Archives and Documentation Service Act 1965* (revised in 1991) restricts access to records until 30 years after their closure. This has not yet been harmonised with the *Constitution of Kenya 2010*, which provides citizens with the right of access to information held by the state,⁸ or with the FOI Bill. In its present form, the Bill would also allocate duties that are already legally the responsibility of KNADS to the Kenya FOI Commission,⁹ potentially creating a split in leadership in the area of records management. To a large extent, this situation stems from limitations in the *Public Archives and Documentation Service Act*, which only empowers KNADS to take control of government records at the end of the records' life cycle. It would be valuable if the government could appoint a high-level review committee to consider how the various approaches to records management can be harmonised to ensure the maximum input to Kenya's development priorities, bearing in mind that there should be a single body with statutory responsibility for the oversight and management of government records from creation to disposition, which is in line 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'.¹⁰

Freedom of information and records in Uganda

Article 41 of the *Constitution of Uganda 1995* gives all citizens the right of access to information in the possession of the state, unless the information is likely to interfere with state security or individual privacy.¹¹ This clause is the result of recommendations from the Uganda Constitutional Commission, which saw access to government information as an important means of promoting good governance, improving and strengthening the culture of transparency and accountability in the public sector and

curtailing the abuse of power and human rights by exposing government dealings to the public. The *Access to Information Act 2005* gives effect to Article 41 of the Constitution, by providing for the right of access to information created and held by government organisations with certain exemptions.¹² The Act encourages government agencies to provide citizens with timely, accessible and accurate information and seeks to empower the public to effectively scrutinise and participate in government decisions that affect them. It applies to all information and records of government ministries, local governments, statutory corporations and bodies, constitutional commissions and other government agencies, unless specifically exempted.

The passage of the Access to Information Act made Uganda the first country in the EAC to enact an FOI law. The Act requires an information officer in each public body to prepare an information manual, including a description of the body and its functions, its procedures for facilitating requests for access, a description of the categories of records available without submitting requests, and remedies available, in case of failures to respond to requests. However, until recently, the law has not had its intended impact, and it has remained difficult for citizens and civil society groups to obtain government information; journalists have had to access information through other means. A number of factors have undermined the effectiveness of the legislation. One issue is that there is disparity between the Act and pre-existing legislation, which stipulates that government records may be made open to the public 30 years after the records are closed, and many public servants continue to adhere to the older law.

There has not been a clear implementation plan for FOI. Although most of the public servants that we interviewed were aware of the Act, none of them knew whether an Information Commissioner's post had been created or filled or which government body was leading on FOI. Access to information is within the remit of the Directorate of Information and National Guidance – a directorate of the Office of the Prime Minister that falls under the political leadership of the Minister for Information and National Guidance. Staff interviewed in the Office of the Prime Minister understood FOI to be a proactive government information dissemination program, rather than a system that allows citizens to request and, conditionally, receive government information. This misconception of the nature of FOI was common across MDAs. Many of the MDAs that we visited had never received an FOI request, and few MDAs had established FOI request-handling processes. Those processes that have been established are overly complex, require senior management approval, are not time constrained and allow for vetting by public relations personnel.

Most significantly, full implementation has not been possible because the regulations giving effect to the law were issued only recently. The regulations were drafted in 2008, but were not published in the *Gazette* until April 2011. The regulations spell out the procedures that have to be followed to get information from a public body, including request forms and fees structures. However, they do not establish the means of ensuring that paper and digital records are managed professionally, so that they can be preserved in authentic form and accessed easily.

As the issue of access to information is widely publicised – for instance, through country-wide training of trainers offered by the Human Rights Network for Journalists-Uganda – the issue of the management of government records will need to be addressed. If not addressed, poor recordkeeping will present a significant impediment to access to information. Visits to government registries revealed large backlogs of paper records, which were stored wherever space could be found and managed by under-qualified personnel. The paper records were not well organised and retention

requirements had not been applied, so large volumes of inactive records occupied valuable office space. Digital records management controls had not been applied, and information was split between paper and digital formats, making it increasingly difficult to follow the progress of a given matter. Digitisation was widely seen as the solution to these and other recordkeeping problems, and there seemed to be little awareness that records in digital form must be managed as carefully as paper records.

Most Ugandans are unaware that the National Archives exists, since there is no budget for outreach, but local and foreign researchers with research permits do use the archives. Use is limited by the fact that only the records dating from 1890 to 1928 have been listed and described. Records created between 1928 and 1967 have not been described, which makes retrieval difficult. Few records created after 1967 have been transferred from MDAs to the National Archives. This situation would prevent timely responses to FOI requests, if requests were received by the Archives. The National Archives has not experienced any effects from the introduction of the Access to Information Act, and it continues to comply with the 30-year rule.

Freedom of information and records in Tanzania

Tanzania has been moving steadily towards the passage of an FOI act. In February 2005, the *United Republic of Tanzania Constitution 1977* was amended to introduce a new section under Article 18, which gives citizens the right to freedom of opinion and expression, with a few exceptions.¹³ Citizens can seek, receive, impart and disseminate information through any form of media, and they have the right of freedom from interference in relation to these communications. This new section effectively introduces a constitutional basis for FOI. In October 2006, the Tanzanian Government published a draft FOI Bill on its official website.¹⁴ The Bill would, if enacted in its current form, establish a Media Board and Privacy Commissioner and amend certain provisions of the *Newspapers Act*, the *Broadcasting Services Act*, the *National Security Act* and the *Communication Regulatory Authority Act*. The Bill has prompted a national debate on FOI. An FOI coalition, comprising 11 civil society institutions, has held meetings and public hearings on the FOI Bill across Tanzania. It has emerged that the public is not only interested in an FOI law, but citizens want the Right to Information (RTI) as a basic right.

The coalition was encouraged by the fact that so many Tanzanians were involved in developing recommendations. Recommendations included RTI and media services Bills, regulations to guide the smooth implementation of the two laws once they are enacted by Parliament and a list of laws and sections of laws that might be repealed to permit the smooth implementation of FOI. The coalition noted that the language of the FOI Bill is unnecessarily complex, making it inaccessible to most citizens, that its provisions restrict more information than they open to public access, contravening the fundamental principles of FOI, and that it would establish a Privacy Commissioner who would be unable to issue binding orders.

A crucial factor in the law's success will be access to accurate and reliable records. Access laws place special focus on an organisation's ability to retrieve information from their systems. International good practice requires a central agency – normally the national records and archives institution – to be responsible for ensuring that public sector records, regardless of their format and media, can be accessed easily. Legally, in Tanzania, the Records and Archives Management Division (RAMD)

of the President's Office – Public Service Management is the correct agency to take on this responsibility, but it will require additional support and resources to do so, particularly with regard to digital records. At present, though well positioned, RAMD does not have the facilities for ingesting or preserving digital records or the skills to play an active role in managing them.

A regulatory framework for the management of records

One of the products of the research project was a *Regulatory Framework for the Management of Records*, which sets out the basic elements that need to be in place to create an environment in which public sector records can be well managed in support of e-government and FOI.

ICT/e-government

Planning for ICT/e-government systems ensures that the records needed for the proper functioning of the system are complete, accurate and accessible.

Planning for ICT/e-government systems addresses functionality for the management of records from creation to disposition.

The national records and archives authority is included in consultations on ICT/e-government initiatives.

Freedom of Information

An FOI law has been enacted.

The FOI legislation is aligned with existing legislation, particularly the national records and archives legislation and other legislation relating to the release of information.

The FOI legislation specifically overrides the 30-year access law, if there is one.

The FOI law stipulates mandatory response times.

A plan for FOI implementation has been adopted by the government.

The plan for FOI implementation considers the completeness, accuracy and accessibility of government records in all formats.

The plan for FOI implementation makes all government staff aware of their responsibilities for managing records.

Records management

Legislation

The records and archives legislation establishes a single authority on the management of government records, from creation to disposition.

The records and archives legislation positions the national records and archives authority centrally within government, so that it can fulfill its cross-cutting function.

Policy

A government-wide records management policy has been adopted to define responsibilities for records management and relationships with ICT/e-government and FOI bodies.

Standards

The national records and archives authority has adopted a records management standard.

A standard for records management functionality in ICT systems has been adopted.

A standard for archival management and digital preservation has been adopted.

Procedures

The national records and archives authority has issued or approved procedures for every phase of the management of records, from creation to disposition.

A national retention and disposal schedule exists and is applied to all hard-copy and digital records.

The national records and archives authority is mandated to enforce compliance with the retention and disposal schedule.

Staffing

A cadre of records management staff exists.

A scheme of service exists for staff responsible for managing records in digital or paper form, from creation to disposition. The scheme of service spans government and ranges from clerical to management positions.

Infrastructure and facilities

The national records and archives authority is allocated sufficient funds to fulfill its mandate. MDAs have sufficient space and equipment to manage active records securely, both in digital and paper formats.

Purpose-built records centres have been provided for the storage of semi-active records.

Purpose-built archival repositories have been provided for the storage of inactive records.

A digital repository has been created to preserve digital records over time.

Capacity building

Training in records management is available to staff at all levels and includes practical training in digital records management.

University programs offer in-depth education for records management, with practical training in digital records management.

The regulatory framework in Kenya, Uganda and Tanzania

The following table shows the situation in Kenya, Uganda and Tanzania against the *Regulatory Framework for the Management of Records*. An X represents an element that is not yet in place.

Good practice statement	Kenya	Uganda	Tanzania
ICT/e-government			
Planning for ICT/e-government systems ensures that the records needed for the proper functioning of the system are complete, accurate and accessible.	X	X	X
Planning for ICT/e-government systems addresses functionality for the management of records, from creation to disposition.	X	X	X
The national records and archives authority is included in consultations on ICT/e-government initiatives.	X	X	X
Freedom of Information			
An FOI law has been enacted.	X		X
The FOI legislation is aligned with existing legislation, particularly the national records and archives legislation and other legislation relating to the release of information.	X	X	X
The FOI legislation specifically overrides the 30-year access law, if there is one.	X	X	X
The FOI law stipulates mandatory response times.	X	X	X
A plan for FOI implementation has been adopted by the government.	X	X	X
The plan for FOI implementation considers the completeness, accuracy and accessibility of government records in all formats.	X	X	X
The plan for FOI implementation makes all government staff aware of their responsibilities for managing records.	X	X	X
Records management			
Legislation			
The records and archives legislation establishes a single authority on the management of government records, from creation to disposition.	X	X	

Good practice statement	Kenya	Uganda	Tanzania
The records and archives legislation positions the national records and archives authority centrally within government, so that it can fulfill its cross-cutting function.	X	X	X
Policy			
A government-wide records management policy has been adopted to define responsibilities for records management and relationships with ICT/e-government and FOI bodies.	X	X	X
Standards			
The national records and archives authority has adopted a records management standard (ie ISO 15489).	X	X	X
A standard for records management functionality in ICT systems has been adopted.	X	X	X
A standard for archival management and digital preservation has been adopted.	X	X	X
Procedures			
The national records and archives authority has issued or approved procedures for every phase of the management of records, from creation to disposition.	X	X	X
A national retention and disposal schedule exists and is applied to all hard-copy and digital records.	X	X	X
The national records and archives authority is mandated to enforce compliance with the retention and disposal schedule.	X	X	X
Staffing			
A cadre of records management staff exists.	X	X	
A scheme of service exists for staff responsible for managing records in digital or paper form, from creation to disposition. The scheme of service spans government and ranges from clerical to management positions.		X	X
Infrastructure and facilities			
The national records and archives authority is allocated sufficient funds to fulfill its mandate	X	X	X
MDAs have sufficient space and equipment to manage active records securely, both in digital and paper formats.	X	X	X
Purpose-built records centres have been provided for the storage of semi-active records.	X	X	X
Purpose-built archival repositories have been provided for the storage of inactive records.	X	X	X
A digital repository has been created to preserve digital records over time.	X	X	X
Capacity building			
Training in records management is available to staff at all levels and includes practical training in digital records management.	X	X	X
University programs offer in-depth education for records management, with practical training in digital records management.	X	X	X

The framework demonstrates that planning for FOI implementation is not in advanced stages in any of the three countries, and the records management underpinning for FOI is also substantially lacking.

Conclusion

Uganda has enacted FOI legislation, but it has no implementation strategy. In Kenya and Tanzania, Bills are pending that could lead to FOI laws. Plans that have been

developed for existing or pending FOI laws typically account for the need to ensure that records are managed properly. In Kenya's pending FOI law, there are provisions for an Ombudsman to be given the power to examine and prescribe systems and procedures for keeping and managing records in MDAs. The same law also requires MDAs to create and preserve the records necessary to document their policies, decisions, procedures, transactions and other activities and to ensure that records in their custody, including those in digital form, are safeguarded from damage or destruction. However, KNADS was not consulted on the law. Similarly, the National Archives of Uganda and Tanzania have had little involvement in FOI. The Ugandan legislation does not include provisions that override the 30-year rule. This has led to confusion in the Ugandan public service, and a similar problem could face Kenya and Tanzania. Even with FOI implementation periods of three or five years, concerns have been raised that bringing records management to the level required will take a considerable length of time in all three countries. Moreover, there was little evidence that the implementation of the laws will consider the completeness, accuracy and accessibility of government records in all formats. Finally, while implementation plans may refer to the need to make all government personnel aware of their responsibilities for managing records, there is a lack of expertise to deliver the required training. If records are to be managed as assets and if they are to serve their roles in supporting FOI, then they must be managed within a strong regulatory framework, which is not yet in place in Kenya, Uganda or Tanzania.

Endnotes

1. The full reports and case studies of this research project are available at <<http://irmt.org/portfolio/managing-records-reliable-evidence-ict-e-government-freedom-information-east-africa-2010-2011>>, accessed 10 August 2012.
2. *ibid.*
3. *ibid.*
4. *ibid.*
5. 'Lord Chancellor's Code of Practice on the Management of Records Issued under Section 46 of the Freedom of Information Act 2000', available at <<http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section-46-code-of-practice.pdf>>, accessed 16 August 2012.
6. Ministry of Information and Communications, Republic of Kenya, 'Draft Kenya Freedom of Information Bill 2007', available at <http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/kenya/kenya_govt_foi_bill_apr07.pdf>, accessed 1 August 2010.
7. Government of Kenya, 'The Freedom of Information Bill', available at <<http://www.law-democracy.org/wp-content/uploads/2010/07/Kenya.FOILawJan12.pdf>>, accessed 10 August 2012.
8. Government of Kenya, 'The Constitution of the Republic of Kenya 2010', available at <http://www.parliament.go.ke/index.php?option=com_content&view=article&id=83&Itemid=79>, accessed 1 August 2011.
9. Kenya Archives and Documentation Service, 'About Us', available at <<http://www.archives.go.ke/about/about-us.html>>, accessed 1 August 2011.
10. International Council on Archives, 'Electronic Records: A Workbook for Archivists, International Council on Archives Committee on Current Records in an Electronic Environment, April 2005', available at <http://arhinet.arhiv.hr/_Download/PDF/Study16ENG_5_2.pdf>, accessed 1 August 2011.
11. Uganda Embassy, 'The Constitution of the Republic of Uganda 1995', available at <http://www.ugandaembassy.com/Constitution_of_Uganda.pdf>, accessed 1 August 2011.
12. Republic of Uganda, 'The Access to Information Act 2005', available at <http://www.freedominfo.org/documents/uganda_ati_act_2005.pdf>, accessed 1 August 2011.
13. The Judiciary of Tanzania, 'The Constitution of the United Republic of Tanzania 1977', available at <<http://www.judiciary.go.tz/downloads/constitution.pdf>>, accessed 1 August 2011.
14. The United Republic of Tanzania, 'Draft No. 4, Bill for the Freedom of Information, October 2006', available at <http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/tanzania/draft_foi_bill_2006.pdf>, accessed 1 August 2011.