

The Enactment of the Public Records and Archives Management Act in Japan and Future Challenges

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History of the Public Records and Archives Management Act (1)

- Report of the Administrative Reform Committee: “Information Disclosure Act and document management go hand-in-hand”
- In a supplementary resolution to the Administrative Organs Information Disclosure Bill by the Committee on General Affairs of the House of Councillors, it was decided to continue to examine the issue within the process of deliberating the formation of an act to govern administrative documents management.
- December 2003: Advisory Panel on the Appropriate Management, Preservation and Use of Public Records and Archives was launched by the Chief Cabinet Secretary.
→ June 2004: A report *Developing Organizations for the Appropriate Management, Preservation and Use of Public Records and Archives: Enhancing the Preservation of Historical Documents and Archives for the Future* was produced.

History of the Public Records and Archives Management Act (2)

- In 2007, public awareness was raised against document management because of a number of incidents stemming from the inappropriate management of documents— loss of pension records, the destruction of the logbook of the Maritime Self-Defense Force's supply ship Towada prior to expiration of its retention period, the failure to create minutes for the Ministry of Defense's Equipment Review Meeting, and the abandonment of documents concerning hepatitis C—.
- This led the Group of the Diet Members to Promote Public Archives (launched in March 2005) to submit *The Urgent Proposal on Preserving Our History as a Legacy for the Future* to the Prime Minister on December 7, in which enactment of a document management law was proposed.

History of the Public Records and Archives Management Act (3)

- February 29, 2008: Expert Committee on Records Management
⇒ Final report published on November 4 (*Public Records and Archives Management: Recording the Times as a Matter of State*)
- Numerous revisions and amendments in the House of Representatives
- Numerous supplementary resolutions (15 in the House of Representatives, 21 in the House of Councillors)
- Enacted on June 24, promulgated on July 1, 2009, and entered into full effect on April 1, 2011

Highlights of the Public Records and Archives Management Act (1)

(1) Covers the entire life cycle of a document

Current stage (Chapter 2: Administrative documents; Chapter 3: Corporate documents)

Creation/acquisition ⇒ Classification ⇒ Preservation ⇒ Transfer or disposal

Non-current stage (Chapter 4: Specified Historical Public Records and Archives)

Classification ⇒ permanent retention, in principle

Public Records and Archives = Administrative documents, corporate documents, and Specified Historical Public Records and Archives

Highlights of the Public Records and Archives Management Act (2)

- (2) General law on the management of state-level public records and archives
Previously, document management law was accessory to the Administrative Organs Information Disclosure Act and the Incorporated Administrative Agencies etc. Information Disclosure Act.
- ⇒ The Order for Enforcement of the Administrative Organs Information Disclosure Act

With the enactment of the Public Records and Archives Management Act, the Information Disclosure Act became a special law for certain categories of use, namely, disclosure and provision of information in response to disclosure requests.

Highlights of the Public Records and Archives Management Act (3-1)

- Also covers corporate documents of incorporated administrative agencies etc.
 - Management of current corporate documents
 - Obligation to transfer Historical Public Records and Archives to the National Archives of Japan etc.
- Cf. Incorporated Administrative Agencies etc. Information Disclosure Act
- Incorporated Administrative Agencies etc. Personal Information Protection Act

Highlights of the Public Records and Archives Management Act (3-2)

- Respects the independence and autonomy of incorporated administrative agencies etc., while imposing accountability on par with the state in light of their role as administrative actors
- Corporate Document File Management Register
- Rules for the Management of Corporate Documents
- Reporting on the status of management

Highlights of the Public Records and Archives Management Act (4)

- Obligation to prepare documents to enable a decision-making process including the background and performance of affairs and business of the administrative organ to be traced or verified reasonably. (Article 4)

Examples of the major types of obligatory documents

Highlights of the Public Records and Archives Management Act (5)

- In the past, transfer was based on a decision reached through consultation between the head of the transferring administrative organ and the Prime Minister, and required the consent of the head of the transferring organ.
⇒ The Public Records and Archives Management Act employs a "records schedule" system in which the decision to transfer or destroy documents must be made as quickly as possible prior to the expiration of the retention period (or, of the extended retention period, when retention periods are extended) and recorded in the Administrative Document File Management Register; and administrative document files etc. scheduled for transfer are automatically transferred upon expiration of the retention periods.

Highlights of the Public Records and Archives Management Act (6)

- Best-efforts obligation to promote centralized management (Article 6 (2))
- Statistical survey by the National Records Management Council (NAREMCO)
⇒ Approximately 90% of documents referred to in the course of duty were created or obtained within the most recent 6 months; approximately 99% within the most recent 1 year

Highlights of the Public Records and Archives Management Act (7)

- Guaranteed right to request use of Specified Historical Public Records and Archives (Article 16) ⇒ Corresponds to the right to request disclosure of administrative documents and corporate documents
- * Ensures accountability to the people, both now and in the future

Highlights of the Public Records and Archives Management Act (8)

- Promotion of use (Article 23) ⇒ Corresponds to provision of information under the Information Disclosure Act
- Digital archives

Highlights of the Public Records and Archives Management Act (9)

- Mechanisms to use a general management organ to ensure compliance

Consent of the Prime Minister to the disposal of administrative document files etc. (Article 8 (2))

Requests from the Prime Minister not to destroy administrative document files etc. (Article 8 (4))

Reporting to the Prime Minister on the status of entries on Administrative Document File Management Registers and Corporate Document File Management Registers (Article 9 (1), Article 12 (1))

Inspections etc. by the Prime Minister (Article 9 (3))

Consent of the Prime Minister to the establishment of Rules for the Management of Administrative Documents (Article 10 (3))

Consent of the Prime Minister to the disposal of Specified Historical Public Records and Archives (Article 25)

Reporting to the Prime Minister on the status of preservation and use of Specified Historical Public Records and Archives (Article 26 (1))

Consent of the Prime Minister to the establishment of the Rules for Usage (Article 27 (3))

Recommendations issued by the Prime Minister (Article 31)

Highlights of the Public Records and Archives Management Act (10)

- Use of the expertise of the National Archives of Japan
Inspections etc. by the National Archives of Japan to ensure the appropriate transfer of Historical Public Records and Archives (Article 9 (4))
Training by the National Archives of Japan for employees of administrative organs and incorporated administrative agencies etc. to ensure appropriate preservation and transfer of Historical Public Records and Archives (Article 32 (2))

Highlights of the Public Records and Archives Management Act (11)

- Use of specialized expertise of third parties to ensure checking functions
Establishment of Public Records and Archives Management Commission in the Cabinet Office (Article 28 (1))

Jurisdiction of the Public Records and Archives Management Commission (Article 29)

Consultation on the establishment, amendment and abolition of Cabinet Orders (excluding Public Records and Archives Management Commission Orders)

Consultation prior to the Prime Minister's consent to the establishment, amendment and abolition of Rules for the Management of Administrative Documents and Rules for Use, and disposal of Specified Historical Public Records and Archives

Consultation prior to the issuing of recommendations by the Prime Minister

Revisions of the National Archives Act (1)

- Previously, the National Archives Act had a dual nature as the organization law establishing the National Archives of Japan as an incorporated administrative agency, and as a management law governing the transfer, preservation and use of Public Records and Archives that are important as historical materials
 - ⇒ The Public Records and Archives Management Act takes care of the management-law aspects, allowing the National Archives Act to be simplified to an organization law

Revisions of the National Archives Act (2)

- Intermediate repository services included in jurisdiction

Intermediate repository services for administrative documents scheduled for transfer under records schedules

⇒ Core services (Article 11 (1) (ii))

Intermediate repository services for administrative documents whose treatments (transfer or disposal) not designated in records schedules

⇒ Non-core services (Article 11 (3) (ii))

Public Records and Archives Management Commission Ordinance

- Enacted on June 22, promulgated on June 25, and entered into force on June 28 in 2010
- Cabinet Order of December 17, 2010 revised the Public Records and Archives Management Commission Orders, establishing Specified Public Records and Archives Complaint Review Subcommittee.

Order for Enforcement of the Public Records and Archives Management Act (1-1)

- Decided by the Cabinet on December 17 and promulgated on December 22, 2010
- Transfer by the Grand Steward of the Imperial Household Agency
⇒ Imperial Household Archives
- Transfer by the Minister of Foreign Affairs
⇒ Diplomatic Archives of the Ministry of Foreign Affairs

Order for Enforcement of the Public Records and Archives Management Act (1-2)

- Other facilities operated by incorporated administrative agencies etc. and designated by the Prime Minister as “National Archives of Japan etc.” may also accept transfers of Historical Public Records and Archives.
- Archives of the Institute for Monetary and Economic Studies, Bank of Japan; The Center for Academic Resources and Archives of Tohoku University; Nagoya University Archives; Kobe University Archives; Kyoto University Archives; the Hiroshima University Archives; and the Kyushu University Archives.

Order for Enforcement of the Public Records and Archives Management Act (2-1)

- Appended table ⇒ Retention periods

Lists administrative documents and retention periods for each work process of administrative organs according to the content and nature of their operations

⇒ Ensures the intelligibility of the documentation of work processes (also serves as guidelines for the creation and classification of administrative documents)

Order for Enforcement of the Public Records and Archives Management Act (2-2)

- Flexibility in setting dates retention periods start to run

Do not necessarily correspond with the date documents are created or obtained

Ex: 5 years from permits and licenses expire

Change in the "minimum retention period" concept found in the Order for Enforcement of the Administrative Organs Information Disclosure Act (prior to the revisions by Cabinet Order No. 250 of 2010) ⇒ Maximum of 30 years
⇒ Required to consider extension of the terms after the elapse of 30 years

Order for Enforcement of the Public Records and Archives Management Act (2-3)

- Each year, when reporting the status of management to the Prime Minister, administrative organs must report to the Prime Minister the term of extension and the reasons for extension (Article 9 (2))

Order for Enforcement of the Public Records and Archives Management Act (3)

Obligation to describe in the catalog created by the head of the National Archives of Japan etc. the type of media of Specified Historical Public Records and Archives (Article 19 (1) (vi))

Order for Enforcement of the Public Records and Archives Management Act (4-1)

- Transitional measures

Both Administrative Document File Management Registers and Corporate Document File Management Registers existent at the time of enactment of the Order are deemed to have been prepared in conformity with the Order for Enforcement of the Public Records and Archives Management Act (limited to those prepared using magnetic disks).

Order for Enforcement of the Public Records and Archives Management Act (4-2)

- Items of a Register equivalent to those prescribed in the Order for Enforcement of the Public Records and Archives Management Act are deemed to have been entered in conformity with the Order.
 - ⇒ Enables to comply with the requirements of the Order with minimal changes: for example, adding measures to be taken at the expiration of retention periods

Order for Enforcement of the Public Records and Archives Management Act (4-3)

- When it is difficult to enter certain items into a Register, a grace period is allowed, provided that each year the organ reports to the Cabinet Office the following: (i) the items not to be entered; (ii) the reason why it is difficult to enter them; and (iii) the expected date of entry.

Guidelines for the Management of Administrative Documents (1)

Prime Minister's approval of April 1, 2011 (Guidelines for the Management of Administrative Documents)

Guidelines for the establishment of Rules for the Management of Administrative Documents by heads of administrative organs

Developed by the Cabinet Office because administrative organs are required to consult with, and obtain the approval of the Prime Minister when establishing Rules for the Management of Administrative Documents.

Also developed in consultation with the Public Records and Archives Management Commission because the Prime Minister is required to consult with the Commission when giving approval to the Rules.

Guidelines for the Management of Administrative Documents (2-1)

- Management structure

General records manager (Director General etc.) = General responsibility for document management throughout an administrative organ

Records manager = Person with responsibility for implementing document management in an area of jurisdiction (nominated by the general records manager)

Auditor = Performs audits to ensure compliance with document management provisions

Guidelines for the Management of Administrative Documents (2-2)

- General records manager formulates Administrative Document File Retention Procedures (detailed version of Rules for the Management of Administrative Documents)

Guidelines for the Management of Administrative Documents (3)

- Functions of the Administrative Document File Management Register
 - (i) Tool to share information between the public and the administrative organ
 - (ii) Management tool covering the entire life cycle from the creation/acquisition of the administrative document to its transfer or disposal

Guidelines for the Management of Administrative Documents (4)

- Records schedules

Established by records managers in accordance with the Appended Table 2 of the Guidelines for the Management of Administrative Documents, using the expertise of the National Archives of Japan.

⇒ Entries to the Administrative Document File Management Register are made with the consent of the general records manager (expertise of the National Archives of Japan is also used).

Guidelines for the Use of Specified Historical Public Records and Archives (1)

- Guidelines for the Preservation, Use and Disposal of Specified Historical Public Records and Archives
- Guidelines for the establishment of Rules for Use etc.

Guidelines for the Use of Specified Historical Public Records and Archives (2)

- Advance review
- Also help to promote the use.

Guidelines for the Use of Specified Historical Public Records and Archives (3)

- Simplified methods adopted in general
Requests for Use considered exceptional

Local government agencies (1)

- (Public) document management ordinances prior to the enactment of the Public Records and Archives Management Act

Municipal Document Management Ordinance (2001), City of Uto,
Kumamoto Prefecture

Emphasis on filing system

Document Management Ordinance (2004), Town of Niseko, Hokkaido

Emphasis on document disclosure

Ordinance of the Public Records Management of Osaka City (2006)

Emphasis on document creation

Local government agencies (2)

- Enactments and revisions of municipal ordinances after the enactment of the Public Records and Archives Management Act

Amendment of the Ordinance of the Public Records Management of Osaka City (February 2011)

Shimane Prefecture Public Documents and Archives Management Ordinance (March 2011)

Kumamoto Prefecture Ordinance on the Management of Administrative Documents (March 2011)

Tottori Prefecture Public Documents and Archives Management Ordinance (October 2011)

All based on the Public Records and Archives Management Act.

Challenges going forward (1)

- Management of current records held by the legislature and judiciary
- See Uga, Katsuya, *Joho kokai to kobunsho kanri (Information Disclosure and Public Document Management)* (Yuhikaku Publishing, 2010) p. 13-

Challenges going forward (2)

- Decisions reached through consultation with the legislature
- Kenseikinenkan (Constitutional Museum)

Challenges going forward (3)

- Documents associated with criminal actions
- Held by the Public Prosecutors Office, which is an administrative organ, but for purposes of transfer, treated the same as documents held by the legislature and judiciary
- "Decisions reached through consultation"

Challenges going forward (4)

- Amendment of the Copyright Act
- Publication rights
- Reproduction rights
- Creation of digitized images for permanent retention

Challenges going forward (5): Key points in the enactment of public records and archives management ordinances (1)

- To cover the entire life cycle of a document (including non-current records) ⇒ Accountability to the citizens of the future
- To cover local incorporated administrative agencies and the 3 standard local public corporations (designated managers)
- Documentation obligations
- Mechanisms to ensure appropriate transfer (records schedules etc.)
- To establish the right to request the use of documents corresponding to Specified Historical Public Records and Archives (mechanism for relief by third-party institutions): Public Records and Archives Management Commission, Information Disclosure (and Personal Information Protection) Review Board

Challenges going forward (5): Key points in the enactment of public records and archives management ordinances (2)

- Mechanisms to ensure compliance
Public Records and Archives Management Commission etc.

Challenges going forward (5): Key points in the enactment of public records and archives management ordinances (3)

For more information on the content of existing public records and archives management ordinances and the key points in the formulation and enactment of public records and archives management ordinances, see:

Uga, Katsuya, *Chikujo kaisetsu kobunsho to no kanri ni kansuru horitsu (Text Tracing Manual of the Public Records and Archives Management Act)* (revised edition) (Dai-Ichi Hoki, 2011)

Uga, Katsuya, *Joho kokai to kobunsho kanri (Information Disclosure and Public Document Management)* (Yuhikaku Publishing, 2010)

Challenges going forward (6): Public archives

- Ensuring functions of public archives properly at the local level
- Fukuoka Prefecture Joint Public Archives
Fukuoka Prefecture and all municipalities in the prefecture (except government-ordinance-designated cities)
Scheduled to open in the fall of 2012