IMS 5047 – MANAGING BUSINESS RECORDS

TOPIC 4 : Access and Ownership

Week Ten : Custody and ownership in a modern environment

Plus Class presentation from one group – Assignment #2

Objectives – see Unit Outline

Some of the objectives of this unit are:

• To develop an understanding of how systems are designed and implemented, so that they meet business needs and evidential requirements.

• To develop an understanding of how to advise team members and function managers in an organisation on records management systems and business rules for business purposes.

This topic covers these objectives, and week 10 relates to some of the requirements, rules and guidelines for access and accessibility in a recordkeeping and archival context.

Reading

AS ISO 15489.2 – 2002, section 4.9.4

National Archives of Australia has a suite of policies and instructions on issues of custody. Scan through these:

• Custody Policy for Commonwealth Records.  

• Privatisation, corporatisation and outsourcing.  

• Digital Recordkeeping: Guidelines for Creating, Managing and Preserving Digital Records Exposure draft – May 2004  

• How digital records are transferred to the long-term digital repository.  

• Custody and Storage.  

• Custody and Other Recordkeeping Responsibilities.  
For a different model see the custody and access provisions under the (ACT) Territory Records Office and Territory Records Act, 2002: http://www.territoryrecords.act.gov.au/

- Standard for Records Management No 4 – Access
- Guideline for Records Management No 4 – Access
- Standard for Records Management No 5 – Recordkeeping and Outsourced Government Business

Custody

1. The responsibility for the care of records, archives, or other material, usually based on their physical possession. Custody does not always include legal ownership, or the right to control access to records.

2. The physical location of the records or archives.

Ellis, J. (ed), Keeping Archives, p. 466

The guardianship of records, archives and manuscripts, which, in a strict sense, includes both physical possession (protective responsibility) and legal title (legal responsibility).

Bellardo & Bellardo, A Glossary for Archivists, Manuscript Curators, and Records Managers, p. 420

What are the general issues for custody in a modern recordkeeping environment?

- Storage space – for paper, and for electronic records.
- Resources to manage the material – preserve, provide access, destroy when appropriate.
- Control systems.
- Organisational restructure & records need to be transferred to the custody of a different organisation.
- Media and formats for preservation.

Some Policies

Over the past 5-10 years the custody policy of many state and the Commonwealth archives/records offices has changed:

- From - accepting any records into custody which need to be retained for a period (including records of archival value) as soon as the immediate business need for the records had ended.
- To – accepting only records of archival value, and only usually after they have been appraised and deemed to be of ongoing value.

However the governing legislation usually enables or allows the transfer of any state records to the custody of the relevant public records office. See: South Australian State Records Act 1997, Part 6. Eg. Section 18. (1) Subject to subsection (2), an agency may deliver any of its records into the custody of State Records.

- Govt organisations are expected to store and manage records of temporary value themselves or make other arrangements.
• Various panels, or approved lists of appropriate storage providers have been established by the public records offices. Govt bodies transfer their inactive records to these providers under their own arrangements, fees, and conditions.

**National Archives of Australia : Custody Policy for Commonwealth Records**

Custody is primarily about accepting responsibility for the ongoing management of a group of records.

“Commonwealth agencies must …not only manage their records to meet operational requirements. They must also exercise a duty of care to the individuals and organisations they do business with and to the wider Australian community. Agencies must manage the records they create and keep in a way that ensures each record’s ongoing accessibility and integrity, and thus potential for use. This duty of care is known as *custody*. It involves agencies knowing what records they have created and then accepting a core set of custodial responsibilities for each record:

• making the existence of the record known when required;
• producing the record in an accessible, usable and meaningful form for access by someone else as required;
• preserving the authenticity of the record over time;
• ensuring that the record is not disposed of unlawfully; and
• accounting for the management of the record while it is under their care.”

**National Archives of Australia 1990’s policy : Retaining Electronic Records in Agency Custody: Requirements**


A distributed custody model.

Section 27 of the *Archives Act 1983* provides that a record which has been in existence for 25 years, or which has ceased to be required for the immediate business of an agency, should be transferred to the custody of the Archives in accordance with arrangements established by the Archives. In the case of electronic records which are deemed to be of enduring value, the arrangements which the Archives is establishing will not involve the records coming into the physical possession of the Archives, but will involve them being registered and controlled by the Archives while they remain in agency custody.

It is the intention of the Archives to have the relevant parts of the Act amended to clarify the special arrangements which apply to records maintained in electronic format, as distinct from those which apply to records maintained in traditional formats.

Because of these changes to custodial arrangements for electronic records of enduring value, agencies will also have to put into place management, storage and preservation regimes for the records remaining in their physical possession which go beyond those required for normal business or operational purposes.
NAA gave an outline of these requirements:

- Protection against alteration or destruction
- Migration across any changes in technology, media or application development
- Physical formats
- Intellectual requirements and controls.
- Disaster recovery.
- Records remain subject to the Archives Act – ie. they are to be registered and described in the Archives control systems, and available for normal public access.
- Transfers of archival records to other departments must be authorised by NAA.
- NAA must have access to audit the records.

**National Archives of Australia Digital Preservation Project**


Aim = to preserve digital records of agencies under a custodial model.
All digital records of archival value are taken into NAA custody under approved disposal authorities.

Use of archival data formats that are non-proprietary and specifically designed for long-term access across different computer platforms (primarily using XML).

**ACT Policy under the Territory Records Act 2002.**

- Section 26 of the Territory Records Act 2002, which commences on 1 July 2007, gives the public the right to access Territory records that are more than 20 years old.
- Section 27 requires agencies to assist members of the public to make applications for access to records.
- Section 16 requires agencies to manage their records in such a way as to ensure that the information in them remains accessible.
- Agencies will need to provide appropriate facilities and services to enable the public to access records.

For outsourced Government business:

- Section 22(2) of the Territory Records Act 2002 requires that an agency must ensure that its records that are in someone else’s possession are held under arrangements that provide for the safekeeping, proper preservation and return of the records.
- The ownership of records must be made clear in any outsourcing contract.
National Archives of Australia: Privatisation, corporatisation and outsourcing

Govt entities may be:
- corporatised to become a Government Business Enterprise
- sold or transferred to a private organisation
- transferred to another government
- outsourced to a contractor

From: Transferring the Custody & Ownership of Commonwealth Records
Privatisation or corporatisation of a govt agency raises the following questions:
- Who should own the new organisation's records?
- Does the Commonwealth still have obligations and liabilities documented in the records?
- Are the records still publicly available under the Archives Act?
- Will the new organisation need access to older records to help it operate properly?

The records created by the agency prior to the change are the property of the Commonwealth. They are subject to Commonwealth law.

A transfer of custody is about records moving from the possession and responsibility of the Commonwealth to another organisation. In such a case, the Commonwealth retains intellectual and other property rights over the records, but an organisation outside the Commonwealth physically has the records and is responsible for them. A transfer of custody does not change the Commonwealth’s legal ownership of a record – it is still subject to Commonwealth law, such as the access and disposal provisions of the Archives Act.

A transfer of ownership is about records leaving Commonwealth legal ownership. With a transfer of ownership, the Commonwealth relinquishes all its legal, physical and intellectual property rights over the records. The records are no longer subject to the Archives Act and other related legislation that protects the use of Commonwealth records. This may be appropriate when the Commonwealth and the Australian community as a whole have no further need for the records.

Any changes to the custody or ownership of Commonwealth records must be authorised by the National Archives under the disposal provisions of the Archives Act.

Alternative strategies include:
- making copies available to the new organisation
- making arrangements for the temporary transfer of custody of records that must be returned to the Commonwealth after a certain period of time
- allowing the organisation to access the records while the Commonwealth keeps custody.

See also National Archives of Australia: Archives Advice no 14 – Contracting out your records management, 1997 (rev 2002)
Noel Butlin Archives (ANU)


A procedural guide has been developed by the Archives to assist depositing organisations identify records of permanent value, list and despatch these records, monitor the growth of their archival collection in the Archives and use the Archives effectively for their own reference requirements.

Deposit and access conditions
Records deposited with the Archives are governed by an agreement between the owner of the records and the Archives. This agreement is summarised in a statement entitled *Conditions of Deposit*. This statement is available from the Senior Archivist, NBAC and is available in four versions:

- business records;
- records of employer and industry bodies, professional and other associations;
- trade unions records; and
- personal papers.

In return for allowing the records to be accessed for research purposes, the Archives agrees to provide:

- secure and cost-efficient storage;
- transportation and re-boxing of records;
- description of records;
- professional appraisal and disposal advice;
- rapid reference and retrieval services; and
- supervision of the use of the records.

Public Record Office Victoria

See PROS 97/004, Standard for the Transfer and Storage of Public Records, is a good example of some of the practical issues and options for managing changing custody.

What might be some of the issues arising from organisational restructure, where records need to be transferred to the custody and possibly ownership of a different organisation?

Where might the custody or ownership of records be transferred to?

- Another organisation with new responsibility for the records (eg. the purchasing company, the new govt dept).
- An outsourced or contracted organisation, eg. an organisation performing work on behalf of your organisation.
- A storage facility.
- An appropriate archives, eg. Uni of Melb Archives, Noel Butlin Archives
Issues might include:

- Authority and accountability for the records being transferred.
- Legislative and regulatory obligations (eg. privacy, FOI).
- Records system controls (eg. metadata, catalogues etc).
- Migration capabilities for electronic records.
- Licensing agreements for electronic records systems.
- Storage capacity – especially for paper.
- Specialist competencies (records &/or archives).
- Stakeholder management.
- How to ensure business continuity (eg. transfer of records from company to company, following a takeover; or need for long term access to some information by both parties – asset information).