

Public Records and Archives Management Act and Challenges after Its Enforcement

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1. Public Records and Archives Management Act as a driving force for the transparency in administration

As a measure to enhance transparency in administration, the Administrative Procedure Act, which is a unified law applicable to general administrative management activities, was enforced in April 1994, and in April 2001, the Information Disclosure Act was enforced in Japan. In the Information Disclosure Act, only one article was described in terms of records management, which gives a basis to disclose administrative document files. As management of the records was actually put in the hands of offices and ministries, more than 1700 (in 2002) and 4000 (in 2006) out of a yearly average of 20000 disclosure requests between 2001 and 2006 were deemed non-existent and rejected.

Under these circumstances, in 2007, a series of incidents involving inadequate records management or non-compliance with records management rules occurred, such as the cases of logbooks being mistakenly destroyed by the Maritime Self-Defense Force and data concerning hepatitis C neglected by the Ministry of Health, Labor and Welfare. This, together with significant mistakes and deficiencies when managing the record of the national pension plan, became a political issue during the extraordinary Diet session held in autumn 2007.

Meanwhile, as for historically important documents, a system was established whereby files could not be transferred to the National Archives of Japan, unless the Cabinet Office agreed this beforehand with other offices and ministries. Therefore, the judgment of managing offices and ministries was prioritized over the professional advice of the Cabinet Office and the National Archives of Japan, which hampered transfer to the latter. Additionally, the facilities of the National Archives of Japan also remained limited, degraded and obsolete, and the systems and utilization conditions were insufficient. Enhancement and reinforcement of the National Archives of Japan were urgently needed.

Moreover, issues concerning records management were formerly handled by the Ministry of Internal Affairs and Communications, which had responsibility for controlling the Information Disclosure Act concerning the administrative document files. A dual system was thus established to manage documents. That is, the administrative documents were managed by the Ministry of Internal Affairs and Communications, while the National Archives of Japan under the Cabinet Office accepted historically important documents after expiration of their

retention periods. For this reason, the National Archives of Japan and Cabinet Office had no rights to manage documents currently used by offices and ministries, and the scope of their activities was limited to matters such as pointing out problems or imposing the requirement to cooperate on the current documents.

To solve these problems, the Public Records and Archives Management Act (PRAMA) was enacted in July 2009 as a cornerstone of records management reform in Japan and later enforced on April 1, 2011 following a preparatory period.

According to PRAMA, the Prime Minister, as the head of the Cabinet Office, describes by law common rules and the compliance framework at every stage of the records management life cycle, and directs offices and ministries to meet obligations in preparing documents. Through this, the systems to manage records and archives were enhanced, and so were the efforts to drastically boost the reform momentum. Together with the enforcement of the Information Disclosure Act, further transparency in administration was expected.

The characteristics of PRAMA are discussed below.

2. New records management based on PRAMA

(1) Purpose of PRAMA

Article 1 of PRAMA clearly describes the role of public records as an intellectual resource to be shared by the people, in support of the basis of sound democracy, and available for independent use by sovereign citizens. Its purpose also extends to enabling the administration to be properly and efficiently managed by stipulating basic records management matters in accordance with the principle of sovereignty of the people, and also ensuring accountability of the State and Incorporated Administrative Agencies, etc. to the citizens both present and future, in their various activities.

(2) Implementation of administrative records management under the unified management rules

As for the preparation and management of administrative records (from Articles 4 to 10), given the strong need for evidence-based policy, it is described that a document shall be prepared to enable a decision-making process, including its background in an Administrative Organ, and the implementation of the affairs and business of said Administrative Organ to be traced or reasonably verified (Article 4). In particular, it is explicitly required by law that documents shall be prepared for the following five matters: 1) Enactment, revision or abolition of laws and regulations and the background, 2) Decisions or agreements made at a Cabinet meeting or a meeting involving heads of the administrative agencies concerned (including equivalent meetings), 3) Agreement among administrative organs or establishment of standards to be indicated to other administrative organs or local governments and the background, 4)

Acquisition or loss of rights and obligations of an individual or a juridical person and the background, and 5) Matters concerning personnel affairs of employees. Moreover, efforts are made to classify administrative record types in detail in the Guidelines for the Management of Administrative Documents. It is believed that establishing such provisions may significantly contribute to solving the problems of non-existent records in the information disclosure system.

In addition, the prepared documents shall be managed with unified management rules government-wide, under the authority of the Prime Minister, compiled by heads of administrative organs into mutually close administrative document files, classified and titled. They shall also have a retention period assigned and the date on which said retention period expires (Article 5). Subsequently, the heads of administrative organs shall preserve the administrative document files until the expiration date of the retention period in the required location to ensure appropriate preservation and use, in accordance with the contents thereof, the passage of time and status of use after taking measures to facilitate easy identification using an appropriate recording medium (Paragraph 1, Article 6). Moreover, the heads of administrative organs shall record the classification, title, retention period, expiration date of the retention period, measures to be taken upon such expiration, preservation location and other necessary matters in the administrative document file management register (Paragraph 1, Article 7). The administrative document files shall be kept in the offices of the administrative organs and provided for public inspection, as well as being publicized via information and communications technology (Paragraph 2, Article 7). In addition, subject to the approval of the Prime Minister, the heads of administrative organs shall establish administrative document management rules, which specifically describe matters concerning the management of administrative documents, to facilitate it (Article 10).

When administrative documents are properly managed, offices and ministries shall establish the guidelines to preserve administrative document files concerning matters such as the method and location of preservation, takeover procedures and other measures to ensure proper preservation of both paper and electronic documents.

Taking into consideration the fact that incorporated administrative agencies are implementing highly public business, the corporate documents kept by these agencies are also subject to PRAMA, as equivalent to administrative documents.

(3) Previously selecting documents subject to transfer based on the records schedule

Characteristic among the provisions to manage administrative documents is that on the selection of documents subject to transfer. In this Act, all documents classified as “historical public records and archives” shall be automatically transferred to the National Archives of Japan after retention periods expire, and judgment on their disposal shall be made as soon as possible

before the retention period expires, to enable the creators of the files engage with the judgment (Paragraph 5, Article 5). This mechanism to decide on the disposal of documents after the early stages of document preparation is generally known as the “records schedule” and historical public records and archives shall be selected based on the unified government criteria.

In addition to the mechanism of the records schedule, PRAMA makes it compulsory for the heads of administrative organs to obtain the Prime Minister’s prior consent when intending to destroy a document (Paragraph 2, Article 8). This is to ensure the transfer of historically important materials as well as to prevent the needless destruction of documents.

All documents classified as historical public records and archives among corporate documents shall be transferred to the National Archives of Japan when their retention periods have expired (Article 11).

(4) Introduction of a mechanism to ensure compliance

One of the key characteristics of PRAMA is to describe not only the unified rules but also well-developed provisions to ensure compliance with the rules.

Each year, the head of an administrative organ shall report to the Prime Minister on the state of administrative document management (Paragraph 1, Article 9). Meanwhile, the Prime Minister may, whenever deemed necessary to ensure the proper management of administrative documents, request the head of the administrative organ to submit reports or materials concerning the management state of administrative documents, or have an employee thereof conduct inspection (Paragraph 3, Article 9). In addition, the Prime Minister may, when deemed necessary, make recommendations after consulting with of the Public Records and Archives Management Commission (Article 31). The Prime Minister’s adequate monitoring, together with these regular reports and inspections on an as-required basis, enables the effectiveness of the administrative document management based on the uniformed rules to be ensured.

Also, to manage the specified historical public records and archives, as equivalent to the current records, there are also provisions to ensure compliance and appropriate operation. Specifically, each year, the heads of the National Archives of Japan etc. shall report to the Prime Minister on the state of preservation and use of specified historical public records and archives (Article 26). Based on these reports, when improvement is deemed necessary, recommendations shall be applied as is done for current records (Article 31).

(5) Preservation of specified historical public records and archives

PRAMA prescribes permanent preservation for specified historical records and archives (Paragraph 1, Article 15). Although the preserved records may be destroyed exceptionally when badly degraded, to avoid improper destruction, key requirements such as obtaining the Prime

Minister's consent (Article 25) following consultation with the Public Records and Archives Management Commission are imposed (Article 29).

The specified historical public records and archives shall be preserved in the required location to ensure appropriate preservation and use, in accordance with the contents thereof, the preservation status, the passage of time and the status of use, etc. after taking the necessary measures to facilitate easy identification using an appropriate recording medium (Paragraph 2, Article 15). In addition, a catalog describing necessary matters such as the classifications, titles, names of those having transferred, donated or deposited specified historical public records and archives, the time of such transfer, donation or deposit, the preservation location and others shall be prepared and publicized (Paragraph 4, Article 15). Moreover, the head of the National Archives of Japan, etc., obtaining the Prime Minister's consent, shall establish rules for use, etc. to ensure the proper preservation, use and destruction of the specified historical public records and archives (Article 27).

(6) Use of the specified historical records and archives

PRAMA clearly prescribes the right to claim to use the specified historical records and archives (Article 16) and establishes the filing of an objection system, assigning the Public Records and Archives Management Commission as a consultative organ (Article 21). Formerly, the right to use documents kept by the National Archives of Japan, etc. was not clearly defined. Establishment of PRAMA this time defines said right, which will be subject to filing of an objection or administrative lawsuit.

Regarding the cases in which use of the specified historical records and archives are restricted, PRAMA basically follows the provisions of the Information Disclosure Act with certain cases being excluded. The reason for this exclusion is the fact that disclosure of specific information on non-current records is not deemed to impact on subsequent deliberation or affairs. Restrictions based on these cases (Items 5 and 6, Article 5 of the Administrative Organs Information Disclosure Act [excluding (a) and (e)]) are thus excluded (Paragraph 1, Article 16).

As for judgment of appropriateness of the restriction on use, firstly, when an administrative organ or an incorporated administrative agency transfers administrative records to the National Archives of Japan, etc., the organ or agency attaches its opinion if it deems the use of the records should be restricted (Paragraph 3, Article 8 and Paragraph 5, Article 11). Secondly, the head of the National Archives of Japan, etc. makes a decision; taking into consideration the passage of time since the preparation or obtainment of the specified historical public records and archives whose use is requested, as well as the opinion from the transferring organ (Paragraph 2, Article 16).

As for judgment of appropriateness of the restriction on use, review must be conducted

steadily by planning preliminary review based on the assumption of frequency in use so that decisions on use can be made at an earlier stage after the request. Also, judgment of the passage of time may be based on the 30-year rule as is international common practice.

(7) Promotion of use

PRAMA, adding to the provision on the claim right to use, describes a provision on the promotion of use: “The head of the National Archives of Japan, etc. shall actively endeavor to provide specified historical public records and archive ... for public use through exhibitions or other means” (Article 23). This is a response to a recommendation given in the final report from the expert committee on records management, who recommends that use by the public should be strongly promoted as well as by overseas users via IT, including digital archives and other means. Henceforth, it is expected that opportunities to gain familiarity with public records and archives may be further increased by actively promoting the utilization of the Internet and holding exhibitions.

(8) Maintaining the third party’s perspective through the Public Records and Archives Management Commission

Although PRAMA integrates the management of the public records under the Prime Minister, maintaining the third party’s perspective should be crucial to reflect specialized knowledge on preservation and filing methods and avoid records management molded for solely in-house purposes by administrative organs.

The Public Records and Archives Management Commission has five functions: inspection and examination of objections filed concerning the use of specified historical records and archives; inspection and examination on the enactment, revision or abolition of cabinet orders; inspection and examination on the enactment, revision or abolition of the rules for use and that for the management of the administrative records; inspection and examination on destruction of specified historical records and archives; and inspection and examination on recommendations necessary to manage public records and archives (Paragraph 2, Article 21 and Article 29).

(9) Enhancing the function of the National Archives of Japan

In terms of specialized expertise, it is important to utilize that of the experts in the National Archives of Japan as well as those of the Public Records and Archives Management Commission throughout the life cycle of public records management. For this purpose, the National Archives of Japan Act was revised in Article 4 of the supplementary provision of PRAMA, and the function of the National Archives of Japan has been expanded from

management of non-current records to include that of “historical public records and archives,” a concept which covers both current and non-current records. This enables the Prime Minister to manage public records for the government as a whole in tandem with the National Archives of Japan. Henceforth, based on the revised provision, it is expected that the National Archives of Japan will be able to enhance awareness and skills of government officials for records management by providing the necessary advice to the Prime Minister and administrative organs (Item 4, Paragraph 1, Article 11 of the National Archives of Japan Act).

In addition, the final report of the expert committee on records management recommended that “an organ in charge of public records management establish a common intermediate repository (centralized repository) for government offices and ministries, and create a mechanism for centralized management of the records which pass over a specified period and are taken over from offices and ministries in response to their needs.” Following these recommendations, provisions are revised to enable the National Archives of Japan to conduct the role of an intermediate repository in commission from administrative organs (Item 2, Paragraph 1 and Item 2, Paragraph 3 of Article 11 of the National Archives of Japan Act).

(10) Management of documents by local public entities

PRAMA describes a provision for the management of documents by local public entities: “In accordance with the purpose of this Act, a local public entity shall endeavor to formulate and implement the measures necessary for the proper management of documents in its possession” (Article 34). PRAMA is established to manage government documents and therefore the formulation of rules and compliance mechanism cannot be applied directly to local entities. However, both national and local governments have equal responsibilities to manage the documents properly, ensure adequate and effective administration and account for their activities. From this perspective, local public entities are also strongly expected to establish prefectural and municipal ordinances on public records management, and strive to preserve and use historical public records and archives.

(11) Publicity of the new public records and archives management system

PRAMA requires the heads of administrative organs and incorporated administrative agencies, etc. to respectively train in-house employees or those of said incorporated administrative agencies, etc. to acquire and improve the knowledge and skills necessary for appropriate and effective management of public records and archives (Paragraph 1, Article 32).

To publicize the new public records and archives management system, the Cabinet Office has uniquely prepared easily understandable materials for employees showing the mechanism for records management, materials for division directors and director-generals of the minister’s

secretariat with responsibility to manage public records, and forms of educational materials for various training programs for employees; all of which have been provided to government offices and ministries. These materials have also been disseminated via electronic media and publicized on the Cabinet Office web site. The government offices and ministries have publicized the new mechanism of public records management to their employees in various forms such as notification of official documents, dissemination of manuals, holding communicative meetings, conducting training programs on records management. The Cabinet Office has actively dispatched instructors for the training programs, with a total of over 9,800 training courses conducted and over 400,000 employees having attended the courses in 2011, the year PRAMA was enforced.

3. Challenges accompanying the Great East Japan Earthquake and tasks in future

The background and enactment of PRAMA and new public records management based on the same have been discussed above.

Reform of the public records management cannot progress in a moment, even if rules are enacted and systems established. It is important that government offices and ministries should continue striving to improve any management problems revealed by investigation on the management of administrative documents and corporate documents implemented by the Cabinet Office every year.

The Great East Japan Earthquake, which occurred on March 11, 2011 before the enforcement of PRAMA, was one of the greatest national crises and tremendously affected the administrative scene. Under these circumstances, some groups such as the Emergency Disaster Response Headquarters and the Team in Charge of Assisting the Lives of Disaster Victims have momentarily recorded the government's responses. In contrast, however, some meetings established to cope with the Great East Japan Earthquake failed to record part or all of the proceedings. The cases were revealed by a report from NHK (Japan Broadcast Corporation) in January 2012 and became a political issue.

In April 2011, PRAMA came into force after the Great East Japan Earthquake, expanding the scope of document preparation and requiring more detailed contents. The Minister of State in charge of Public Records Management of the Cabinet Office and the Deputy Chief Cabinet Secretary called for complete management of documents and preservation of records and materials on the disaster, intended as a reminder of the more stringent rules now applied to manage public records. In October 2011, I personally, as the then Director of the Records and Archives Management Division, reminded officials again at a liaison meeting of the ministries concerned of the fact that materials relevant to the Great East Japan Earthquake were historically important records and should be appropriately preserved, mentioning the statements

given by the Minister of State and the Deputy Chief Cabinet Secretary in April. Additionally, a sample form of check sheets for self-inspection to confirm the preparation of the necessary documents were shown to the offices and ministries and formally distributed in December.

While efforts have been made to publicize the new system as widely as possible to employees, insufficient awareness of the public records management remains in some government offices and ministries in charge of important government meetings established to cope with the Great East Japan Earthquake, which is extremely regrettable.

An investigation and examination of the reasons behind the failure to record proceedings at the meetings established to cope with the Great East Japan Earthquake were conducted by the Public Records and Archives Management Commission of the Cabinet Office and concluded on April 25, 2012. Following this investigation, the Cabinet Office has been revising part of its guideline on the management of administrative records, including improvement measures. After completion of the revision among the guideline as a common rule, the government offices and ministries are to revise their administrative records management rules.

As for tasks to be addressed in future, firstly, efforts should be made to improve the awareness of employees to a level sufficient to cope with the high standard of the new public records management system. Additionally, the Cabinet Office, as an institutional office, should suitably exercise a mechanism of compliance and facilitate the improvement of public records management among offices and ministries.

Secondly, although potentially difficult under the current fiscal environment, innovation in the fields of administration must be addressed, for example by introducing Enterprise Content Management (ECM) to the government electronic document management system as “an investment for saving” and introducing a mechanism to preserve documents, including a means of avoiding the background burden, to personnel on site, promoting information commoditizing and with careful consideration of security in mind. It is desirable to promote the commitment of employees to innovating document management by creating an environment to facilitate sufficient knowledge management, whereupon it will be possible to manage frontline affairs efficiently. This may also enhance the political importance of document management.

Thirdly, the document management of the legislative and judicial branches of government is problematic. This problem was also mentioned in the final report issued by the expert committee on records management to discuss the future of public records management on November 4, 2008, which said that “as for documents of the legislative and judicial branches of government, each branch has managed its documents under the constitutional principle of separation of powers but the preservation and use of these documents have aspects, which have not exactly been appropriate”. Moreover, it also pointed out that “the legislative and judicial branches of government are strongly required to take adequate measures to improve document

management using the example of enhanced public records management in the executive branch of government”. In consideration of this indication, Paragraph 2, Article 13 of the Supplementary Provision of PRAMA describes that “Management of the documents of the Diet and the Courts shall be subject to review, in consideration of the purpose of this Act as well as the status, power, etc. of the Diet and the Courts.”

In Japan, with its parliamentary cabinet system, important national decision-making is performed by the Diet and government/ruling party. Accordingly, the whole picture is not always shown clearly by administrative records alone, hence the need to improve records management, including that of the legislative branch of government. Such improvement would also enhance the fairness and transparency of the judicial system.

The Cabinet Office has required legislative and judicial branches of government to discuss the future of their records management under their own judgment and responsibility and subject to the separation of powers, providing information on reformation of records management and its progress in the government offices to the officials in charge of records management in the legislative and judicial branches of government. The Cabinet Office has also required the legislative branch of government to discuss the transfer of historically important records and archives to the National Archives of Japan.

In addition to these tasks, various problems emerging in the management of the public records and archives in the course of actual operation of the new mechanism should be solved. PRAMA describes in Paragraph 1, Article 13 of its Supplementary Provisions that “Approximately five years after the enforcement of this Act, the government shall review the scope of Administrative Documents and Corporate Documents as well as other matters, taking into consideration the state of enforcement of this Act, and, when it finds necessary, shall take the necessary measures based on the findings of the review.” The future of the National Archives of Japan, currently an incorporated administrative agency, is also to be discussed in the review.

The reform of public records management in Japan started only a year or so ago and enormous efforts will be required to accomplish the purpose of Article 1 of PRAMA in future. However, efforts to complete the public records and archives management system will enable Japan to realize the democratic sovereignty of its people and form a basis to innovate its administration and intellectual activities. Additionally, the private sector in Japan has already achieved technical and conscious innovation of document management by upgrading systems using technology such as Enterprise Architecture (EA) and the Japanese version of SOX (Sarbanes–Oxley Act of 2002). Now is the time to promote the innovation of public records and archives management as a national project with full governmental commitment. Promoting this will enable further completed archives to be realized in future.