

Open Government and the Role of Archives

Presentation to the Forum of National Archivists

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22 November 2013

Let me begin by explaining that I am not an archivist by training or profession. I am, however, a user of archives for historical and academic research, and involved with archival policy through the National Archives of Australia Advisory Council and therefore very familiar with their purpose and administration. But of greater relevance to this topic, much of my professional life was spent in politics, as a Federal and State ministerial adviser, public servant and member of Parliament - in my case, the Parliament of the State of South Australia, where I served as Leader of the Opposition, a Minister and, for ten years, the Premier. It is from this latter perspective that I speak, and will try to convey attitudes to open government and archives.

The importance of open government is now an article of faith, and has been particularly prominent in public discourse for the last thirty years as legislative enactments began to elevate it from theory, then to rhetoric, and finally to practice. I think it's also fair to say it is being viewed in an entirely new way since WikiLeaks and Edward Snowden appeared on the scene! Faced with what might be called 'extreme' or 'ultimate' open government there is alarm at its implications. There is a new diplomatic discourse, and reactions which either welcome the revelations and call for more transparency, or have governments scrambling to protect their processes and security.

Two perspectives on open government can be offered:

Political: It is much-favoured by those in opposition, not just for their own purposes but also to curry favour with the media. It is therefore often driven by a media rather than a political agenda. In government - and this is invariably the case even when the opposition that has been proclaiming its virtues achieves power - lip-service is paid to the concept, but in reality much time is spent on devising ways and means to escape its discipline.

Archival: open government is a prime argument for the record-keeping and the usefulness of archives. In this area the archive is indispensable. But this can be qualified by a state archive's reliance on government funding, and its need to adhere to policy directives. The archive is constrained by its statutory responsibility, need for discretion, and principles of privacy.

Open government and freedom of information are very easy to abuse if they centre around what you might call a 'news story', a controversy of the day, a particular political issue, or are used as the means for 'fishing expeditions' as they are called:

the attempt, by asking multiple questions, to trawl for information, some of which may be useful, but most of which is discarded, and all taking considerable resources to provide. If open government is used for the purpose of general or specific investigative topics usually driven by the media I don't think we are really talking about its substance. Surely what it *is* about is the culture of government, the way a government operates, its accountability. If it is looked at in that broader general perspective we can immediately see its value.

Embedded in the concept of open government are ideals. For example it can be defined as:

better access to and use of government held information with the purpose of informing citizens, of engaging them in feedback on services, service delivery, and the effectiveness of government activity, while at the same time encouraging government to be more consultative and participative.

All the assumptions in that definition are positive, implying that open government must inevitably lead to positive results. But is this so? I'd like to tease that out a little as we go.

Let us consider a couple of questions: what is wanted in terms of open government? And what is required of the keepers of government information, whether they are in government departments or its agencies or (of particular interest to a group such as this), in state or national archives?

State or national archives are of course the ultimate guardian and gatekeeper of the records and information of a nation and its component parts. Their interests, I would argue, are quite separate and different from those of any government agency and its archival holdings, many of which of course eventually find their way, and indeed *should* find their way into the national archive itself. Who controls those records and where they are located is a very important factor here, and touches closely on open government and its administration.

The government itself or its agencies, I suggest, sometimes has a vested interest in keeping and retaining records for their own purposes which should be centrally held. The archive should have an independent brief; it should be able to override particular requirements or claims made by the agencies within a government. Without it, open government cannot prosper.

I've suggested there are idealistic expectations of what open government can achieve but a dose of political realism may be needed to make moves to open government more effective and less transitory. If we are just paying lip-service to the ideals nothing much will happen when they crunch up against political reality.

A very good focus for this discussion is the Open Government Partnership (OGP) with which you would all be familiar at least to some extent. It is based very firmly on the assumption that open government makes for better government, full stop, no questions asked. It defines its aims as providing more transparency, more effectiveness, more accountability, and, by so doing, empowering citizens and improving government response to them. These are admirable aims indeed.

But looked at from the politician's perspective these aims are often seen as incompatible. I think it is fair to say that for those in government 'effective' is the watchword. That is the key word of the three: *transparency, effectiveness and accountability*. They would argue that the other two could in fact provide a barrier to effectiveness in some cases, whether this is true or not. 'Transparency', for instance, can create problems, the sort of problems that we have seen being dealt with in the recent Snowden revelations and the Wikileaks scandals. Governments could argue they cannot operate in a full light of transparency and while this needs to be probed and examined, they will continue to maintain it. As far as 'accountability' is concerned, this again is a fine object, but a government could argue that accountability wastes time on explanations and procedures and processes without actually revealing anything of substance, and indeed inhibiting a timely response or a timely implementation of a policy. So I'm suggesting that we mustn't be starry-eyed about how these aims are looked at.

The OGP has what it calls 'five grand challenges':

1. improving public services
2. increasing public integrity
3. more effectively managing public resources
4. creating safer communities
5. increasing corporate accountability

These challenges can all be met through open government.

At the moment nations are assessing their procedures and practices and seeing whether they can, or wish to sign on for the OGP. To do so they have to demonstrate their achievements or intentions under a number of heads and are awarded qualifying points accordingly. I wish to briefly deal with the four categories which need to be addressed for the minimum eligibility criteria of the OGP.

The first category is *fiscal transparency*, and for this it is required that governments publish essential budget documents. These are documents that show where and how they are spending their money or intend to do so. That is the simple criteria but I think we need to look behind that.

Firstly, the role of Treasury or Finance departments in preparing and presenting documents is very critical here. Usually they're presented in a departmental or agency form. This makes year on year functions and comparisons quite difficult. Governments constantly change, re-order, re-name, or re-group departments and agencies. Indeed state archives are often the victim of this as they are moved from one ministerial responsibility or cluster of portfolios to another. All this can cause confusion and obscure fiscal transparency.

I would argue that we should rather be looking more at budget segmentation, and present budget and finance documents around particular priorities of action and activity that may in fact straddle a number of departments. For instance, a government which I led in the nineteen eighties, started a practice of presenting a 'social justice budget' document which drew in all those things that affected social justice issues

from the various agencies and departments; another document on programs which particularly affected women a 'women's budget', and so on. There are now many more examples, but not many governments do it. Only by these means can true transparency be reached.

Secondly, the role of the auditor and auditor-general (if such a position exists) is absolutely fundamental to the integrity of the process. The test should be the extent to which such office is independent of government. In many cases it is a requirement that it reports to parliament rather than the government, underlining its independence. But you need to look behind that to see to what extent the audit office or department is required to consult with the Government, and whether it modifies reports prior to such tabling, before you can see if it is actually providing full assurance of accountability.

The second category is *access to information*. Laws governing access to information are an essential element under the OGP by guaranteeing the public's right to information and access to government data. The OGP is keen on a constitutional guarantee, and for many that is seen as the ultimate protection. But sometimes a constitutional guarantee is fuzzy, is unenforceable, is more a show than a provision under which one can assert rights through courts or by other means. Constitutional recognition or legislation for freedom of information or even draft laws attract points under the OGP, but I think we should look beyond constitutions, beyond the legal and regulatory framework in which these access provisions are provided, to a fourth element, the practice, and how it is judged and how it is enforced.

The third category is *disclosures related to elected or senior public officials*. This means public disclosure of income and assets and of questions of conflict of interest aimed at anti corruption and open accountable government. Here again, one must tease that out if it is to actually make sense. It is important to distinguish between elected and non-elected public officials as there are different elements of conflict, and different sources of possible corruption involved in their practices and operation and these should be understood and recorded properly. The practice and the culture are critical here. Can the rules be enforced? They may be very adequate but in fact are more honoured in the breach. What are the consequences of default? Can people be called to account whether they are elected or non-elected officials? And finally are the rules properly understood by those elected officials or non-elected officials?

Very often when we see examples of corruption in government through lack of disclosure it is because step by step certain practices have become accepted which in themselves might not be corrupt initially, but simply seen as 'stretching the rules'. Then each 'stretch' becomes more part of the practice, and individuals get enmired in situations that lead to gross corruption. But the person involved hasn't seen how far they have come. They are no longer applying the ethical standards as laid down by the disclosure laws.

Fourth is the category of *citizen engagement*. Open government requires openness to citizen participation and engagement in policy making and governance, including basic protection of civil liberties. That is the requirement of the OGP.

But I think it should also be about access to decision makers. Influence on decision making is one thing, but unless one has some kind of right or ability to access the decision makers themselves then whether it is a pressure group, or a corporate operator it is very hard indeed to make known what you need from government, and what government needs from you. Paid consultancies and political lobbyists, whether registered or unregistered are, in my view, a bane on communication and a bane on open government. Acting as paid intermediaries and using their influence to do simple things that the ordinary citizen and corporate should be able to do, such as picking up the phone and ringing the minister's office to get an appointment. The ability to do that is true accountability, and I would have thought that face to face interaction ought to be part of the OGP requirements. Governments must be open to the people not just on their terms but seriously for discourse and discussion. Other questions of course arise under this category, such as how whistle blowers are to be protected on which I don't have time to elaborate.

So how should state archives take account of any of these things I have been canvassing? What effect do the political realities have on how they keep and provide access to records?

A government *does not* want from its archives inconsistent practice, resistance to change, embarrassing mistakes, breaches of security, or slow or unsatisfactory responses to the public. It *does* want high quality data that is timely, comprehensive and accurate; fully described and easily retrievable whether hard copy or digital and machine readable. To discharge its brief, a state archive needs integrity and it needs to have the broad confidence of the government.

So I am suggesting that for an archive to be effective it must have very close regard to its relationship with government. If it can do the things that government wants to see and avoid doing the things that it doesn't want, while preserving integrity it is a long way to being relevant.

And so I finish on this point - actually six points - that archives organisations need to do.

Firstly: stay relevant and close to government, understand the political realities, be sensitive to a government's priorities. Be a part of the solution rather than simply expressing difficulties or problems. Ensuring it has authentic, reliable and available records.

Secondly: actively publicise and promote its service and its role. Interface with the public and demonstrate its relevance. Don't just leave it to others to promote the role and relevance of archives.

Thirdly: avoid compartmentalisation within government. The state archive is not a cultural agency, it is not a library, it is not a storage facility and it is not a creature of the government agencies, although it contains elements of all of them. It is an overarching 'whole of government' organisation with a 'whole of government' responsibility. Where it is located in the bureaucracy can be important. It can be argued that it should be the prime minister's or premier's department responsibility, but if not there, then certainly Attorney-General's is most appropriate.

Its place is not in a rag bag portfolio of services and supply (although it supplies important services to all of Government), nor a ministry of arts and cultural organisations (although it has rich and invaluable cultural collections and its public programs are often significant).

Fourthly: establish good partnerships across the bureaucracy with information commissioners, privacy agencies, and government information technologists, sharing information, programs and training. It is vital they understand that the archive is there and that it is relevant and essential to their effectiveness.

Fifthly: in order to have some help in advocacy at government level, establish an advisory or management council. I prefer an advisory council to a board or management council with executive functions (perhaps I would say that because I'm the chair of one!) but a state archive needs an independent body constituted by government. They appoint the members, but the body is independent in its operation, can report directly to the head of the archive *and* to the minister in charge of the archive, acting as an advocate, as commentator and as an assessor of performance. It provides a very useful backup function. Far too many state archives don't have that kind of body to assist them.

Sixthly: be active internationally - particularly through participation in the ICA and FAN. International partnership is so important, involving exchange of information and experience, and helping to provide something against which to measure performance.

Attention to those six points means archives organisations can indeed be relevant and deliver what governments need, while carrying out their important independent functions.

Thank you.