THE ROLE OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION TO RECORDS MANAGEMENT IN THE PUBLIC SECTOR IN SOUTH AFRICA

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Abstract

Records management plays a significant role in ensuring accountability, transparency and good governance. The South African Human Rights Commission (SAHRC) is a democratic institution responsible for the promotion of accountability, transparency and good governance in the public sector through various forms such as investigation, reporting, and recommendations. While the regulatory role of records management in the public sector is the responsibility of the National Archives and Records Service of South Africa (NARSSA), it would seem this responsibility is cumbersome for the organisation as several scholars concur that the public sector is characterised by poor records management. As a result, NARSSA is unable to support governmental bodies on managing records properly. Given the position of SAHRC in government and its mandate as set out by the Constitution of the Republic of South Africa, this institution is able to hold the state accountable for their actions, unlike NARSSA. This study investigates the role of SAHRC to records management in the public sector. Qualitative data were collected through interviews

with purposively selected participants from SAHRC, as well as content analysis of documents such as strategic plans, operational plans, and annual reports. The study established that SAHRC can play a role in records management through regulating access to information legislation. Although the study established that records management is a key enabler to information access, the SAHRC had little or no interaction with the NARSSA. The study concludes that there is a need for SAHRC to develop a memorandum of understanding with NARSSA for the purpose of fostering proper record-keeping in the public sector.

Keywords: access to information, records management, public sector, South African Human Rights Commission, freedom of information

1. Introduction and background

South Africa, just like any other countries in Africa and in the world, regulates the management of public records through the National Archives and Records Service of South Africa (NARSSA). NARSSA is mandated to facilitate the proper management of records in the public sector (Ngulube & Tafar 2006). NARSSA derives its mandate from the National Archives and Records Service of South Africa Act (Act No. 43 of 1996 as amended). However, NARSSA act has its own challenges such as lack of recognition and low status in government and public arena as suggested by Ngoepe and Keakopa (2011). In addition to that, NARSSA has its own limitation such as the period in which the records was created. For example, with NARSSA Act, members of the public can only access records of archival value after 20 years.

Promotion of Access to Information Act (PAIA) on the other hand provides rights of access to public records irrespective of their age, unless specific exception applies. The passing of freedom of information legislation in South Africa ushered in a new era in accessing government records (Sebina 2009). Although NARSSA creates the basis to access records, it is restricted to archival records. PAIA provides the citizens with the rights to access other records which do not have archival value (Darch & Underwood 2005). This is evident that NARSSA act alone cannot be sufficient enough to promote access to records in South Africa. It is for this reason that several scholars such as Makhura (2005), Ngulube and Ndenje-sichalwe (2008), Ngoepe (2010) and Marutha (2011) continue to criticise NARSSA's failure to improve records management service in the public sector.

Ngoepe and Keakopa (2011) assert that, in South Africa, NARSSA is charged with the primary responsibility of managing all records in governmental bodies, as well as ensuring preservation and accessibility of archival heritage and overseeing the national archival system. However, such responsibility seems to be cumbersome as the level of compliance with NARSSA regulations is questionable. For example, there are still public entities in South Africa that are still operating without the file plan and records management policies. In cases where the records management policy and file plan exist, one finds that there is no proper implementation or there is no implementation at all. Makhura and Ngoepe (2006: 97) assert that government departments in South Africa continue to manage public records without relevant policies and approved records classification systems. However, things may have been changed as a results of a number of developments such as the appointment of Chief Director of the NARSSA, the establishment of the Information Regulator and the Information Officers Forum. A common assumption is that if the public entities are unable to comply with the basic records management requirements such as the implementation of approved records classification system, they are likely not to comply with other requirements which are more cumbersome such as proper records disposal which will eventually affects the public to have access to records in the custody of government.

The democratic benefits of citizens to have access to public records may be undermined if NARSSA ignores its role to regulate records management in South Africa. As it is evident that NARSSA is battling with its responsibility of ensuring proper records management, Ngoepe and Keakopa (2011) identify other institutions that can contribute to records management in South Africa as chapter nine institutions, such as the Auditor-General of South Africa (AGSA) and the South African Human Rights Commission (SAHRC) through various activities such as records audit, auditing and reporting on issues pertaining to records management. However, the main focus in this case is to investigate the role that the SAHRC can play to records management in the public sector while pursuing on its mandate of promotion of access to information. Ngulube and Ndenje-Sichalwe (2009) note that record-keeping in the public sector in South Africa has got an impact on the work of the SAHRC on the delivery of PAIA mandate. Ntontela (2015) argues that records provide citizens with an opportunity to track the activities of their government. This study investigated the role of SAHRC in records management in the public sector. It is worth noting that although the Information Regulator has been established, by the time of conducting this study the responsibility with access to information was still under the SAHRC.

2. Contextual setting

The context of this study is the SAHRC. The SAHRC is a national independent institution established to entrench constitutional democracy. The Commission was established in terms of section 181 (1) of the constitution and Human Rights Commission Act of 1994 (Masutha 2014). The Commission was inaugurated on 2 October 1995, under the Human Rights Commission Act, 54 of 1994, and as provided by the Constitution of the Republic of South Africa Act, 200 of 1993 (South African Human Rights Commission 2014:10). As has been stipulated in the Human Rights Commission Act, the SAHRC has been given the mandate to monitor and report on the Promotion of Access to Information Act (PAIA) in the public sector. The Commission has a specific mandate set out by PAIA, which is to promote the right to access information and monitor compliance

with the legislation (South African Human Rights Commission 2012). As provided by the legislation, the Commission has committed itself to ensuring awareness of the act and to providing assistance to members of the public to exercise their constitutional rights. As a result of this mandate, a number of activities have been undertaken.

In 2004, the South African History Archive (2005) commissioned a study on how prepared government departments were to manage requests for digital electronic records made under the act. The report indicates that few departments keep official records in electronic format and that there was no formal policy and procedure on how and when electronic records should be stored. Despite the electronic records management being new to most records officers and archivists in contemporary sub-Saharan Africa; it transformed the traditional mode of record-keeping (Asogwa 2012). That is not strange as Kemoni (2009) emphasises that most countries in ESABRICA region lack capacity and face various challenges in managing electronic records. These challenges include but not limited to policies, standardisation, authenticity and lack of awareness amongst records professionals. In September 2005, the Open Democracy Advice Centre (ODAC), through partnership with the SAHRC, announced the launch of South Africa's first openness and responsiveness awards known as Golden Key Awards. Through this award, ODAC and the SAHRC recognise government departments, Deputy Information Officers (DIO), private institutions, journalists and members of the public that have done exemplary work in promoting openness, transparency and accountability in the public and private sector through usage of, and compliance with, the PAIA (Ngoepe 2008).

In celebration of the International Right to Know Day, the SAHRC hosts an annual event called the "National Information Officers Forum (NIOF)" in September every year. The NIOF is one of the annual events hosted in partnership with the Open Democracy Advice Centre (ODAC). The aim of the event is to provide a platform for Deputy Information Officers in public and private sectors to interact with experts and to share the challenges they face on a daily

basis. Chipu (2014) indicates that the journey of the NIOF will be a journey without destination, if the event will continue to be hosted without the availability of records professionals. Chipu (2014) further states that records professionals are also custodians of information access because they are the very same people who are responsible for ensuring the safekeeping of records.

3. Problem statement

The contribution of chapter nine institutions to records management in the public sector in South Africa has not been clearly identified and defined. For example, the SAHRC can make a contribution with regard to access to records through the Promotion of Access to Information Act (Mokate 2014; Ngoepe 2012). Reports published annually by several organs of the state in South Africa such as the AGSA, the SAHRC, Standing Committee on Public Accounts (SCOPA) and other organisations such as the South African History Archives (SAHA), and the World Bank, confirm poor records management in the public sector in South Africa. It seems that the National Archives and Records Service of South Africa is unable to cope with ensuring an oversight of records management in the public sector (Ngoepe 2012). It is with this regards that SAHRC is one of the institutions that are seen as institutions that could play a role in assisting NARSSA by ensuring accountability, transparency and good governance through their contribution towards records management in the public sector in South Africa. As studies have shown, the chaotic state of public records in many African countries, and the near collapse of record-keeping systems in some of the countries make it virtually impossible to determine responsibility for official actions and to hold individuals accountable for their actions (Wakumoya 2000). Many efforts to strengthen financial controls fail because the fundamental structures needed to underpin them are often overlooked; such efforts include record-keeping (Barata, Cain & Thurston 2000).

4. Research purpose and objectives

The general purpose of this study was to investigate the role of the SAHRC to records management in the public sector in South Africa, with the view of fostering a culture of accountability, transparency and good governance through records management. The specific research objectives for this study were to:

- Analyse the SAHRC mandate to determine the relationship with records management.
- Determine if the SAHRC is working closely with NARSSA to achieve a common goal of promoting accountability, transparency and good governance in the public sector.
- Assess the influence of the SAHRC on the management of records by government officials.
- Determine whether the SAHRC have measures in place to promote accountability, transparency and good governance through records management in the public sector.
- Make recommendations on how the SAHRC can foster accountability, transparency and good governance through records management.

5. Literature review

Lipchak and McDonald (2003) allude that governments are increasingly recognizing the importance of information for accountability and good governance, and the need of information to be managed in an effective manner. Access to information remains one of the fundamental rights in South Africa as has been provided by section 32 of the Constitution of the Republic of South Africa. SAHA (2016) posits that, the right of access to information in South Africa is regulated by South African Human Rights Commission, which has been charged with the responsibility of ensuring compliance with Promotion of Access to Information Act (Act No. 2 of 2000). PAIA was approved by Parliament in February 2000, nevertheless since its inception, the SAHRC reports a consistent non-

compliance with the act and the absence of implementation to Parliament (SAHRC 2012). For example, in the year 2015, the SAHRC reported to the parliament that 81% of local government structures were not in compliance with PAIA (Evans 2015).

However, the SAHRC recognises the importance of records management in facilitating or speeding up a process of information access. Masuka and Makwanise (2012) also recognise the significance of records management on access to information as one of the most important human rights in South Africa. Masuku and Makwanise (2012) attest that no state or government can claim to be at the helm of human rights without records or archives to support its information access activities. In view of the above statement, one can conclude that records occupy a central position relative to information access. It is assumed that PAIA is one of the few pieces of access to information legislation in the world to apply to both public and private sector records, regardless of when a particular record came into existence (McKinley 2003).

Some countries in Africa have adopted the freedom of information law as a means to promote transparency without having been campaigned by civil society organisations. This is not the case in Uganda and Nigeria, where civil society organisations had to campaign for right to information laws, and secured this as part of the struggle for recognition of democratic rights and transparent government (Adu 2013). On the other hand, the government of Angola, Gunea-Conakry, Niger and Zimbabwe adopted the right to information laws on their own initiatives and not as part of the democratisation process.

South Africa's rapid movement from autocratic information management towards democratic transparency has made the national context quite distinctive and more similar to post-communist Eastern Europe to such stable long-term democracies as Australia or Canada (Darch & Underwood 2005). On the other hand, it was a long walk for the freedom of information bill to be passed into law in Nigeria (Omotayo 2015). The bill was signed into law on 28 May 2011, and that is 11 years after South Africa passed PAIA into law. Banisar

(2004) indicates that most of the freedom of information laws around the world are broadly similar, and countries that long adopted the law are used as models and benchmarking tools.

Unlike South Africa and other democratic countries, Botswana does not have freedom of information legislation that enables citizens to gain an independent legal right to access information that is being held by government or that of the private sector (Sebina 2006). The Botswana National Archives and Records Service Act is the only legal instrument which gives members of the public an enforceable legal right to gain direct access to archival information derived from government, normally after a period of 20 years. There is a widespread belief that access to information laws promotes transparency and accountability, which underpins good governance (Puddephat 2009). It is further believed that access to information laws is an essential element of reducing poverty and achieving the Millennium Development Goals.

Puddephat (2009) emphasises that the impact of civil society upon measures to promote access to information is considerable. Without the intervention of civil societies, freedom of information will continue to face challenges of exemptions and restrictions. For example, The Freedom of Information Act in Mexico remained relatively inactive until Mexico joined the Organisation for Economic Co-operation and Development (OECD), North American Free Trade Agreement (NAFTA) and World Trade Organisation (WTO). In South Africa, the organisations that support the promotion of access to information are Open Democracy Advice Centre (ODAC), Right2Know Campaign, and Africa Freedom of Information Centre (AFIC), just to name but few (SAHA 2016).

Carter and Weerakkody (2008) argue that internationally, the internet has made transparency easier for government to accomplish in practical ways, but it has also added new complications to ensuring equal access to and preservation of digital-born government information. Several researchers wrote about e-government initiatives to promote transparency but few wrote about equal accessibility including rural communities. For example, Moon

(2002) explores the two institutional factors that contribute to the adoption of e-government among municipalities. Carter and Belanger (2005) investigate from Technology Acceptance Model, diffusions of innovation theory and web trusted models to form a parsimonious yet comprehensive model of factors that influence citizen adoption of e-government initiatives. Choudrie and Dwivedi (2005) administer a survey to assess United Kingdom (UK) citizen awareness of e-government services. As much as the e-government service is being appreciated for the purpose of promoting accountability, transparency and good governance, the issue of equal access should also be considered and addressed as every citizen would like to enjoy the benefits.

Africa is still far more behind in making access to information a guaranteed right. For example, Latin America after a slow start, gained momentum (Colland & Tilley 2002: xvi). In African countries where the right to information has been implemented, there are also pieces of legislations that are passed to impinge the right to information by limiting access to the very same information. For example, PAIA in South Africa is used parallel with the Secrecy bill. The same applies to Zimbabwe, where the Access to Information and Privacy Protection Act (AIPP) is used in parallel with the Official Secrets Act (OSA) and Public Order and Security Act (POSA). Furthermore, PAIA also provides for circumstances where information may be refused with a written response detailing justification for such refusal.

Access to Information is, however, largely dependent on the availability of records. For this fundamental right to be able to take force or to be exercised, records must be made available to the requester within a reasonable time as required by PAIA. A user friendly systematic arrangement must be in place to allow quick retrieval of information as required by the Constitution of the Republic of South Africa. NARSSA act requires the public sector to use the approved records classification system. For example, in accordance with section 13 (2) (b) (i) of NARSSA Act (Act No. 43 of 1996, as amended), the National Archivist shall determine records classification system to be applied by governmental bodies.

Ironically, Makhura and Ngoepe (2006) assert that government departments continue to manage records without approved policies, procedures and classification systems. NARSSA act gives the National Archivist the powers to evaluate and approve the records classification system that is to be adopted by the public sector.

In 2012, ODAC began exploring the possibility of an automated online requesting process for PAIA in South Africa. The study revealed that access to information is not a reality in South Africa (OPAC 2012). As per the study, out of the 70 per cent of people who requested information through PAIA, information was granted to only 21 per cent. The implementation of PAIA is an effort by the government to increase transparency and to continuously build and nurture trust from the citizens. However, the issue of costs attached to information requests at times appears to be a barrier to information access. For example, in *Trustees, Biowatch Trust v Register: Genetic Resource & Others* 2005 (4) SA 111 (T), an NGO applying for access to information in a campaign to monitor the risks of genetically modified organisms (GMO) was ordered to pay hefty court costs. The case was appealed to Supreme Court of Appeal and eventually to Constitutional Court (Klaaren 2010).

The SAHRC performs a records management audit for government departments. The purpose of the audit is to check the manner in which records are generated, organised and stored. According to the SAHRC (2012: 9), a system must be in place for government departments to ensure that all records held by the department are properly documented and organised so that they would be easily accessible and identified when a request for information is received. The University of State New York (1994: 8) states that accurate, reliable, and trustworthy records are the cornerstone of effective programmes for auditing and accountability. Scholars such as Ngoepe (2014) and Ngoepe and Ngulube (2013) also attest to the above statement.

6. Research methodology

This study utilised qualitative data obtained through interviews with purposively selected participants from SAHRC. As per SAHRC structure (2016) which was the sampling frame used by the study, PAIA section of SAHRC comprised of three staff members (the head of the section and the two compliance officers). The sample was chosen purposively by focusing on three PAIA staff members from SAHRC. The data were supplemented through content analysis of documents such as legislation and annual reports. The data obtained through the interview were analysed through coding and augmented by analysis of documents such as annual reports, acts, operational plans, policies and procedures together with strategic plans. To ensure anonymity each participant was assigned a code, i.e. 1A and 2A for compliance officers while 1B was for records management officer. The head of the unit was booked off sick during the time of data collection.

7. Research findings and discussions

This section analyses and presents the results of data obtained via interviews and document analysis.

7.1 SAHRC mandate in relation to records management
The first research objective sought to find out the state of the relationship between SAHRC mandate and records management. In this objective, the following items were covered:
- key legislations;
- the role of SAHRC towards records management; and
- the impact of records management on an organisational mandate.

7.1.1 Key legislation
Participants were asked which piece of legislation mandates their organisation to perform line function. Both 1A and 1B listed PAIA, and SAHRC act. Participant 1A also listed the Protection of Personal Information Act (POPI) as one of the acts that affects their work. The

legislation mandating the operations of the work done by SAHRC in as far as information access is concerned is PAIA. PAIA gives effect to section 32 of the Constitution of the Republic of South Africa which allows for everyone to have access to information. In order to ensure that there is an unlimited access to information in South Africa, a law was passed by parliament in 2000. Section 83 of PAIA outlines SAHRC's mandate in advancing the right of access to information. SAHRC uses the submitted manuals to monitor compliance with PAIA. PAIA provides for the private and public sector to compile a manual that contain certain information that PAIA specifies. The manual should explain to the public how they can request access to information that the public sector holds and which information the public sector holds. In terms of PAIA, the manual should be available on the website for public consumption. With regard to the public body, an information officer needs to compile section 14 manual in at least three official languages and the manual should contain a description of its structure and functions, contact details such as telephone, postal and street address, sufficient detail to facilitate request of access to records, and description of the services available to members of the public.

PAIA has a clear definition of what a record is, but it does not have a definition of the concept "information". One would wonder what information is and why the concept is not defined by the act because the act promotes access to information, as opposed to access to records. One would expect to find the definition of "information" under the definition of terms in the act. Without necessarily dwelling much on the difference between a record and information, PAIA describes how government can give and obtain information. The act further allows members of the public to access records quickly, simply and at an affordable price. What the act fails to do is to provide advice on how records should be organised in order to speed up the retrieval process. The act also fails to determine the period in which a record can be retained in the custody of the public sector. However, the good part about PAIA is that the act cares less on who or which institution created such record. What is important to PAIA is the name of the public entity or private company having the record during a time of request.

7.1.2 The role of SAHRC in records management

To deliver its mandate, SAHRC relies on records management. Participants were asked if their respective organisations have a role to play towards records management in the public sector.

Participant 1A indicated that SAHRC plays a role towards records management in the public sector as the officials sometimes receive request from the public sector officials who wants to be trained on records management. The participant 1A also indicated that they host an annual event called the Information Officer's Forum where issues related to records management are discussed with a view to find solutions for challenges faced by Deputy Information Officers (DIO) in the public sector. Another issue that was indicated by the participants is that part of their PAIA training is on record-keeping.

7.1.3 The impact of records management on SAHRC mandate

Participants were asked if records management or record-keeping in the public sector has an impact on their organisations' delivery mandates. Participant 1A indicated that in all the trainings they conduct on PAIA, record-keeping is over emphasised as SAHRC strongly believes that PAIA and records management should never be separated. Participant 1B indicated that for a government department to fully comply or implement PAIA, it should have its records organised. "Otherwise, records would not be provided when requested in terms of PAIA". Participants further outlined that the complaints they receive from clients in most cases reveal that records management in most organisations is neglected and abandoned by top management and this result in situations where records management programmes are not given sufficient resources to perform their function.

7.2 The working relationship between NARSSA and SAHRC

The second research objective sought to find out if there is a working relationship between SAHRC and NARSSA to achieve a common goal of accountability. NARSSA together with SAHRC have an

almost similar or common goal which is to promote accountability, transparency and good governance in the public sector.

Both participants 1A and 1B indicated that their relationship with NARSSA is not that strong. The only time they engage with NARSSA is when they invite archivists from NARSSA for IOF event. Both participants could not remember any single day where NARSSA invited SAHRC to attend one of their events or workshops. Furthermore, SAHRC strategic outcome oriented goal as per the strategic plan 2010 to 2015 is to strengthen the Commission's relationship with key stakeholders. Parliament, media, and civil society organisations are cited in the strategic plan to be the most key stakeholders for the Commission. NARSSA has not been cited as the important stakeholder to SAHRC.

Participants 1A and 1B highlighted that "there is a serious need for SAHRC to fully engage with NARSSA in order to address access to information challenges in the public sector". According to participant 1A "this even creates a problem for the implementation of PAIA in the public sector in the sense that while SAHRC recommends that records managers be appointed as deputy information officers in terms of PAIA, this is not the case. As a result, divisions such as legal services within the public sector take over PAIA responsibilities while records management takes back seat".

7.3 The influence of SAHRC on records management in the public sector

The aim of this objective was to find out whether chapter nine institutions have an influence on records management practices in the public sector in as far as the mandate for the two institutions is concerned. Promotion of Access to Information Act (Act No. 2 of 2000) provides for the public body to submit to SAHRC reports annually detailing the number of request for access to information received, the number of request for access granted, number of appeals, number of cases and number of applications to court as part of the monitoring process. The report is sent to parliament for perusal as part of the annual report. The following items were covered:

- fostering of proper record-keeping;

- synchronisation of SAHRC mandate with that of NARSSA; and
- implementation of recommendations.

7.3.1 Fostering of proper record-keeping

Participants were asked if their institution has got an influential role in terms of fostering proper record-keeping in the public sector. Participant 1A asserted that SAHRC does not have a huge role or influence towards records management in the public sector. "However, for PAIA to be implemented effectively, records have to be organised. In most government departments this is not the case. This is evident when we conduct audits in terms of PAIA. We are often told by records managers that NARSSA hardly conduct audits or assists in the development of classification systems". Participant 1B was of the view that the SAHRC should have an influential role on record-keeping in the public sector but unfortunately nothing is happening. Furthermore, Participant 1B also blamed the Department of Justice and Correctional Service (DJCS) for "not fostering the implementation of recommendations made by the Commission". The court of law, as suggested by the participant, must also provide clarity on the extent to which the recommendations made by SAHRC can be binding.

7.3.2 Synchronisation of SAHRC mandate with that of NARSSA

This question was asked in order to get a sense from participants on how SAHRC's mandates can be synchronised to that of NARSSA in as far as access to information is concerned. Participant 1A indicated that PAIA promotes record-keeping. The title of the act (PAIA) can be misleading as it says "Promotion of Access to Information" as opposed to "Promotion of Access to Records", but the act itself talks less about information. The act does not even define information under definition of concepts, instead, it defines record. When asked why then is the mandate of PAIA not shifted to NARSSA, Participant 1A indicated that it is because access to information is a human right issue in terms of section 32 of the Constitution of Republic of South Africa and all human rights issues are handled by the SAHRC.

"However, arrangements can be made with the national archives in order to fully implement the act".

7.3.3 Implementation of recommendations

Participants were asked to what extend are the recommendations made by SAHRC on records management implemented by the public sector. Participant 1B lamented of lack or poor implementation of the recommendations by the public sector whereas on the other hand participant 1A indicated that the results are positive considering what PAIA report says in terms of compliance. Participant 1A further indicated that compliance is very low but there is a significant change of statistics in as far as compliance is concerned. This according to participant 1A can be attributed to the fact that "the commission name and shame public bodies that do not comply with the act by publishing their names as an Annexure in the annual report. This annual report is then submitted to parliament. However, what is discouraging is that the cabinet is doing nothing about that. Perhaps there should be lobbying and sensitising of the parliamentarians. Most municipalities can't even comply with the basics of PAIA, for example compilation of Section 14 manual and submission of Section 32 reports to the commission". When asked about the punitive actions in this regard, participant 1A indicated that "information officers who fail to compile a Section 14 manual are liable to conviction of a fine or two years imprisonment. However, I don't have any information that such has happened as there are many municipalities that don't submit the manuals. These manuals are to be translated into at least three official languages and published on the websites of the entities. A file plan should form part of such a manual. In most instances, public bodies don't have file plans. So it is a huge challenge".

It has been indicated under strategic plan outcome oriented goal number eight of SAHRC that the Commission will continue to use the reports, findings and recommendations to influence government policy direction and legislations (SAHRC strategic plan 2014 to 2017). It, however, occurs as if SAHRC is currently not doing enough in influencing senior public officials.

7.4 Measures in place to promote good governance through records management in the public sector

This objective sought to find out if there are measures put in place by the SAHRC to promote accountability, transparency and good governance through the management of records in the public sector. The following items were covered:

- contribution of SAHRC towards records management;
- engagement with NARRSA;
- promotion of records management; and
- punitive actions.

7.4.1 Contribution of SAHRC towards records management

Participants were asked if SAHRC has done anything to implement issues relating to record-keeping in the public sector. Both participants 1A and 1B cited PAIA training that they conduct from time to time where issues relating to proper record-keeping are over emphasised. Section 83 of PAIA provides that SAHRC may train information officers and deputy information officers of public bodies. Since the inception of the act, SAHRC has largely focused its efforts and resources on training public officials on the basis that they are in most instances, the primary holders of information required by the public (SAHRC 2016). It is further indicated that the training programme developed by SAHRC is informed by the outcome of research, compliance assessment and information received from members of the public and the state, amongst others. Without necessarily mentioning all the 16 training workshops PAIA unit of SAHRC had in the 2014/15 financial year, some of the workshops conducted include the following:

- the national LIASA workshop;
- the national rcahives workshop; and
- the North West Directorate of Library, Information and Archives Services.

The other contribution according to Participant 2A is in the form of auditing of PAIA compliance in the public sector. Since 2008 SAHRC has been conducting PAIA implementation audits in respect

of its mandate in terms of section 83 (3) (b) and (d) of PAIA. According to the SAHRC (2012), the audit empowers the SAHRC to monitor implementation and make recommendations to private and public bodies on ways of administering and implementing PAIA. Participant 2A indicated that PAIA compliance audit is intended to support public institutions in identifying their key implementation challenges and how to address them. PAIA compliance audit further provides an insight on the levels of implementation in the public sector and highlights the sector's readiness to fully deliver on the right to access information. "While auditing PAIA compliance, this also raises awareness with regard to records management".

7.4.2 Engagement with NARSSA

Participants were asked if they have a close working relationship with NARSSA, perhaps in a form of engagements through gatherings. Gatherings in this case is referred to workshops, seminars, meetings, trainings, imbizos, road shows, round table discussions and any other form of gatherings where records management issues are discussed. Both Participants 1A and 1B from the SAHRC indicated that they were never invited to any gathering organised by NARSSA. The only thing mentioned by Participant 1A is a Records Management Forum (RMF) that both staff members of SAHRC and NARSSA are members of and that's the only forum or platform where the two institutions engage. It has been mentioned under section 4.3.2.1 of the study that SAHRC, according to the Commissions' strategic plan 2015 to 2020, does not see NARSSA as the key stakeholder. It is also expected that a senior official from NARSSA should be invited to come and render a presentation at the NIOF event organised by the SAHRC, but it is strange when no one from the NARSSA is invited to come and present. For example, in 2015, SAHRC had a successful NIOF where presentations were heard from the DJCD, Department of Cooperative Governance and Traditional Affairs (COGTA), the AGSA and Department of Performance, Monitoring and Evaluation (DPME).

7.4.3 Promotion of records management

Participants were asked on records management activities implemented by SAHRC to support records management in the

public sector. Participants 1A and 1B mentioned only PAIA workshops and NIOF that take place every year.

7.5 Fostering accountability, transparency and good governance in the public sector

This objective sought to find out the opinions of the participants regarding fostering accountability, transparency and good governance in the public sector in as far as records management is concerned. The following items were covered:
- punitive actions;
- positive outcomes achieved;
- the impact of records on access to information; and
- recommendations by participants.

7.5.1 Punitive actions

Participants were asked if there are any punitive actions that can be imposed towards non-compliance by governmental bodies. Participant 1A from SAHRC recommended that parliament should change its attitude towards PAIA and implement the recommendations made by SAHRC. Participant 1A further suggested that there should be sanctions as per the act. According to participant 1A, PAIA is very clear in terms of sanctions for non-compliance and what is needed for now is the implementation of the sanctions as provided by the act itself. The participant also lamented of the South Africa that has good with powerful legislations that are not implemented. As per participant 1A, even if there is an implementation of a certain act, you may find that a certain portion of provision is not properly or fully implemented. Parliament is to receive blame for lack of implementation of recommendations because SAHRC submits PAIA report to parliament every year detailing all public and private bodies' names together with their compliance status. Participants 1B suggested that there should be PAIA audit every year and sanctions should be imposed if one institution is found not to be complying. With regard to punishment on non-compliant, participant 1A indicated that "information officers who fail to compile a Section 14 manual or submit a Section 32 report

are liable on conviction to a fine or two years imprisonment. However, there is no evidence that such punitive action has ever been meted to information officers. Information officers are the administrative head of organisations and should be in a position to appoint or designate officials to implement PAIA. In most instances we recommend that such officials should also be responsible for records management. However, according to our PAIA audit reports; this has not been done in most governmental bodies".

7.5.2 Positive outcomes achieved

Participants were asked if there are any positive outcomes achieved in relation to records management in the public sector. This question aimed at assessing the level of compliance and the role that SAHRC can play towards the management of records in the public sector with a view to encourage a culture of accountability, transparency and good governance. Participant 1A indicated that PAIA compliance at the local government is very low and SAHRC every year reports on lack of willingness from local government to comply with the act. However, Participant 1A was impressed with the response from members of the public as the requests were received from members of the public requesting training on PAIA from SAHRC. According to the Annual report of SAHRC (2009/10; 2014/15) such requests were also received from public organisations such as the Reserve Bank of South Africa, Mpumalanga Department of Sport, Arts and Culture and the City of Cape Town.

Participant 2A indicated that "the establishment of Information Regulator is also a step closer to information access by the public as the institution will be responsible for the general work of PAIA. However, it still remains to be seen if every PAIA related activity will be transferred to the Information Regulator. Participants indicated that the focus of their work is to check compliance with PAIA as opposed to checking how records are organised. As participant 1A put it "It doesn't matter whether heaven and earth moved for one to retrieve the record requested, what matter most is that a request should be handled within 30 calendar days of receipt as per PAIA prescriptions." The participants however acknowledge

the importance of records management and feel that something should be done to embed record-keeping into the PAIA compliance.

7.5.3 The impact of records on access to information

Participants were asked if the public sector can deliver as expected in terms of PAIA if the records are not properly organised. Participant 1A indicated that without organised records, the implementation of PAIA would be very difficult considering that there are time frames that need to be adhered to when searching for a record. So in cases where records are not properly organised, access to information may be delayed. Participant 1B was of the view that there cannot be full compliance of PAIA if records are not in order because information access depends on the systematic arrangements of documents. Participants further indicated that the reason why sometimes there is lack of response to information requests is because public officials at times do not know exactly where the records are.

7.5.4 Recommendations by participants

Participants were asked to recommend some of the things that can be done to enhance record-keeping in the public sector. Because record-keeping in the public sector affects the mandate of their organisations, the researcher had a view that participants may have suggestions in mind about what can be done to enhance the quality of record-keeping in the public sector. Participant 1A was of the view that the technicality involving records management should not be taken for granted. "Records management is not just about filing. It is more than that as a number of activities have to be done, for example, records survey (audits), classification systems, retention periods, disposal authority, digital records, etc. All these needs specialised skills to develop, manage and sustain. Therefore, qualified people need to be employed to manage records in the public sector. Failure to transform the pattern would result in records being in the state of a mess as reported by the AGSA reports". According to Participant 2A, "service providers need to be hired to clean all the "mess" created by unorganised records in the public sector". The participant further indicated that the public sector must also take advantage of technological development and make use of necessary equipment to

fulfil their records management tasks. Furthermore, awareness and workshops need to be conducted on records management to sensitise senior management. This can be done by qualified records managers in collaboration with NARSSA. This will come in handy when records are requested in terms of PAIA because they can be retrieved within 15 minutes as prescribed by international standards. However, as the statuesque can remain, it would continue to take governmental bodies more than a month to retrieve requested files. As a result, officials will spend more time searching for information rather than acting on the information".

8. Conclusion and recommendations

It is clear from the study that the successful implementation of PAIA relies more on the availability and organisation of records. The underlying assumption here is that if records are in order, retrieval and access becomes easy. In most cases, access to information is compromised because records cannot be retrieved as they are scattered all over the building with no proper classification system to organise them. This concludes that records management has a huge impact on PAIA. If records are in order, PAIA will be successfully implemented by the public sector in order to avoid penalties as the act stipulates.

The study establishes that the SAHRC and NARSSA are working in silos. There are no engagements between the two institutions. It is expected that the two entities should work closely in order to deal with records management challenges faced by public officials. Previous conclusion on the analysis of chapter nine institutions mandate revealed that there is an unshaken relationship between PAIA and records management. This means that the work of NARSSA has an impact on the work of the SAHRC. This means that the SAHRC and NARSSA should work closely as their mandates has records management as a common factor.

Based on the findings of the study and the documents that were analysed, the influence of the SAHRC on records management is limited. Members of staff at the SAHRC are not impressed by the

Commission's influence towards records management in the public sector. It was established that even Parliament itself appears to be ignorant on the recommendations made by the SAHRC. The independence powers of the SAHRC in that case is undermined by senior public officials. Regardless of the SAHRC's recommendations being independent from any influence by government, there is continuous ignorance from senior public officials and this results in lack of recognition of the SAHRC by members of the public at large. The study therefore concludes that the influence of the SAHRC on the management of records in the public sector is limited. The SAHRC only contributes through the facilitation of PAIA workshops and DIOF. Other than workshops and DIOF, there is no other activity undertaken by the SAHRC to promote accountability, transparency and good governance through the monitoring of records management.

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