A Framework for Electronic Court Records Management in Malaysia

Wan Satirah Wan Mohd Saman
Abrar Haider
Andy Koronios

Follow this and additional works at: https://aisel.aisnet.org/iceb2010

This material is brought to you by the International Conference on Electronic Business (ICEB) at AIS Electronic Library (AISeL). It has been accepted for inclusion in ICEB 2010 Proceedings by an authorized administrator of AIS Electronic Library (AISeL). For more information, please contact elibrary@aisnet.org.
A FRAMEWORK OF ELECTRONIC COURT RECORDS MANAGEMENT IN MALAYSIA

Wan Satirah Wan Mohd Saman, School of Computer and Information Science, University of South Australia, Mawson Lakes, Australia.
E-mail: WanSatirah.WanMohdSaman@postgrads.unisa.edu.au

Abrar Haider, School of Computer and Information Science, University of South Australia, Mawson Lakes, Australia.
E-mail: Abrar.Haider@unisa.edu.au

Andy Koronios, School of Computer and Information Science, University of South Australia, Mawson Lakes, Australia.
E-mail: Andy.Koronios@unisa.edu.au

Abstract

In today’s rapid and dynamic changes brought by the ICTs to the conduct of government administration, there is a mounting pressure to address specific records management problems generated and stored electronically. Corporate record keeping has become a strategic and costly decision for many companies. The high level of noncompliance today could cause organizations to fall foul of the law which can result in heavy fines and damaging reputation. This research seeks to explore the management of electronic records in Malaysian courts of law, including Case Management System (CMS), Electronic Filing System (EFS) and Court Records Transcription (CRT). A qualitative research methodology will be employed through exploratory case studies to answer the research questions, using diverse data collection strategies including observation, interview and survey. A framework of a legally complied court records management will be developed to assist organizations to fulfill legal and quality requirements as well as achieving their corporate efficiency, effectiveness and economy.

Introduction

Document management discipline is becoming important in recent years. Beginning with the event of September 11, 2001, when many organizations lost both their physical and electronic records, through the Arthur Andersen document shredding scandal and the passage of Sarbanes-Oxley Act, which require strict record-keeping practices and stiff penalties for noncompliance, a spotlight has been focused on the records and document management profession. Suddenly, corporate record keeping, once considered an obscure back-room job for calculator-punching accounts executives, has become a strategic and costly decision for many companies. AMR Research stated in a report in June 2003 that companies would spend up to $2.5 billion to comply with the Sarbanes-Oxley Act [1].

Records Management is the key component in the delivery of justice. Among the important factors or contribution of a systematic court records management systems are, it provides full information for courts to make decisions, the transparency of the system automatically can avoid corruption, it helps to avoid delays in decision making, thus, enhancing the standing of the judiciary as well as protecting legal rights of individuals and society as a whole [2,3].

In recent years, a number of legal and judicial issues and crisis in Malaysia has been brought to the attention of the public, especially by the mainstream newspapers. The issues are among others, the long delay of cases, the attitude of lawyers, the shortage of judges, the absence of written judgment by judges, which sometimes deny the right of appeal to the accused, or generally deny certain rights of the public at large [4,5,6].

An intensive approach was taken by the government to advance and ‘modernize’ the judicial system by the implementation of e-courts management covering Case Management System (CMS), Electronic Filing System (EFS), Court Records Transcription (CRT) and Queue Management System (QMS).

Currently, different courts take different approaches in managing their records. An obvious variation can be seen especially on the management of current records. A few pilot studies revealed that the way a particular court manages its records depends on the ease of access to the records.
The study focuses on the legal information and records management within the Malaysian courts of law, with the emphasis on electronic records, with the aim to develop the legal records management framework.

**Literature Review**

Information is a vital strategic resource of any organizations. The key to information management is a good records management policy. Recent legislation and an increasingly regulated business environment has meant that records management is not only a business or organisational priority but in many cases a legal requirement as well [7]. In many instances companies faced with serious problems due to lack of records management structure in place [8]. Once in place a records management system creates an environment of effective information management that meets the ongoing organisational, regulatory, and legislative requirements of a business. The key benefits of an effective records management program are: 1) saving time, money and resources, 2) minimize legal risk, 3) effective corporate governance, and 4) business continuity in the case of a disaster [9].

Effective management of electronic records depends not only on technology, but also requires an infrastructure of laws and policies [10]. The high profile business compliance failures and poor record-keeping are rampant. The leaked e-mails, bugging of competitors and even friends, interception of e-mail and mobile phones, electronic identity theft, money-laundering; the litigations against companies, local councils and hospitals with the associated risk and cost of electronic legal discovery exercises, breaches of government and monarchy secrets, the debates about the potentially conflicting freedom of information and data protection legislation and other publicity, have made the citizen and governments, business leaders, shareholders and investors hyper-aware of the difficulties of protecting confidential information and records in an electronic environment [11]. Thus, a comprehensive understanding must be achieved by all organizations and their employees, especially those who are vested with the records management responsibility.

Johare [14] in an article entitled ‘Electronic records management in Malaysia: the need for an organisational and legal framework’ clearly defines the need for a legal framework of electronic records in Malaysia that is serve as the aim of this current research. A qualitative research methodology will be employed through exploratory case studies to answer the research questions, using diverse data collection strategies including observation, interview and survey. A framework of a legally complied electronic court records management will be developed.

**Requirements of Records Management: International Standard ISO 15489**

ISO 15489:2001 is the main and overarching standard for records management, generally accepted and used by nations around the world, together with other national specific records and information statutes, standards and regulations [15]. It was developed by an international committee and is based on the 1996 Australian Standard on Records Management AS4930 (Hofman 2008). It was launched at the ARMA International Conference (Montreal) in 2001 and is supported by the Standards Council of Canada. The Standard was designed to meet the ongoing need for efficient and cost effective best practice.
recordkeeping in a business environment. It is also used as the basis for other practical guidelines and specifications. It requires records to be created and maintained as a routine part of business activities to be stored on media that ensure their usability, reliability, authenticity, integrity, security and preservation for as long as they are needed, despite any systems changes.

Part 1 of ISO 15489 gives a high level framework for recordkeeping and specifically outlines the benefits of good records management, the legal considerations, the importance of assigning roles and responsibilities for records management, he fundamental principles of a records management program, design of recordkeeping systems, records management processes, auditing and training

Part 2 of ISO 15489 is a technical report which sets out procedures that enable organizations to implement the principles [15]. It serves as a guidance on records management policies and the responsibilities to be defined and assigned, further explanation for developing recordkeeping systems; practical advice on the development of records processes and controls to manage records and records management training in the organization.

The Standard is useful because it meets the recordkeeping needs of organizations worldwide, it gives an widely accepted framework to help managers set up and maintain best practice recordkeeping systems, it has a monitoring and auditing framework to enable levels of compliance and accompanying benefits to be benchmarked and assessed. Normally all policies, standards, guidance and tools must be either based on it or are consistent with it.

However, it should be well understood that no one standard that can fit all organizations because “one size does not fit all”. Organizations need to determine which standards best support their business activities and how to integrate them into their processes [16].

**Records Management Issues in Judicial Organizations**

A few number of case studies on Judicial records management issues had been carried out worldwide. In Minnesota, a Record Retention Committee, composed of court and district administrators, judges, record administrators and archivists, addressed the retention requirements of various court records and file series [17].

In Turkey, eJustice plays a crucial role to increase transparency, reduce administrative corruption, improve quality of service delivery, provide community a better access to Justice, enhance efficiency and productivity and decrease costs in the interaction of citizens with governments [18].

In South Africa, records management is seen as an integral part of the management of court business, not as a separate skill or discipline. In the Pretoria Regional Court, for example, twelve ‘control officers’, reporting to the Court Manager, have responsibility for the records of the courts that they cover. However, clerks are responsible for the day-to-day safekeeping and control of records in use in the courts [19].

In Argentina, A National Judicial Reform Program was launched, seeking to achieve improvements in four broad areas of reducing delays in processing cases, human resources, judicial efficiency and effectiveness and access to justice. This improvement can be achieved by upgrading or introducing new information and case management systems, enhancing registries and judicial infrastructure, and providing equipment and training [20].

In Ecuador, The Judicial Reform Project has been a learning experience for all. Judges interviewed during the case study talked of the need for a change in ‘mentality’ or culture. Judges need to regard what they do as a service to users (lawyers, offenders, victims, etc). This in turn will change the way users view the Judiciary. Cuenca, which was said to be the most corrupt city in Ecuador 20 years ago, is now proud of its courts and judicial system. Within the Judiciary, there is a sense of service to citizens and a desire to make the system work [21].

In Singapore, with over a million case files in storage, some dating as far back as 1946, the volume of paper exceeded the capacity of the storage spaces at Havelock Square Complex and in a former ministry building by 1994. In 1995 a joint committee, comprised of the Supreme and Subordinate Courts and the National Archives, was established to investigate the management of court case and improvements were made accordingly [22].

In Gambia, Prior to 1995, record-keeping systems throughout the Judiciary were inadequately managed and could not be relied upon to meet the information needs of the courts, government and civil society. Not only were records poorly protected physically, but there was also a general lack of security. A preliminary survey in December 1995 confirmed that registry systems in the Judiciary had largely broken down. In 1996, the British High Commission in The Gambia provided limited support so that the work of improving
records management could begin. Some improvements in registering and indexing cases and handling files were introduced in the central registry and sub-registries of the superior courts. A judicial records centre was established on the ground floor of the Law Courts complex in Banjul to serve the High Court (formerly the Supreme Court) and the Court of Appeal. These achievements were considerable given the limited scope of the project, but a far greater effort was required to extend and institutionalize improvements, to upgrade storage equipment and materials and to provide training to staff in managing and handling records [23].

Despite these successful efforts of improving the administration of court records, there are few critical issues that are still unresolved, in the sense that no consensus being achieved, especially with the exponential growth of electronic form of judicial records:

**Retrieval**

Failure to control the creation of records usually means failure to retain accurate records that subsequently affects the retrieval process. When the number of records accumulates, the problem would gradually emerge. The retrieval process, in turn, consumes longer time and thus affects the smoothness of the administration and decision making process [24].

In an electronic environment, although various information or database systems provide retrieval utilities, they are not the same as having a comprehensive record keeping and file plan structure that enables a better classification and storage of records.

**Metadata**

Managing most electronic information objects can only succeed with the availability of adequate metadata that function to aid the identification, description and location of networked electronic resources. Without metadata, electronic documents in particular, lose their original context and become less useful, as the metadata functions like a map and a compass to make it easier for everyone searching for information to find it [25].

Recordkeeping metadata is the type of information required to describe the identity, authenticity, content, context, structure and management requirements for records created in the context of a business activity [25]. A recordkeeping metadata schema provides semantic and structural definitions of metadata, including the names of metadata elements, how they are structured, and their meaning.

Isa [24] points out that a working group on record keeping metadata (Working Meeting on Recordkeeping Metadata) consists of archivists, metadata experts and computer scientists defines record keeping metadata as structured or semi structured information that enables the creation, management, and use of records through time and within and across domains. However, the group admit that record keeping metadata may or may not follow a structured schema for organising metadata. The group also agrees that it was unlikely a single fixed metadata schema could be developed or would be accepted to serve all record keeping environments. Establishing a fixed record keeping metadata schema across an organisation would only generate more problems rather than facilitating the management of organisational records.

The role of metadata in a records management context is to:

- Identify records and people who create them
- Establish connection between related records
- Manage and preserve record content, context and structure
- Administer management requirement
- Facilitate understanding and discovery of records
- Supporting efficient retrieval of records
- Supporting evidential value of records
- Managing access, privacy and rights
- Supporting interoperability and transfer across domains and over time
- Supporting efficient migration or other preservation strategy
- Supporting legislations compliance [10,25,26].

Metadata is a critical tool that enables broader business objectives to be achieved. These include increased control, understanding, authenticity, security and accessibility of organization information and the ability to reuse data as required.

**Standardization of Practice**

Standardization of practice appeared a prerequisite of a records management system, be it a manual or electronic systems [27]. One obvious problem is that, despite the increasing investment in new technology, managerial work often involved working with various kinds of ‘legacy’ system. A legacy system is one which, having been
introduced with the best of intentions as an ‘all singing, all dancing’ solution has not been maintained, modified or developed to accommodate organizational or technological change. This issue of legacy systems illustrates some of the difficulties of introducing and deploying technologies in organizations undergoing continuing and often significant change.

The standardization of practice and the imposition of procedural rules in court management in Malaysia is limited to the case handling practice, not to the handling of the case file management as a whole, from their creation to disposition or permanent preservation. There is a lacking of court records management policies across all levels of civil courts in Malaysia.

Accountability of Records Management

Records may not exist if the issue of accountability, which is more fundamental, has not been addressed [26]. Kaler [27] asserts that accountability has to be understood as providing answers and ‘giving an account’ to some authority for one’s actions, normally by holders of public office. The accountability of a government can only be achieved when it demonstrates considerable transparency, which in turn can only happen when trust is supported by authentic and reliable records.

To date, accountability for the integrity of records is poorly defined and may not be as clear in most organizations and jurisdictions [10]. However, in the contemporary business environment, good metadata enables good records management and reflects greater accountability in business operations [26].

Records Lifecycle Management

Despite encouraging effort in embracing modern technologies to ensure the smooth running of court management, one of the serious issues in the judiciary remains with the large amount of paper records which are bulky and keep increasing exponentially, giving the problem of storage space and the issue of proper preservation of it. The crisis within this jurisdiction is identified as how long should legal and judicial records be held in the system, or is the normal lifecycle concept of records management especially the ‘disposal’ stage is applicable to judicial records? Should the case file of a case that was decided in 1800, for example, be held in the court’s record centre or should it be disposed to meet the objective or records management i.e. for economy, efficiency and effectiveness? Rahmah [6] posits that court records are in different nature and category from any other records, that their value are uncompromised and never come to an end. They should remain in storage permanently.

In Malaysia, court records never been destroyed formally, except informal destruction by enemies of records such as rodents and insects. Despite the existence of the Destruction of Court Records Enactment 1935 (Enactment no 18 year 1935) and Sarawak Records Disposal Ordinance 1966 as well as Court Retention Schedule developed in 1989, that require the formal destruction of certain type of court records, they never been enforced or updated.

Proposed Research Framework

This research seeks to explore the management of records in Malaysian courts of law, specifically on the implementation of e-courts covering Case Management System (CMS), Electronic Filing System (EFS) and Court Records Transcription (CRT). This research is significant to the records management discipline, addressing the gap between records management and its legal and compliance requirements. It will specifically tackle the issue of legal and quality compliance in records management.

The main research question is “How can ICT allow for better management and legal compliance of court records in Malaysia?” followed by three sub-questions:

• How is electronic court records life cycle management implemented in Malaysia?
• What are the quality and legal requirements, policies and procedures in place for managing court records in Malaysia?
• What is the appropriate framework for legally compliant court records management in Malaysia?

It sets the foundation for the research framework illustrated in figure 1, which demonstrate the multi-layered and multi-tied framework of electronic court records management legal and quality compliance.

The first inner layer of the framework addresses the first sub-question of the research which deals with the implementation of court records management. It examine the theoretical basis of records lifecycle that deals with creation, use, maintenance, storage, retrieval and disposal of records, in the light of enabling technologies like Case Management System (CMS), Electronic Filing System (EFS), Office Automation System (OAS) and Court Records Transcription System (CRTS). The
second layer of the framework seeks to resolve legal and quality compliance of court records management. The aim is to examine the abovementioned systems in the light of the international standard for Records Management i.e. ISO 15489 as well as other relevant legislations, policies and procedures. The third layer of the framework acknowledge the quality assessment for jurisdiction specific. For the purpose of this research, it will be focused to Malaysian jurisdiction. Hence, the research will examine Records Management principles, practices & methodologies in the court within Malaysia and how they could be improved in the light of international standard ISO 15489, legislation and policies. Answering all those research questions: 1. How Ct Rcds are managed (SQ1), 2. How it should be managed according to quality standard ISO 15489 (SQ2) and 3. How these should be done in Malaysian environment (SQ3), means answering the main Research Question of “How can ICT allow for better management and legal and quality compliance of court records in Malaysia?”

![Conceptual Framework of the Research](image)

Figure 1: Conceptual Framework of the Research

**Conclusion**

In reaching the answer to the research question to resolve issues at hand, we are going to employ a qualitative research methodology, an inductive analytical process which immersed in the detail and specifics of the data to discover important categories, dimensions and interrelationships by exploring genuinely open questions rather than testing theoretically derived hypothesis [28,29]. Marshall and Rossman [30] define qualitative research as: it takes place in the natural world; it uses multiple methods that are interactive and humanistic; it is emergent rather than tightly prefigured and it is fundamentally interpretive. This research fits into the qualitative research genre because it focuses on individual lived experience illustrated by mainly phenomenological approaches, as described by Marshall and Rossman [30]. This methodological approach enables a study of Malaysian current practice of court records management experiences. The qualitative nature of judicial/legal administration study necessarily lends itself towards an examination of current practices, and case study methodology is the best approach to answer the research question posed in this study.

**References**


[27] Clarke, K. et al., 2002. Improving 'knife to skin time': process modelling and new technology in medical work. Health Informatics Journal, 8(1), 39-42.