Chapter 7

Open and Transparent Judicial Records in the Digital Age:
Applying Principles and Performance Measures

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ABSTRACT

Open access to accurate and reliable records is essential to participation in the judicial process and government transparency. As the judiciary and other branches of government increasingly rely on records which are created and maintained in digital form, a new set of challenges faces policy makers to ensure ongoing access and authenticity. One of the keys to this effort is the development of a set of principles and related performance standards which provide a framework and a system for measuring success. Using the recently adopted records management standards published by the U.S. Conference of State Court Administrators as a basis, this chapter discusses their application to digital record-keeping and how existing court performance standards addressing records management already developed by judicial organizations and the records management industry can be brought together to create a new set of performance measures to ensure that court records remain open, accessible, and trustworthy in the digital age.

INTRODUCTION

Recordkeeping has always been a core component of the judicial process. While most organizations create and maintain records as part of their business function, the purposes and uses of records in a governmental organization are often directly related to maintaining the democratic process and preserving the rights and obligations of citizens and organizations. This is particularly the case in the judicial branch. An effective records management program in the judiciary supports several critical functions: (Raaen, 2014)

- Support for judicial decision-making,
- Documentation of legal status and rights,
- Public access to court proceedings and decisions,
- Enforcement of court orders and judgments,
- Preservation of records for appellate review,
- Preservation of historical information.

Citizen participation in the judicial process is a critical part of open government. Public access helps ensure that court proceedings are conducted fairly and in a way that promotes confidence in judges and the courts as an institution. Public access also allows citizens to monitor the ability of society to address matters relating to crime, punishment and rehabilitation. The ability to access court records in a timely manner, along with the expectation that records will be accurate and complete, are fundamental to open justice and public participation. This chapter focuses on the issues surrounding the creation and maintenance of case records and their importance to transparency and participation by citizens in the judicial process in the digital age, and argues for the adoption of comprehensive performance measures based on fundamental principles to ensure that judicial organizations are able to provide open access to digital court records, while at the same time ensuring their authenticity and preservation over time.

BACKGROUND

The emergence of digital record keeping capabilities is causing a profound shift in the way that government agencies do business and interact with the public. Government agencies have turned to electronic records as a means to increase operational efficiency, improve access and security, and reduce their reliance on paper as the primary record. Although it must be said that in many regards technology has actually created an increase in paper documents since office automation products have made it easier to create, duplicate, and distribute documents and other records. As a result, many government agencies are working in a "hybrid" records environment as they make the transition from paper-based processes and record keeping to greater reliance on digital technology. Across the world, as well as within state and provincial jurisdictions, courts are at varying levels of adoption of electronic record-keeping. Already, however, some judicial agencies have fully adopted electronic record-keeping systems, effectively operating in a "paper-on-demand" environment.

In a 2003 World Bank forum on legal and judicial reform and record keeping, participants from over thirty countries identified a number of emerging issues for consideration in the digital age which have potential impact on the availability and usability of judicial records: (World Bank, 2003)

- The volume of judicial records, and resulting problem of storage, duplication, and obsolescence are major concerns for those responsible for the creation and maintenance of those records.
- The rapid adoption of technology and its continuing evolution have often out-paced the ability of law and policy-makers to ensure that the legal and statutory framework for creation, maintenance, and access to digital records is in harmony with current technological capabilities.

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