

한국 정부기록보존소의 역사기록물 공개에 관한 검토

A Study on the Access in the Government Archives & Records Service of Korea

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<국문초록>

이 글은 정부기록보존소에 보존되어 있는 역사기록물의 공개에 관한 법과 제도, 운영상의 미비점을 살펴보고 그 개선방향을 제시하기 위해 작성한 것이다. 주지하듯이 세계 각국의 기록보존소는 역사기록물의 공개원칙과 재분류를 위한 세부적인 기준을 세워 역사기록물이 적극 활용될 수 있도록 하고 있다. 한국의 경우, 1999년 기록물관리법이 제정됨에 따라 역사기록물의 공개와 관련한 의무와 권한은 대체로 기록관리기관으로 넘어왔지만, 그것을 완수하기 위한 기틀과 근거는 아직 정비하지 못한 상태에 머물러 있다.

이와 같은 미비점을 극복하기 위해서는 정보공개법과 기록물관리법을 다음과 같은 방향에서 정비·보완하여야 한다.

첫째, 정보공개법에는 '기록보존소로 이관된 기록물 중 생산한지 30년이 지난 기록물의 공개여부는 기록물관리법에 따른다'는 위임 규정을, 기록물관리법에는 재분류에 관한 원칙과 기준을 명시하는 것이 바람직하다. 현용기록물과 역사기록물은 성격이 다른 만큼, 공개문제도 각각의 법에서 규정하는 것이 적합하기 때문이다.

둘째, 기록물관리법에 '생산한지 30년이 지난 기록물은 공개를 원칙으로 함'을 제시한다.

셋째, 기록물관리법에 '생산한지 30년이 지난 기록물의 비공개는 별도의 절차없이 자동적으로 일괄 해제한다. 다만, 국가기밀이나 개인정보를 포함한 기록물은 비공개 기간을 연장할 수 있음'을 제시한다. 이로써 기록물 공개와 기록물 보호 사이의 균형을 획득한다.

넷째, 국가기밀·개인정보 기록물 등 예외를 인정한 기록물은 정보의 유형별로 기록물을 세분하고 각각의 공개시기를 구체적으로 지정한다. 비공개 해제를 위한 유형별 세부 기준이 명시되지 않으면, 공개재분류가 여전히 주관적이고 일관성 없이 이루어질 수도 있다.

다섯째, '기록보존소에 이관된 생산한지 30년이 안된 비공개 기록물은, 공개요청이 있을 때 생산기관의 의견을 물어서 기록보존소가 공개할 수 있다'는 방향에서 정비할 필요가 있다.

<ABSTRACT>

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The ultimate goal of preserving and maintaining the records is to use them practically. The effective use of records should be supported by the reasonable recordskeeping systems and access standards. In this report, I examined the Korean laws and administrative systems related to the public records access issues. After I pointed out major problems of the access laws, the Government Information Opening Act (GIOA), and the problems in practices, I suggested some alternatives for the betterment of the access system. The GIOA established "eight standards of exemption to access" not to open some information to protect national interests and privacy. The Public Records Management Act (PRMA) applies to the archives transferred to "professional archives."

The two laws show fundamental differences in the ways to open the public records to public. First, the GIOA deals with the whole information (the records) that public institutions keep and maintain, while the PRMA deals with the records that were transferred to the Government Archives. Second, the GIOA provides with a legal procedure to open public records and the standards to open or not to open them, while the PRMA allows the Government Archives to decide whether the transferred records should be opened or not. Third, the GIOA applies to record producing agencies, while the PRMA applies to public archival institutions.

One of the most critical inadequacies of the PRMA is that there are no standards to judge to open the archives through reclassification procedure. The GIOA also suggests only the type of information that is not accessible. It does not specify how long the records can be closed. The GARS does not include the records less than 30 years old as its objects of the reclassification.

To facilitate the opening of the archives, we need to revise the GIOA and the PRMA. It is necessary to clearly divide the realms between the GIOA and the PRMA on the access of the archives. The PRMA should clarify the principles of the reclassification as well as reclassifying method and exceptions. The exemption standards of the GIOA should be revised to restrict the abuse of the exemption clauses, and they should not be applied to the archives in the GARS indiscreetly and unconditionally.

1 Raising a question

The access of information of public institutions has very important functions not only to satisfy people's right to know, but also to evaluate the achievement of the administration and to monitor irregularities and inefficiencies in the public administration. Since January 1998, when the Government Information Opening Act (GIOA) was legislated, the act has been operated positively in Korea. The , making it a principle to open public information, encourages public institutions to open their information to public as much as possible. But the law established eight standards of exemption to open access (hereinafter referred to as 'standards of exemption') not to

open some information to protect national interests or privacy.¹⁾

But 'standards of exemption' of the are not applied to only the current records. The standards are also applied to the archives²⁾ transferred to the repositories because of shortcomings of the related laws including the Public Records Management Act (hereinafter referred to as the PRMA, legislated in 1999). Large portion of the archives in the Government Archives have not been legally opened, though they should have been opened with the reasonable passage of time. As we see from this case, if we don't revise the laws which 'standards of exemption of the allow to keep all public records and archives unopened, it is expected that the access to the archives will be seriously obstructed.

The ultimate goal of preserving and maintaining the records is to use them

1) The types of information regulated to be off the record in GIOA are as follows (Article 7 of GIOA).

- ① information classified to be maintained secretive or closed records by the law or the command.
- ② information which could be fatal to the national securities, defense, unification, or foreign affairs when it is opened.
- ③ information which could cause trouble to the public security or interests such as the life, body, or property of people when opened.
- ④ information related to the investigation, judgement, or crime prevention which could cause interrupting official performance or could trespass the right of the accused to be judged fairly when opened.
- ⑤ information under the audit, superintendence, trial, control, bid contract, technological development, decision-making, or examination which could cause interrupting official business when opened.
- ⑥ personal information such as names and residents registration numbers from which they distinguish specific persons.
- ⑦ information related to the confidentiality of a person, a group, or a corporation which could cause serious damages to each of them when opened
- ⑧ information which can give specific persons benefits or disadvantages through real estate speculation or cornering and hoarding when opened.

2) Korean public agencies should transfer permanent and semi-permanent records to the archives in the tenth year of creation according to the PRMA. In this report, the archives mean permanent and semi-permanent records transferred to the Government Archives after they had been used in their own agencies.

practically. And the utilization of them should be supported by the reasonable recordskeeping systems and access standards. In this report, I will examine the laws and systems related to the access issues. In the analysis of the issue, I will point out major problems of the laws and the problems in practices and will suggest some alternatives for the betterment.

2 Laws related to the public access to records and their flaws

There are two laws, the GIOA and the PRMA, which decide whether the records of public agencies can be opened or not. They both deal with opening issue of the public records. But they are very different in details in terms of their objects and subjects. The differences are as follows;

First, the GIOA deals with the whole information (the records) that public institutions keep and maintain, while the PRMA deals with the records that were transferred to the Government Archives. Second, the GIOA provides with a legal procedure to open public records and the standards to open them, while the PRMA allows the Government Archives to decide whether the transferred records should be opened or not. The PRMA also established the duty of mandatory review for the reclassification. Third, the GIOA applies to record producing agencies, while the PRMA applies to public archival institutions.³⁾

Seen above, the two laws show fundamental differences in the ways to open the public records to public. The GIOA deals with the current records in their respective institutions, but the PRMA deals with the records transferred to the archives. Accordingly, it is natural that the access to archives should be complied with the

3) Articles 1, 2, 7 of the GIOA, the article 17 of the PRMA, and article 18 of the Regulations of the PRMA.

PRMA, though there is no exact clause which mentions it. These two laws reveal some critical inadequacies in opening the archives.

First, one of the most critical inadequacies of the PRMA is that there are no standards to judge to open the archives through reclassification procedure. The PRMA regulates that, 'the professional archives institution (GARS) will reclassify the closed records over 30 years-old, and decide to open them or not.⁴⁾ But there are no detailed standards to reclassify the archives. As a result, the PRMA has to depend on 'standards of exemption' of the GIOA.

The GIOA, especially the 'standards of exemption,' has been criticized as that it became "No Freedom of Information Act," because it does not clarify the standards strictly. It does not regulate specifically which personal information should be opened. Therefore, the information that should be opened in public interests tends to remain closed. To realize a transparent administration and to encourage extensive and practical use of information, the eight standards of exemption of the GIOA should be revised in direction to open information as much as possible.⁵⁾ It reveals a limitation of the access policy in the archives if we have to apply these inappropriate standards to the non-current transferred archives. Actually, the GIOA has been also criticized by civil societies when the public agencies apply it to the current records, too.

Second, the GIOA suggests only the type of information that is not accessible. It does not specify how long the records can be closed. As to reclassification of closed or classified records, there is only one clause that states "public agencies should make information be accessible when it is no more necessary to keep the records closed as the passage of time."⁶⁾ Needless to say, there can be a counter-argument that after 30 years of their creation, most records are to be opened naturally, and whenever the

4) Article 17, clause 3 of the PRMA and article 18, clause 5 of the Regulations of the PRMA.

5) Sangmin Lee, "The Directions and Tasks of Korean Public Records Management System: A Policy Report to the Director General of the Government Archives & Records Service," unpublished report, the Government Archives & Records Service, Republic of Korea, January 2003.

6) Article 7, clause 2 of the GIOA.

reason of closing records is dissolved with the passage of time, the records can be accessible at any time. So the period doesn't matter."

But when these two inadequate clauses are applied strictly, some records cannot be accessible permanently. Especially the records that contain personal information fall under this category. For instance, we have lots of court records created under the Japanese rule. The records of execution have great academic research value. Fifty years have already passed, but they are still classified as closed due to the exemption clause in the law regarding protection of private information.

Third, there is an ambiguous clause in the PRMA that makes it difficult to reclassify the archives. The clause says "permanent and semi-permanent records could be reclassified by the head of the archives after they are transferred."⁷⁾ Here comes with two different interpretations of this clause.

One is that the archives can reclassify the transferred records regardless of the period. In accordance with the law, Korean public agencies should transfer permanent and semi-permanent records to the archives nine years after their creation, while many other countries generally transfer the records after 25-30 years. Therefore, there should be many records under 30 years in the archives and the officials concerned can interpret the clause of the regulation as which the archives could reclassify the records.

There is another interpretation of this clause. It argues that the law (the PRMA) states clearly about the reclassification of closed records of over 30 years after their creation, therefore it is not correct that the subordinate law of ordinance regulates the reclassification of the records less than 30 years old. The advocates of this interpretation argue that 'this clause means to rectify the errors that creating agency made when it determine the retention period.' As we see, the regulation on the reclassification of the records less than 30 years old is not clear enough. If the clause is not revised, there will be a substantial confusion about the objects and authorities of the reclassification.

7) Article 18, clause 3 of the Regulations of the PRMA.

3 The Practice of the Reclassification in GARS

I will move to introduce how the GARS is implementing the reclassification clause (to open archives) and will examine if there are any restrictions in practice. The Government Archives criterion of what records are to be reclassified is whether the records have passed 30 years.⁸⁾ The GARS does not include the records less than 30 years old as its objects of the reclassification. But sometimes it reclassify the records even them. In the process of appraising the records transferred to the GARS, the GARS verifies the appropriateness of the given classification. When the archivists in the GARS find any errors or mistakes made by a creating agency, they correct them with the consent of the agency. But that kind of correction cannot be regarded as real reclassification works. Unlike the reclassification of the records over 30 years that the GARS is supposed to do, the mere correcting errors are not such reclassification.

The GARS reclassifies the closed records of over 30 years as open records without consulting with the creating agency. The major reclassification project of the GARS launched when the archivists in the GARS reviewed the records of former president Park Jung Hee. In 2001, the GARS organized a special work group to reappraise the records of which had been closed. The team designed an appraisal form that contains appraisal input items for each record item. Furthermore, they reclassified which pages should be opened. At that time, they made a kind of simple reclassification directions as a guide to open the records. The guide is summarized roughly as follows.

'The records over 30 years old should be opened as far as possible, but the secret records related to the national security or the records related to defamation of private person should not be opened. The records under 30 years old could be opened selectively when the facts informed in the records were already known to the public through the media such as newspapers and etc.'

In 2003, the GARS organized a new work group to reclassify the records of the

8) Article 66 of *the Rules of the GARS Operation* (classification of re-evaluation).

former president Syngman Rhee. The records of Syngman Rhee are older than 30 years and most of them will be opened in principle. But some special records containing national security information or personal information such as disciplinary punishment records that might cause the defamation of a person will be excluded from opening.

The GARS has implemented the reclassification to encourage a positive use of its holdings. But due to the large scale of the work, it requires a lot of staff resources and time. Furthermore, the directions for the opening the records are legally inadequate. Therefore the reclassification of the records of former presidents cannot go beyond the temporary procedure.

But it should be noted that there has been no reclassification of the public records in public agencies. It means that there are no institutional supports, such as policy frameworks and guidelines, to operate the reclassification system. In other words, the records of over 30 years accumulating every year, but there are no principles, responsible work groups assigned to do such work, guidelines or directions how to reclassify them. This is rather a bigger obstacle in implementing the reclassification of closed public records that a lack of detailed legal standards.

Closed records that are over 30 years old are transferred to the archives from all agencies naturally every year. If the principles or directions to reclassify them are not prepared in advance, the GARS cannot implement the reclassification process properly. In this situation, even if the reclassification is implemented, it will be an irregular and anomalous operation in which the specific records are to be reclassified as case by case only when the specific cases come up.

Despite the regulation on the reclassification of the closed records over 30 years, the reclassification function of the GARS remains to be under effective operation. To use the archives efficiently, we should have effective intellectual and physical control of the records and we should improve the reclassification functions that have not been performed normally.

4 The basic approach to encourage the Reclassification

According to a survey, the national archives of United States, Britain, France, and other countries take over the permanent records of over 25-30 years. Except for the records of the national security, foreign affairs, national defense and personal matters, they are reclassified and opened to public when the national archives receive the records. And the rest of the unopened records are to be opened at the designated time respectively. For instance, in France the personal medical records are to be opened after 150 years of his or her birth; the records that may threaten one's life or the national security, or the defense can be opened after 100 years. In Germany, the personal records are to be opened after 30 years he or she died.⁹⁾

Thus, all other countries established the principles to open the records and detailed standards to reclassify them after they were transferred to the archives to activate the use of them. In contrast to other countries, the Korean Archives has some insufficient laws and systems in relation to the access of the archives. After the PRMA was enacted in 1999, the GARS has been endowed with the duty and the authority to determine the accessibility of the archives that were transferred to GARS. But, the tools to implement the authority have not been established sufficiently enough to perform the functions properly.

To overcome the inadequacies and to facilitate the opening of the archives, above all other things, we need to revise the GIOA and the PRMA as pointed out. If the two laws are revised toward a more open records access, the inadequacies in practical operation will be largely dissolved. The exemption standards of the GIOA should be revised to restrict the abuse of the exemption clauses, and they should not be applied to the archives in the GARS indiscreetly and unconditionally.¹⁰⁾ The revision in the

9) GARS, The Archives Management & Preservation Systems in Foreign Countries, 1998

10) The revision of the exemption standards of the GIOA was strongly requested by major civil movement organizations. For details of the revision request, see Solidarity for Civil Participation, "Evaluation of the Government Proposal for the Revision of the GIOA and the Right Directions

PRMA should be made as following suggestions.

① Adjustment of overlapped realms of the two laws: It is necessary to clearly divide the realms between the GIOA and the PRMA on the access of the archives. The two laws should be distinctive in its purpose and function and they should present precisely responsibilities and authorities of to open records. To put it concretely, it is desirable that, the GIOA should have a mandate regulation that says 'Among the records transferred to the archives, the records of over 30 years should be opened according to the PRMA.' On the other hand, the PRMA should have clearly stated principles and standards of reclassification. The current records and the historical non-current records are very different in terms they are to be used and preserve. Therefore, it is desirable that access to the current records and the non-current historical archives should be regulated differently and separately in the frame of the two laws respectively.

② Clarification of principles of the reclassification: In the PRMA, there should be a clause that states clearly 'the records over 30 years should be opened to the public as a rule.'

③ Reclassifying method and exceptions: In the PRMA, there should be a clause saying 'closed records over 30 years should be opened as a unit automatically without any further procedures. But the access to the records containing national security information or personal information could be restricted for a certain period.' Thus, the balance between the open access (for peoples interest and right to know) and the secrecy of the records (for public good and public safety or for protection of privacy) can be achieved.

④ Clarification of the type of exceptions and the closing period: the records exempted from opening should be sorted by their types and the terms of closing should be presented as in France. To establish the clear and fair system, we should do an extensive research on the various foreign cases. To reclassify the closed records objectively and coherently, we should make detailed standards.

⑤ Opening methods and an implementing authority to determine access to the records under 30 years : The third clause of the Article 18 of the Regulations of the PRMA can

cause different interpretations. This clause should be revised into that "Among the close records transferred to the government archives, the records under 30 years old could be opened to public by the archives upon request, with mutual agreement between the archives and the creating agency."

When records to be reviewed and standards of the reclassification are arranged as above, it is reasonable that access to the records under 30 years is provided according to the exception standards of the GIOA. But it is inappropriate to regard it as the same one as the reclassification of records over 30 years old in the archives. That is, they are not same kind of business. When we call these distinguished and different businesses as the same reclassification works, there should be confusion. Therefore, it is preferable not to use the word reclassification in case of opening of the historical records in the archives.

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