



# OMBUDSMAN FOR BERMUDA

## **SPECIAL REPORT**

Pursuant to s. 16(3) Ombudsman Act 2004

Re: response of the Cabinet Office (Ministry responsible) to  
'Atlantica Unlocked: the Ombudsman's Own Motion Systemic Investigation  
into Allegations of Barriers to Access to the Bermuda Archives'

June 2010

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June 4, 2010

The Speaker, The House of Assembly  
The Hon. Stanley Lowe, OBE, JP, MP  
Sessions House  
21 Parliament Street  
Hamilton HM 12

Dear Honourable Speaker,

I have the honour to present a Special Report regarding the response of the Cabinet Office (Ministry responsible for the Bermuda Archives) to 'Atlantica Unlocked: the Ombudsman's Own Motion Systemic Investigation into Allegations of Barriers to Access to the Bermuda Archives'.

This Report is submitted in accordance with Section 16(3) of the Ombudsman Act 2004 which provides:-

**Authority to notify Ombudsman of steps taken**

- 16(3) If within the time period specified in this section, the authority—
- (a) fails to notify the Ombudsman of the action that has been taken or is proposed; or
  - (b)(i) has taken no action; or
  - (b)(ii) has taken action that in the Ombudsman's opinion is inadequate or inappropriate,

the Ombudsman, after considering any reasons given by the authority, may submit a special report under section 24(2).

Yours sincerely,

  
Arlene Brock  
Ombudsman for Bermuda

**COVER COMMENT for Special Report pursuant to S.16(3) Ombudsman Act 2004 (“Act”)  
 Re: Response of the Cabinet Office (Ministry responsible for the Bermuda Archives) to Atlantica  
 Unlocked: the Ombudsman’s Own Motion Systemic Investigation into Allegations of Barriers to  
 Access to the Bermuda Archives (“Archives”)**

**A. INTRODUCTION**

1. For clarity, the Special Report of the Systemic Investigation tabled on June 30, 2009 pursuant to s.24 of the Act will be referred to as the “Systemic Report”. This Special Report pursuant to s.16(3) of the Act (comprised of this Cover Comment and attached Recommendations Grid) will be referred to as the “Special Report”. As noted in paragraph 216 of the Systemic Report, I also submitted an 8 page Private Report to the Premier (Minister), the Secretary to the Cabinet (Permanent Secretary) and the Chair (Chief Justice) of the Archives Advisory Council (“AAC”). The first deadline for the Ministry’s response was August 28, 2009, extended to December 4, 2009 and finally to March 31, 2010. The Response, dated February 19, 2010, was received in our Office on February 24, 2010.

2. The Systemic Report set out 22 overall Recommendations but as several had ‘sub-recommendations’, there are a total of 35 Responses and one No Response. The Responses to the Recommendations and my corresponding observations as to their adequacy are set out in the Recommendations Grid attached as Appendix I to this Special Report.

3. I must commend the diligence with which the AAC, a voluntary body, has considered those Recommendations that are not only relevant to but also may greatly expand its work.

4. The 35 Responses show that 5 Recommendations were implemented and 6 are in process. Actions are proposed for 16 Recommendations and no further action is proposed for 8 of them. Overall, I found 23 of the Responses to be adequate or appropriate (with 8 caveats) and the remaining 12 Responses to be inadequate or inappropriate:

<b>Responses</b>		<b>Adequate</b>	<b>Inadequate</b>
Implemented	5	4	1
In process	6	6	0
Action proposed	16	11	5
No further action	8	2	6
<b>Totals</b>	<b>35</b>	<b>23</b>	<b>12</b>

5. One official asked why I have paid so much attention to the Archives when there are many more pressing issues in Bermuda. This question presents an opportunity to clarify that the Ombudsman is a last resort for complainants. A country’s crises and structural problems should be tackled by the Ministries and agencies responsible. The Ombudsman is tasked precisely with addressing those concerns that people feel have fallen on deaf ears.

6. In any investigation, the devil is in the details. This has not been truer of any matter that our Office has looked into than of the Archives investigation. Most issues have a technical component and almost every explanation must be double-sourced and nuance reality-tested. Overall, it is clear that time, effort and inclination is required to ferret out fact from fiction.

Before commenting on certain Responses, I must note the following two issues:

## **Purported Rebuttal**

7. Usual Ombudsman practice is to comment on one or two sentences or paragraphs of an authority's response to an investigation report. However, as a courtesy and in an abundance of fairness, I attached to the Systemic Report a 23 page, 75 paragraph "1<sup>st</sup> Rebuttal" from the Archives. However, I could not – in full conscience – reprint 14 of the paragraphs: "*I decline to print adverse statements made about other persons (who do not appear to have been given the chance to respond).*" Indeed, I had previously clarified to the Archives and their counsel that the 14 adverse statements were contrary to the facts uncovered in my seven month investigation.

8. On July 10, 2009 – without the courtesy of notification to me (much less a due process opportunity to comment) – the Ministry tabled a "2<sup>nd</sup> Rebuttal" that purported to summarize and add back the 14 paragraphs that I had omitted. Actually, this 2<sup>nd</sup> Rebuttal similarly excluded, diluted or reworded nine of the very 14 paragraphs that I had omitted. I take this as an effective admission that my caution to exclude those adverse statements was justified.

## **Confidentiality of complainants and witnesses**

9. The Systemic and Private Reports were criticized because I did not name witnesses. As noted in the Systemic Report, several complainants and witnesses were apprehensive about putting their research at risk should they be identifiable. Accordingly, I exercised my deeply considered discretion to conduct a systemic investigation, thereby protecting their identities. Witness fears were justified. Both Rebuttals impugned persons who had either agreed to be identifiable or were assumed to have given evidence. In any event, all evidence was professionally vetted and corroborated in accordance with s.12(2) of the Act.

## **B. COMMENTS ON CERTAIN MINISTRY RESPONSES**

### ***Non-flash self-service photography***

10. *Recommendation:* Establish and post a policy to allow for digital photography and scanning.

11. *Response:* Council discussed and agreed in principle use of digital cameras in the Reading Room (without flash & in lieu of scanners) for research purposes. Policy & Guidelines for Use of self-service photography to be developed and agreed by Council.

12. *Comment:* This excellent Response removes a substantial barrier to access and brings Bermuda in line with well-established archival practice overseas. For AAC consideration: the policy should permit: (a) the purchase of a workable copy stand (or other appropriate equipment to alleviate camera shake). Not to do so would hobble the ability of researchers to take quality photographs; and (b) researchers to take photographs for other purposes as well.

### ***Use fees***

13. *Recommendation:* The AAC should review, consult with the Archives and advise the Minister

- (a) whether usage fees should be charged for items in the public domain
- (b) whether there should be a waiver for scholarly and cultural works
- (c) of a more practical and intellectually rigorous definition of 'commercial' use (to exclude break-even ventures of cultural value to the country).

14. *Response:* Council reviewed, consulted with the Archives and advised: that the Archives fee structure remains as it is due to current financial circumstances. The Minister will invite Council to review fees in fiscal year 2011/12.

15. *Comment:* This Response is adequate if the time is required for careful consideration by the AAC to determine the fundamental principle – should documents already in the public domain (i.e. no longer subject to copyright) be subject to use fees?

16. For consideration by the AAC: currently, the Archives exempt from use fees a single use copy of materials for educational and cultural production. Two or more copies or publication of material are deemed “multiple use”, subject to use fees. The goal is to prevent the commercialization of and private gain from public property. Private archives abroad often also charge use fees both to prevent commercialization of private property and to finance their operations.

17. Many public archives do not charge fees for use of public material. The policy at the US National Archives & Records Administration (“NARA”) is illustrative (in response to our inquiries re a recent complaint about images located both there and in our Archives): “*these images may be from the US [-] series here at NARA, in which case none are copyrighted, all are in the public domain, so there is no need to contact us for use or for reproductions purposes.*”

18. Many public archives have a “materiality” threshold. That is, for relatively small (e.g. 3,000 or under) print runs of commercial items (such as history books, DVDs and coffee table photo albums), there is a nominal or no fee. For larger production runs, there is a commercial charge. The policy is that it is preferable to encourage the disclosure and circulation of public information to the public rather than to impose fees that may discourage use.

#### ***Access restrictions***

19. *Recommendation:* The AAC should review, consult with the Archives and advise the Minister on criteria for discretion by the Archives to place other restrictions on use.

20. *Response:* Council reviewed, consulted with the Archives and advised: that the practice of applying existing access (open after 30 years) and privacy (personal data of living individuals closed) policies to donor collections be upheld.

21. *Comment:* This Response is inadequate. In one instance, a researcher was denied access to an organization’s administrative records even after the organization had requested that she be given access to its entire collection. This Response suggests that access was denied to protect the privacy of living individuals. This would be a fourth explanation. As detailed in the Private Report, the other explanations were: (i) to the researcher: *the records are not open to the public*; (ii) to our investigation: *as is the case with public administrative records, these are closed for 30 years*; and (iii) to the Secretary to the Cabinet (in writing): *closed to the public at donor request*. In truth, the donor requested that the researcher have access to all of its collection. In law, the 30 year statutory rule is for public records, not private donations. I urge the AAC to reconsider this Response so as to permit donors to give permission for researchers to have access to their materials.

#### ***Guidelines for staff and public***

22. *Recommendation:* Establish guidelines for staff to assist them to respond to public queries about (a) acquisition policies (b) restrictions on access (c) copyright (d) use fees (e) archival research.

23. *Response:* The Archives has no permanent public service staff at this time. Once fully staffed, the Archives will develop a handbook and orient staff to policy and practices governing the use of the collections.

24. *Comment:* This Response is inadequate. Given the revolving door of staff as well as current financial constraints, it is unlikely that the Archives will be “fully staffed” in the near future, if ever. It is unrealistic to wait to produce staff guidelines until four highly specialized new posts are hired. Indeed, given limited staff, it is even more critical that the public should have as many guidelines as possible to conduct their own research – this is best practice elsewhere.

25. For reference staff in particular, basic management instruments to enable them to assist the public do not exist. Without a shelf / location list at the box level, it is difficult for staff to know where things are. This is also a security issue and important for annual audits (see Recommendation 9 / Resources). It is difficult for the Archives to know what should be where without a baseline list.

26. *Perfection should not be made the enemy of the good.* Until a handbook is developed, there are at least two documents that can be available to the staff and public – imperfect, but better than nothing: (i) a “Reference Desk Guide” created by a former staff that has been handed down surreptitiously from some staff to others and is considered to be invaluable. It has not been made available to all staff even after the investigation (when the Archives responded that this guide was “not on the radar”); and (ii) an “Index to the Finding Aids”; appended to the Systemic Report; similarly has not yet been made available at the Archives for the public.

27. This Response puts the issue of staffing squarely on the table. A number of other Responses in the Recommendations Grid similarly argue for as many as four new specialist posts. While an archivist with IT expertise would be ideal to implement many of the Recommendations, the kind and extent of specialization suggested by the Ministry’s response is almost unheard of in small archives (all of which are backlogged and yearn for more staff). Best practice at even far larger national archives (such as the US and Canada) encourages senior archivists who have gravitated into specialties to be seconded to different areas or otherwise generalize their expertise.

28. The number and specialization of staff may be less critical than their efficient management and deployment as well as the prioritization and clarity of projects. The experience of the Archives of the British Virgin Islands is instructive: with a meager three staff and in just three years, they manage to balance archival tasks of cataloguing, etc, with robust outreach (including Friends of the Archives, Records Management Month, History Research Project, Historical Calendar, Old Photos contest and resulting book, “Snapshots of the Past”, as well as a Newsletter).

### ***Veteran copying costs***

29. *Recommendation:* Discontinue charging veterans copying costs for their own service records.

30. *Response:* Council recommended that seniors be exempt from paying for personal use copies of all types of archival material. Cabinet will be invited to make changes to the Government Fees.

31. *Comment:* I applaud this Response for going beyond the Recommendation by extending the exemption to all of Bermuda’s seniors.

### ***Standard archival practice***

32. *Recommendation:* The Archives should follow international standards and best archival practice. In particular, deposits should not be re-arranged without consultation with the depositing authority to confirm the factual, rather than theoretical, provenance of the records.

33. *Response*: Under the present administration, international archival standards were first introduced in support of automated cataloguing, conservation and outreach. The Archives is dedicated in continuing its work in applying standards.

34. *Comment*: Examples of past failure of basic archival standards include: (i) research was stymied because relocated photographs were not cross-referenced; (ii) inadequate guidelines for staff to assist the public (iii) until our investigation, the Archives was not even aware that NARA (to whom staff have been sent for training courses over the years) has permitted self-service photography even before the invention of digital photography; (iv) the Regimental Records have been rearranged at least twice over two years. Three prior professional staff questioned both the apparent indecision and the failure to leave the records in the order that they arrived and were used by the Regiment. [The Regiment's Register is created sequentially, but the files were kept and only useful alphabetically]; and (v) professionals have questioned the focus of time and minute itemization of bits of the Archives before developing an overall classification scheme for the entire Archives. This is somewhat like having an interior designer decorate a room before the tank of the house is dug.

#### ***Manager / Mentor***

35. *Recommendation*: An overseas archivist with expertise in administration, auditing of repositories, cataloguing and freedom of information should be contracted to manage the Archives overall for a period of not less than one year. Tasks for this person would include (a) auditing the state of tasks required to bring both the Repository and the Records Centre to efficiency (b) developing and/or updating all relevant policies, procedures and tools (c) rationalizing and speeding up the current five year plan for electronic access (d) training staff in accessioning, appraisal, arrangement, cataloguing and outreach tasks as well as reference interviews (e) developing an orientation module for new staff (f) supervising the strategy to prepare for PATI legislation, including any implications for the Records Centre (g) mentoring the Director in administration, public relations and management of people.

36. *Response*: The established post holder is a long serving dedicated and capable public servant, committed to the efficient running of the Department and will be managed and supported as needed.

37. *Comment*: This Response is inadequate. The Recommendation was not made capriciously nor was the Systemic Report the first time senior officials were alerted to these concerns. As detailed in the Private Report, at least one of three prior interventions by senior officials in response to staff discontent noted similar recommendations (never followed through and the Archivist was never informed). If no further action is to be taken, then at the very least, the Department of Human Resources and/or the Office of Internal Audit can assist the Ministry by reviewing processes, deliverables and deadlines for the tasks.

#### **CONCLUSION**

38. The decision to permit self-service photography is an important step in promoting public access to the treasures within the Archives. However, most of the other Responses are silent or vague with respect to timelines for implementing proposed actions. Accordingly – and to ensure that these matters are not shoveled under the rug – I request an update by September 30, 2010 of the status of the Recommendations, including any reconsideration of all Inadequate Responses.

39. I reiterate paragraph 227 of the Systemic Report: *the Archives must play a fundamental role as Bermuda shapes a national identity. As we lament the increase today in our community of violence, intolerance and other forms of acrimony, it is instructive to consider to what extent the rich content of the Archives can contribute to our collective and mutual esteem. By facing our history, we can perhaps embrace ourselves.*

**RECOMMENDATIONS GRID for Special Report pursuant to S.16(3) Ombudsman Act 2004 (Attachment to COVER COMMENT)**

OMBUDSMAN'S RECOMMENDATIONS	ACTION TAKEN TO GIVE EFFECT	ACTION PROPOSED TO GIVE EFFECT	REASONS FOR NO ACTION	OMBUDSMAN'S COMMENT
<p><i>ADMINISTRATION</i></p> <p>(1) Establish and/or publicize written access policies regarding (a) updated search room procedures, including handling of documents</p> <p>(b) which collections are freely available for view, duplication and use</p> <p>(c) which collections are subject to access restrictions</p> <p>(d) procedures, where applicable, for requesting permission to restricted documents</p>	<p>New search room leaflet produced with basic rules for registration and use.</p>	<p>More detailed information will be put on website currently under development under "Who We Are," "What we do" etc.</p>		<p><b>Implemented: Adequate</b></p>
		<p>Access and use statements for each collection will be entered into the AdLib cataloguing system as developed. In the interim, a three fold brochure on general guidelines for search room policies will be designed and printed for public distribution.</p>		<p><b>Proposed: Adequate</b></p>
<p>(2) Submit annual, itemized accounts of the Fund to the AAC</p>	<p>Section 7 of the Archives Act does not require an account to be submitted to Council however the Director provided Council with an up to date itemized account of the Special Purchase Fund on 16<sup>th</sup> July 2009 and will present Council with an annual copy at the Closing of Accounts (Mar. 31 of each year).</p>			<p><b>Implemented: Adequate</b></p>

<p>(3) Update donor and loan agreements, and advise donors of current archival standards</p>	<p>A sub-committee of the Council comprising members with donor affiliations was established to develop and agree a standard deposit agreement.</p>	<p>Work is on-going.</p>		<p><b>In process: Adequate</b></p>
<p>(4) Develop step-by-step user friendly guidelines and/or flowcharts about how to do historical and genealogical research</p>	<p>The Archives will secure the services of a CPU intern to develop guidelines for research as a training exercise under the supervision of the Director.</p>	<p>Reference staff currently gives advice to researchers based on their individual needs. There is currently a Bermuda College genealogy course using archival sources being offered free to the public.</p>	<p><b>Funding Implications:</b> Establish new post of Education/Outreach Archivist \$\$\$\$</p>	<p><b>Proposed: Inadequate</b> Best practice: should be developed by staff already acquainted with the collection and trained in how researchers use it.</p> <p>The Bermuda College's single evening lecture is independent of the Archives and offered by a Lecturer highly-regarded for her work in genealogy. She learned of the existence of the electronic 1821 &amp; 1834 Slave Registers only in March 2010. Imagine how much further along her work would have been had she been offered access to the searchable Registers this past decade.</p>

OMBUDSMAN'S RECOMMENDATIONS	ACTION TAKEN TO GIVE EFFECT	ACTION PROPOSED TO GIVE EFFECT	REASONS FOR NO ACTION	OMBUDSMAN'S COMMENT
<p>(5) The AAC should</p> <p>(a) act as a recourse to receive complaints from the public and advise the Minister on resolution of disputes about access</p>	<p>Pursuant to Section 4 of the Archives Act, Council agreed that a "suggestions" box for complaints be placed in the Public Reading Room to channel complaints to the Chairman of the Council (Cedar box currently under construction.).</p>	<p>The Cabinet Office will ensure full consultation with the AAC (per letter of August 24, 2009).</p>		<p><b>Proposed:</b> <b>Inappropriate</b> There should be a direct and objective route to the AAC for users who wish to appeal decisions of the Archives. A Suggestion Box inside of the Archives may be useful but is not appropriate for complaints.</p>
<p>(b) include members who are engaged in promoting heritage but may not be part of the traditional research community (for example, include representatives of the Departments of Education and Cultural Affairs as ex-officio members)</p>	<p>Council recommended that a representative from Education be appointed to grow archival outreach to schools. [Minutes &amp; Ltr. 16<sup>th</sup> Dec. to Sec. to the Cabinet.]</p>			<p><b>Implemented:</b> <b>Inadequate</b> A representative of the Department of Cultural Affairs should also be a member of the AAC.</p>
<p>(c) assist in establishing policies for de-accessioning (public records may not be de-accessioned, but in the absence of donor agreements, private records may be)</p>			<p>As there are currently no international standards/guidelines Council recommended that the Director wait until the Society of American Archivists' report on de-accessioning is</p>	<p><b>Proposed: Appropriate,</b> however, during the investigation, the Archives promised to consider returning to one user personal photos and letters written by him. He never gave permission to his step-relative who had included his items in a</p>

			published later this year so as to review current thinking, standards and practices on de-accessioning.	family donation to the Archives. The AAC should consider the return of his items.
<b>RESOURCES</b>				
(1) Prioritize (a) Adlib catalogue project, using available expertise as needed and resolve security issues that might prevent web access	AdLib project a priority and is currently under contract to resolve outstanding software issues. Capital resources allocated. The security issues will be resolved by the ITO Department under normal protocols when the system comes on line.		Funding Implications: Establish new posts for Cataloguing, Reference & IT staff \$\$\$\$	<b>In process: Adequate</b> Note: The Accessions Register (which should list all items donated to or purchased by the Archives) is a prime candidate for early digitization. This would be quicker to complete than the detailed Catalog (or even a less detailed top-level Guide to the Archives) and would provide the public with a searchable database in the interim.
(b) accessioning of unaccessioned collections		Accessioning is on-going.		<b>In process: Adequate,</b> but see Cover Comment
(c) updating finding aids		Updating finding aids is on-going. Two staff are currently working on completion of description for the Regimental Records and on the Archives' photographic collections. Work is on-going. A		<b>Proposed: Adequate,</b> but see Cover Comment

OMBUDSMAN'S RECOMMENDATIONS	ACTION TAKEN TO GIVE EFFECT	ACTION PROPOSED TO GIVE EFFECT	REASONS FOR NO ACTION	OMBUDSMAN'S COMMENT
<p>(2) Establish and post a policy to allow for digital photography and scanning</p> <p>(a) provide a space with adequate lighting for photography</p>	<p>Council discussed and agreed in principle use of digital cameras in the Reading Room (without flash &amp; in lieu of scanners) for research purposes.</p>	<p>business case will be prepared for additional staffing for 2011/2012.</p> <p>Policy &amp; Guidelines for Use of self-service photography to be developed and agreed by Council.</p>		<p><b>Implemented: Adequate policy but Inadequate in practice.</b></p> <p>See Cover Comment</p>
<p>(b) purchase a flatbed or book scanner</p>		<p>Existing book copier can be retrofitted digitally as scanner in consideration of cost and space.</p>		<p><b>Proposed: Adequate</b></p> <p>Retrofit should ensure that scanned images are of high quality.</p>
<p>(c) digitize (at highest resolution) and catalogue negatives, photographs and film reels. (Negatives still deteriorate even in the conservation conditions of the Archives)</p>		<p>Initial planning for digitizing visual collections is underway in tandem with a regional cooperative programme through the Caribbean Archives Association – the MIGAN project. International funding may be available.</p>	<p>Funding Implications:  Establish new post for IT support to maintain website; digital imaging; mgt.e-recs; cataloguing &amp; records centres systems).  \$\$\$\$ to digitize archival collections</p>	<p><b>Proposed: Adequate</b></p> <p>The Government must submit a statement of intent to commit staff, time and funds as the MIGAN project should be completed in two years and funding that may be available is for only 70% of need. Each country is obligated to produce the prioritized images scanned either in-house or outsourced.</p>
<p>(d) allow the Department of Communication and</p>			<p>The Department of Communication and</p>	<p><b>No further action: Adequate, if done going</b></p>

<p>Information to photograph images for any Government project</p>			<p>Information is currently permitted to film images for Government projects under the same conditions that govern public use, except that there is no charge for the service.</p>	<p><b>forward.</b> After the Systemic Report was tabled, former staff of the Government's own TV station – CITV – advised us of problems with reproduction and service attitude (eventually resolved by the Dept. of Internal Audit).</p>
<p>(3) Establish a policy and system for access to materials in process of arrangement and description</p>	<p>Best practice: collections in process of arrangement and description remain closed to access.</p>			<p><b>No further action:</b> <b>Inappropriate</b> Best practice to promote access, especially when large portions of an archives are neither accessioned nor catalogued: (1) fast-track arrangement of collections in demand and (2) access exceptions, under appropriate supervision (so that researchers do not have to wait years for processing to be completed).</p>

OMBUDSMAN'S RECOMMENDATIONS	ACTION TAKEN TO GIVE EFFECT	ACTION PROPOSED TO GIVE EFFECT	REASONS FOR NO ACTION	OMBUDSMAN'S COMMENT
<p>(4) Install a computer terminal on-site for user access to</p> <ul style="list-style-type: none"> <li>(a) Hallett Civil Records CDs</li> <li>(b) the donated Slave Register index (with appropriate caveats)</li> <li>(c) negatives database</li> <li>(d) Adlib as it comes online</li> </ul>	<p>Council firmly supported the use of the AdLib database in the public search room once it comes on-line. Council did not promote the public use of in-house working electronic lists. (Council Minutes 24<sup>th</sup> Sept./09 Item 4).</p>			<p><b>No further action: Inadequate</b></p> <p>As public use of AdLib may be months if not years away, in the interim, the Hallett CDs should be available at the Archives for public use.</p> <p>The electronic Slave Register was <u>not</u> an “in-house” document. It was produced by a US professor who donated it over a decade ago to the Archives for public use.</p> <p>The Negatives Database includes negatives of images already printed by researchers. No reason is given for keeping this list secret from the public.</p>
<p>(5) The AAC should review, consult with the Archives and advise the Minister</p> <ul style="list-style-type: none"> <li>(a) whether usage fees should be charged for items in the public domain</li> <li>(b) whether there should be a</li> </ul>	<p>Council reviewed, consulted with the Archives and advised: that the Archives fee structure remain as it is due to current financial circumstances. The</p>	<p>The Cabinet Office will ensure full consultation with the AAC (per letter of August 24, 2009).</p>		<p><b>Proposed: Appropriate</b></p> <p>but see Cover Comments</p>

<p>waiver for scholarly and cultural works (c) of a more practical and intellectually rigorous definition of ‘commercial’ use (to exclude break-even ventures of cultural value to the country)</p>	<p>Minister will invite Council to review fees in fiscal year 2011/12. Council recommended that seniors be exempt from paying for personal use copies of all types of archival material. (Meeting 19<sup>th</sup> Nov.)</p>			
<p>(d) on criteria for discretion by the Archives to place other restrictions on use</p>	<p>Council reviewed, consulted with the Archives and advised: that the practice of applying existing access (open after 30 years) and privacy (personal data of living individuals closed) policies to donor collections be upheld</p>			<p><b>No further action: Inappropriate</b> See Cover Comment</p>
<p>(e) criteria and strategy for purchases, solicitation of collections, archival recovery (of Bermuda related material overseas), including</p> <ul style="list-style-type: none"> <li>• guidelines for what is of “historical value”</li> </ul>				<p><b>No response: Inadequate</b></p>
<ul style="list-style-type: none"> <li>• clear agreements for joint purchases regarding responsibility for conservation, restrictions on access, permissions for use</li> </ul>	<p>Council recommended that donor agreements should be drawn up for joint purchases.</p>			<p><b>Proposed: Adequate</b></p>
<ul style="list-style-type: none"> <li>• public disclosure of what is purchased and cost (an expert</li> </ul>		<p>The Archives will investigate the impact of public</p>		<p><b>Proposed: Inadequate</b> Any impact analysis</p>

OMBUDSMAN'S RECOMMENDATIONS	ACTION TAKEN TO GIVE EFFECT	ACTION PROPOSED TO GIVE EFFECT	REASONS FOR NO ACTION	OMBUDSMAN'S COMMENT
<p>advises that it is doubtful whether this information could be denied under FOI)</p>		<p>disclosure policies on the market value of archival purchases through consultation with other institutions abroad and report back to the Council.</p>		<p>should be for Bermuda-specific items – for which the market is minimal.</p>
<p>(f) on appropriate preparation for PATI</p>	<p>See People 5 &amp; 6 below</p>			<p><b>In process: Adequate</b> See Recommendation re People 6 below</p>
<p>(6) Establish guidelines for staff to assist them to respond to public queries about            (a) acquisition policies            (b) restrictions on access            (c) copyright            (d) use fees            (e) archival research</p>		<p>The Archives has no permanent public service staff at this time. Once fully staffed, the Archives will develop a handbook and orient staff to policy and practices governing the use of the collections.</p>		<p><b>Proposed: Inadequate</b> See Cover Comment</p>
<p>(7) Partner with other heritage entities and venues for exhibits and other public education</p>	<p>The Archives has long established ties to the Island's heritage entities with full representation on the Archives Council. It will however forge closer relationships with those organizations not traditionally represented.</p>		<p>Outreach/Education            Archivist needed.            \$\$\$\$</p>	<p><b>Proposed: Adequate</b>            Experiences and 'out-of-the-box' thinking of the British Virgin Islands, Jersey and other small jurisdictions with limited staff and resources are instructive. [The Archives should be commended for applying to join other islands in the Caribbean that have included their Slave Registers in <i>UNESCO's</i></p>

<p>(8) Update and post guidelines regarding search room procedures and how to handle documents (the latter is set out on the current web page)</p>	<p>See 1 above</p>			<p><i>Memory of the World</i>, a documentary World Historic Site.]</p> <p><b>Implemented: Adequate</b></p>
<p>(9) Conduct annual audits of the stacks to ensure that materials are in proper locations</p>	<p>The Archives will seek the advice of the Council for recommended length of closure of the Reading Room to enable annual audits.</p>			<p><b>Proposed: Adequate</b> It is well-known, common practice for Archives to close for up to a week to conduct audits. The first audit will help to determine closure period for subsequent audits.</p> <p>Bermuda's challenge is that there is no existing location or shelf list (at the box or volume level). It is difficult to conduct an audit without such a list which provides a baseline for the audit to determine what may be missing or misplaced.</p> <p><b>Proposed: Adequate</b> See Cover Comment</p>
<p>(10) Discontinue charging veterans copying costs for their</p>		<p>See 5 above. Cabinet will be invited to make changes to</p>		

OMBUDSMAN'S RECOMMENDATIONS	ACTION TAKEN TO GIVE EFFECT	ACTION PROPOSED TO GIVE EFFECT	REASONS FOR NO ACTION	OMBUDSMAN'S COMMENT
own service records		the Government Fees Regulations to effect this change.		
<b>PEOPLE</b>				
(1) The Archives should work with the Department of Human Resources to (a) institute best practices for training, mentoring and experiential learning of staff	The Archives consulted with HR & archival educators abroad to develop programme for current trainees.	Archives will consult further with HR and overseas archival entities on the best course for training additional new staff.		<b>Proposed: Adequate</b> By analogy to the Bermuda Library: staff who begin careers after earning Master's degrees are called "Librarians", not "trainees".
(b) offer management training and mentoring to the Director to improve skills in strategic and workflow planning, staff development and public relations		Director considers training a lifelong undertaking.		<b>Proposed: Inadequate</b> See Cover Comment
(2) The Archives should expand on relationships with other depositories in the local heritage community especially in order to leverage exhibit opportunities	See 7 above		Resources Needed: \$\$\$\$ Outreach/ education archivist.	<b>In process: Appropriate</b>
(3) The Director must refrain from making: disparaging comments about staff in front of researchers, and similarly, comments about researchers to staff; and also from making unproven allegations about the professionalism of other exhibit spaces (one comment make to our	Personal comments about anyone are unprofessional and are discouraged in the Archives and in Government in general.			<b>No further action: Adequate if true going forward</b> Since tabling the Systemic Report, I continue to receive reports of disparaging comments about third parties.

<p>on-site expert without any current evidence could severely damage public confidence in that space if believed)</p>	<p>(4) The Archives should follow international standards and best archival practice. In particular, deposits should not be re-arranged without consultation with the depositing authority to confirm the factual, rather than theoretical, provenance of the records</p>		<p>Under the present administration, international archival standards were first introduced in support of automated cataloguing, conservation and outreach. The Archives is dedicated in continuing its work in applying standards.</p>				<p><b>No further action:</b> <b>Inadequate</b> See Cover Comment</p>
<p>(5) The work of the Records Centre is a priority which has entailed the use of overseas experts in 2001 and 2008 to train Government departments in how to manage records for eventual deposits to the Archives. It appears that retention schedules (guidelines to determine items of enduring historical or administrative value) have been completed for only four Government departments. Retention schedules have yet to be done for some 61 departments and quangos (give are in process). This area of archival work is important because the modern</p>	<p>The Archives has followed the advice of its consultants in 2001 and 2008.</p> <p>The Archives has prepared a draft policy paper for Cabinet which lays out the requirements for implementation of its public records programme as required by the Archives Act.</p> <p>It is currently undertaking a needs assessment survey of government record</p>				<p><b>No further action:</b> <b>Inadequate</b> Four Retention Schedules are up-to-date and usable. The others need work. The methodology for Retention Schedules is inappropriate as classification and retention schedules should not be combined in one document. Our on-site expert noted that the schedules were too complicated to be readily implemented by Government departments.</p>		

OMBUDSMAN'S RECOMMENDATIONS	ACTION TAKEN TO GIVE EFFECT	ACTION PROPOSED TO GIVE EFFECT	REASONS FOR NO ACTION	OMBUDSMAN'S COMMENT
<p>Records become the historical depository of the future. This is a monumental task to which the Archives must assign senior resources.</p>	<p>keeping systems so as to develop &amp; implement appropriate standards &amp; guidelines.</p> <p>In addition to the four mentioned by the Ombudsman, there are twenty one other Retention Schedules covering a wide range of Government agencies records.</p>			
<p>(6) Accordingly, both the Director and new Deputy Director should focus on the Records Centre tasks for a period of one year, if that is required to tackle the tasks noted above. General policies and procedures of the Records Centre are likely to require some adjustments to respond to the introduction of PATI and this should be taken into account in achieving the tasks above</p>	<p>The public records programme (not the Records Centre which is merely a storage facility) is currently allocated the bulk of the department's human resources out of a staff of 10: an Assistant Director; 2 Appraisal Archivists, 3 records clerks &amp; 1/2 time Administrative Assistant.</p>	<p>The Archives is currently consulting with other Caribbean archives to better understand how the Bermuda Archives can support PATI. The Archives' survey will itself assist departments with preparation of PATI Section 5 Information Statements.</p>		<p><b>In process: Appropriate</b></p>
<p>(7) An overseas archivist with expertise in administration, auditing of repositories, cataloguing and FOI should be contracted to manage the Archives overall for a period of</p>	<p>The established post holder is a long serving dedicated and capable public servant, committed to the efficient running of the</p>			<p><b>No further action: Inadequate</b> See Cover Comment</p>

<p>not less than one year. Tasks for this person would include</p> <ul style="list-style-type: none"> <li>(a) auditing the state of tasks required to bring both the Repository and the Records Centre to efficiency</li> <li>(b) developing and/or updating all relevant policies, procedures and tools</li> <li>(c) rationalizing and speeding up the current five year plan for electronic access</li> <li>(d) training staff in accessioning, appraisal, arrangement, cataloguing and outreach tasks as well as reference interviews</li> <li>(e) developing an orientation module for new staff</li> <li>(f) supervising the strategy to prepare for PATI legislation, including any implications for the Records Centre</li> <li>(g) mentoring the Director in administration, public relations and management of people</li> </ul>	<p>Department and will be managed and supported as needed.</p>			
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