Legal framework for records management and archives. Public authorities and private financial institutions in Sweden.

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The public and private sectors

The Swedish legal framework for records management and archives varies depending on whether operations are conducted within the public or private sector. There are two kinds of participant in the Swedish financial market – public authorities and private financial institutions.

Public authorities include the Riksbank and Finansinspektionen, the Swedish Financial Supervisory Authority. The Riksbank is an authority under the Riksdag (the Swedish Parliament) with an independent position guaranteed by the Instrument of Government and the Sveriges Riksbank Act. Finansinspektionen, on the other hand, is a public authority with activities governed by the Government’s Letter of Appropriation. Finansinspektionen has an independent position in relation to the Riksbank, but with close cooperation within several areas.

The private financial institutions include three large groups of companies on the Swedish financial market: the banks, the insurance companies and the mortgage institutions. The four largest banking companies in Sweden are Handelsbanken, Nordea, SEB and Swedbank. Other financial institutions on the Swedish financial market are mainly the companies supervised by Finansinspektionen

Legislation and legal framework of the public sector’s records management and archives.

Records management in the Riksbank and the entire public sector is governed by the provisions of the Freedom of the Press Act (SFS 1949:105), which is a part of the Swedish constitution and was ratified in 1766. The Freedom of The Press Act establishes every person’s right to examine public documents, which is known as the principle of public access to official documents:

Chapter 2. Art. 1. Every Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information.

The principle of public access to official documents governs all management of current and archival records by Swedish authorities. The right to examine public documents may be restricted in certain cases:

Chapter 2. Art. 2. The right of access to official documents may be restricted only if restriction is necessary with regard to:

1 http://www.swedishbankers.se/web/bf.nsf/$all/25BBAF308202245CC125761800442481?open
2 http://www.fi.se/Folder-EN/Startpage/About-FI/Who-we-are/
3 http://www.government.se/content/1/c6/01/95/60/ab86aeeb.pdf
1. the security of the Realm or its relations with another state or an international organisation;
2. the central fiscal, monetary or currency policy of the Realm;
3. the inspection, control or other supervisory activities of a public authority;
4. the interests of preventing or prosecuting crime;
5. the economic interests of the public institutions;
6. the protection of the personal or economic circumstances of individuals; or
7. the preservation of animal or plant species.

The Freedom of the Press Act also defines the concept of the official document:

Chapter 2. Art. 3. Document is understood to mean any written or pictorial matter or recording which may be read, listened to, or otherwise comprehended only using technical aids. A document is official if it is held by a public authority and if it can be deemed (…) to have been received or drawn up by such an authority. (…).

The term 'official document' can be interpreted as being equivalent to the term record.

The second law that governs records management at the Riksbank and the public sector is the Public Access to Information and Secrecy Act (SFS 2009:400). This law includes further provisions on how records are to be managed by authorities to satisfy the principle of public access to official documents. Part II Authorities’ handling of official documents, chapter 4 of this law generally stipulates how authorities' records are to be managed and described to facilitate access to records and thereby satisfy the principle of public access to official documents. Chapter 5 is particularly important for authorities' management of documents and records. Article 1 stipulates that:

Public documents shall be registered as soon as they have been received or drawn up by an authority (...). (...).

This means that all Swedish authorities must maintain registries of their records. At present, the Riksbank is conducting a comprehensive project aimed at replacing the present simple registry system with an integrated Electronic Records and Document Management System (ERDMS). The project’s objective is to digitalize the management of all records and comply better with the requirements of the principle of public access to official documents. The registration of records in journals creates order, facilitates daily management and makes possible the retrieval of information requested by the general public and internal management. Registration also prepares large parts of the authority’s records for correct archiving as stipulated by article 5 of the Archives Act. Part III General provisions about secrecy in the Public Access To Information and Secrecy Act includes provisions to facilitate the management of records when consideration must be taken of secrecy, e.g. in the release of records.

The Archives Act (SFS 1990:782) is the third law that governs the Riksbank's management of records. The Archives Act includes fundamental provisions concerning authorities' archives. The Riksbank only applies certain parts of the Archives Act that the text of the law specifies as applicable to the Bank.

The Archives Act defines authorities' archives and their function:

Art. 3 The archives of an authority are composed of the official records created through the activities of the authority (...)
The archives of the authorities are a part of the national cultural heritage and shall be preserved, kept in order and handled in such a way so that they can provide

- The right of free access to public records,
- The information requirements for the jurisdiction and administration, and
- Research requirements

The term 'official record' in the Archives Act is equivalent to the term record or archival record. The Riksbank’s archive mainly consists of those records that have been entered in registries or otherwise archived. Due to the Bank’s specific area of activity, special consideration has been paid to archiving for the needs of the general public, internal management and researchers. The archive is well-organised and has an inventory. The Riksbank's archive is open to the general public and researchers in accordance with the principle of public access to official documents.

The obligation to comply with the provisions of the Archives Act is strengthened by the Instructions for Sveriges Riksbank:

Art. 33 There shall be an archive function within the Riksbank, with responsibility for ensuring that the provisions of the Archives Act (1990:782) are adhered to.

The practical records and archives management is implemented via a number of internal policy documents. The most important document is the Riksbank's rule on archive structure. Among other matters, the rule stipulates that the Riksbank shall put into practice, where applicable, the Archives Act and the National Archives' Statute Book. This decision facilitates the Bank's management of current and archival records and leaves scope for internal solutions. Among the other policy documents are the Bank's retention schedules.

Like the Riksbank, the Swedish Financial Supervisory Authority is a public authority and a part of the public sector. Its records and archives management is thus affected by the same overall laws, i.e. the Freedom of The Press Act, the Public Access to Information and Secrecy Act and the Archives Act.

The difference between the Riksbank and Finansinspektionen lies in their application of the Archives Act. Among these differences, this entails that the provisions of the Archives Ordinance (SFS 1991:446), which complements the Archives Act, is not applied, in principle, to the Riksbank’s archive activities but it is to those of Finansinspektionen. According to the Archives Ordinance, public authorities under the Government are to apply the regulations and general guidelines in the National Archives' Statute Book. The regulations indirectly govern Finansinspektionen's records management, archiving and disposal of records. The obligation to comply with the regulations facilitates the management of current and archival records by Finansinspektionen. The ultimate goal is always to comply with the Archives Act. However, it may be difficult for Finansinspektionen's records management and archive function to find the right balance between regulatory requirements, the authority's current operations and the National Archives' supervisory activities. The Riksbank is exempt from this obligation but applies selected parts of the Statute Book and otherwise complies with established practice and de facto standards. The freedom with responsibility imposed by the Archives Act can be difficult to manage but leaves scope for flexibility and pragmatism.

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5 Own translation. Swedish text: https://lagen.nu/1990:782
6 http://www.riksbank.se/Documents/Beslutsunderlag/2013/rb_instructions_130101_eng.pdf
7 Swedish text: https://lagen.nu/1991:446
Finansinspektionen's remit is to supervise companies on the Swedish financial market. Finansinspektionen has no statutory right to regulate these companies' management of records and archives. The private sector's management of current and archival records is mainly governed by the Accounting Act. However, Finansinspektionen has an indirect influence on the preservation of information with its provenance in companies' activities on the Swedish financial market. Companies are required to report information to Finansinspektionen. This obligation to report is governed by Swedish financial legislation and EU regulations. Finansinspektionen's Statute Book includes regulations governing the periodic reporting of financial information from companies on the Swedish financial market. Companies must also report changes concerning ownership, corporate management, new policy documents and important events. This reporting creates conditions for the preservation of information with its provenance in the financial companies' operations. In accordance with the Freedom of the Press Act, all information received becomes public and can be preserved or disposed of. Finansinspektionen has chosen to preserve all information. This information is classified under the provisions of the Public Access to Information and Secrecy Act.

Similarly, the Riksbank has the right, under chapter 6, article 9 of the Sveriges Riksbank Act, to request data from financial institutions or other companies under Finansinspektionen's supervision. This is further regulated by the Riksbank's regulations, as included in the Bank's Statute Book. The information received by the Riksbank becomes public in accordance with the Freedom of the Press Act and is not disposed of but preserved. The Public Access to Information and Secrecy Act protects the information that becomes classified under law.

**Legislation and legal framework of the private sector's records management and archives.**

Records management within the private sector is mainly governed by the provisions of the Accounting Act (SFS 1999:1078). Chapter 7 of the Accounting Act, dealing with The archiving of accounting information etc., describes forms for the preservation of accounting information, retention and place for record-keeping, temporary storage of verification abroad, equipment placed abroad, transfer of accounting information and when accounting information may become subject to disposal. The Accounting Act stipulates that, in principle, all accounting information can be disposed of following the seventh year after the end of the calendar year in which the information was created. This means that companies on the Swedish financial market may also destroy all their accounting information. Accounting information refers to the compilation of data found in sources such as companies' balance sheets, books of prime entry and general ledgers, supporting vouchers, annual reports, annual accounts, agreements and other documents of special significance for illustrating the business's economic circumstances.

The preservation of other types of documentation over a certain period may be governed by other laws, e.g. the Companies Act (SFS 2005:551). The Annual Reports Acts for credit institutions and insurance companies also specify the obligation to submit an annual report to the Swedish Companies Registration Office. However, the legislation only covers a small part of the documentation created by companies.

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As mentioned earlier, Finansinspektionen and the Riksbank have the right to request information from companies on the Swedish financial market. The preservation of such information contributes to the preservation of these companies' historical information and the preservation of a view of their operations in the event that the companies choose to destroy their information themselves.

The daily management of current records is indirectly governed by chapter 4, article 2 the Accounting Act, which stipulates that:

*The requirement to maintain accounting records shall be complied with in a manner that corresponds with generally accepted accounting principles.*

The term 'generally accepted accounting principles' means that book-keeping is to be conducted according to established practice in the sector. Using generally accepted accounting principles provides an approach that contributes to the correct management of current records. The records management of the larger companies, particularly the banks, can be considered to be governed by international standards within the area of records. Particular mention should be made of ISO 15498-1,2 Standard on Records management, which is a de facto standard in Sweden.

**Protection of private archives and the national cultural heritage**

The Archives Act does not protect the private sector's archives. The financial companies' archival records are not counted as part of the national cultural heritage. It is up to each company's management to decide on that company's records management and historical archiving, e.g. in its articles of association or some other manner.

As regards the private archives' final storage, the Ordinance with Instructions for the National Archives of Sweden (SFS2009:593) allows the National Archives to:

*Art. 6 (...) receive archival documents from private individuals or groups if they are of particular importance to research and the cultural heritage.*

This paragraph makes it possible for the state to take care of particularly valuable archives from the private sector and thereby potentially also from companies on the Swedish financial market.

Among the archival institutions that accept private archives, particular mention should be made of the Swedish business archives. The Centre for Business History in Stockholm preserves, e.g. historical archives deposited by some of the Swedish banks, e.g. Nordea, SEB and Svenska Handelsbanken.

In 2012, the Cooperation Council for Private Archives was established. This is a national organisation for cooperation between the National Archives and the private archive sector. Among other tasks, the council shall act for the increased preservation of private archives of significance to the cultural heritage.

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