

Accessibility and Archives: A Response

Jean Tener's article, "Accessibility and Archives"* is timely and significant since in the current discussions concerning freedom of information legislation the essential concern of archivists with access to public records has been virtually ignored. When changes to existing practices are considered it is important to understand those practices and in this respect it may be useful to clarify several references in Jean Tener's article.

It is not true that the policy concerning access which was announced by the Prime Minister in May 1969 was a result of the report of the Task Force on Government Information (p. 23). In fact this report, which was completed in the fall of 1969, discussed in considerable detail the policy which had been announced earlier. Actually, discussions concerning statutory provision for access to public records commenced nearly a decade earlier, shortly after the British Public Records Act, 1958, established a "fifty year rule". There were several reasons for the Canadian government's delay in reaching a decision on access conditions. It was recognized that a fifty year rule would not be acceptable in Canada since access in practice had been much more liberal. Although, in the absence of legislation, permission to consult public records was recognized as a departmental prerogative, the view of the Dominion Archivist that a delay of twenty five years was a reasonable rule of thumb prevailed in respect to most records which had been transferred to the Public Archives of Canada. It was also recognized that it was necessary to withhold access for a longer time in the case of certain records, particularly diplomatic and military records which were shared with other countries. By 1962, thirty five years was accepted as an age when most records could be made available as a matter of right while access to more recent records with the permission of originating departments would continue and would be encouraged.

The Royal Commission on the Organization of Government of Canada (Glassco) made recommendations concerning a public records act which would authorize a comprehensive system of records management. As an interim measure the major provisions of the proposed act were authorized by a Treasury Board Order (TB 636933) dated 30 March 1965. This order, a management improvement circular (M-1-5), included one sentence concerning access to the effect that "the Dominion Archivist has the responsibility to approve all proposals to withhold records from the public inspection for more than thirty-five years." When the Treasury Board order was withdrawn and replaced by an Order in Council, the Public Records Order, dated 7 October 1966, the reference to access was removed since it was decided that access should be considered separately and that it should be based on a cabinet decision. While a submission to cabinet was being prepared the United States Freedom of Information Act became effective (4 July 1967) and the British Public Records Act was amended (effective 1 January 1968) to reduce the fifty year rule to thirty years. This settled the problem of the Department of External Affairs concerning shared records since the thirty year rule corresponded to the United States conditions for access to records of the State Department. In December 1967 the Canadian cabinet approved in principle a policy for transfer of and access to public records, a modified thirty year rule, which was to be announced by the Prime Minister. Because of the change in leadership and other factors the announcement was not made until May 1969. It took yet another four years to have a cabinet directive issued but essentially the existing policy had been developed by 1967. The Secretary of State's Green Paper of 1977 refers to the 1973 directive on transfer and access but the movement towards freedom of information legislation is quite distinct from that policy. Indeed, the Standing Joint Committee on Legislation and other Statutory Instruments had been discussing freedom of information for

* *Archivaria* 6 (Summer 1978): 16-31.

several months before it was aware of the existence of the cabinet directive.

In comparing Canada with other countries in regard to accessibility it is not helpful to observe that "Canada does not have so restrictive an atmosphere as the USSR" (p. 22). It would be more accurate to say that while Canada does not have freedom of information legislation similar to that in the United States and Sweden, access in practice is more liberal than in most other countries. That is because of the modified "thirty year rule" which instead of denying access to records until they are thirty years old as in Britain, for example, is based on the policy that access will be permitted to most records when they are not required for departmental operations and that with a few exceptions departments cannot withhold access for more than thirty years. In this respect the Cabinet Directive of 1973 sounds more restrictive than it is. Instead of the wording of the Treasury Board order of 1965, that access cannot be *withheld*, the Directive says that access to records less than thirty years will be given *only* with the permission of the originating department. Also the exemptions from the thirty year access are not as extensive as it appears. Three of the seven exempt categories which refer to other countries are in fact rarely used since the departments of National Defence and External Affairs invoke the exemptions in a very few cases and on an ad hoc basis permit access to records less than thirty years old. A fourth exemption, relating to the protection of privacy, appears to provide an excuse to exclude a large proportion of records but in practice it is interpreted in a narrow sense along the lines proposed by the Joint Parliamentary Committee.

A feature of the current access policy which is of particular interest to archivists is the separation of transfer and access. In many countries records are transferred to the Archives only when they are available for public access and departments have either their own archives (especially external affairs and defense) or a more limited archival function. In Canada the records management system is based on the premise that departments will retain records only while they are required for their operations, that this requirement is indicated in the retention periods in disposition schedules and that the transfer of records to the Archives is governed by the application of schedules. This policy is based on the assumption that it is an advantage for users and government departments to centralize archival functions in an institution which has research facilities and specialized archives staff. If acquisition continues to be governed by the application of schedules there is no reason to expect the sudden flood to which Jean Tener refers (p. 27). The complaint of users in the United States that public records are "too cumbersome for them to use" is not related so much to an increased volume of records in archives as to the nature of public records and the increasing variety of uses. However, while a large proportion of the demands for access under freedom of information legislation will concern current records and be directed to government offices, archivists will continue to have retrieval problems for the selected records which are transferred to archives. Probably more serious is the "formidable task" of declassification. If the proposed exemptions from general access are considerably more extensive than those designated in the current access directive freedom of information legislation will result in a drastic reduction in the records available for research unless it is accompanied by regulations which provide for declassification.

The references to Dr. Lamb give the impression that he had a restrictive influence on access to public records and private papers. The opposite is true. The request that Dr. Lamb should give the opening address at the first session of the Extraordinary Congress in Washington in 1966 was prompted by international recognition that he was one of the foremost advocates of liberalization of access. While the argument against the control of access by archivists is valid, Dr. Lamb's influence on liberalizing access in the federal government during a period when there was no legislation was remarkable. There is no evidence that his influence was ever used in a restrictive sense

by “discretionary or even arbitrary denial” (p. 25). Further, the quotation from Dr. Lamb’s presidential address to the Canadian Historical Association (p. 26) has nothing to do with access but is simply an appeal to historians to make effective use of the research materials which had been acquired for them by archives. This speech was not in the context of “a diffusion programme based on the deposit of complete microfilm series in institutions other than his own, an idea whose time had not yet arrived.” This diffusion programme was not introduced until 1972, but it would have been equally valid in 1958 had the resources been available then. Dr. Lamb’s references to research were understood by the historians whom he addressed, none of whom would have dreamed that he was revealing “the arbitrariness of the PAC’s access policy during his tenure” (p. 26). Access to private papers, of course, is not governed by legislation but by the wishes of the donor. Perhaps the most serious effect of Dr. Lamb’s influence as it was perceived by academic researchers has been the reluctance of historians to demand and lobby for more liberal access to public records because of their reliance on the Public Archives of Canada to defend and promote research interests within the federal government. Freedom of information legislation is based on the needs of the general public for current information and the chief concern of archivists and their patrons is that there be adequate provision in the legislation for liberalization of access to records in the archives, primarily for a variety of research purposes.

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