

Notes and Communications

Limitations to Use: The Problem of Access to Private Manuscripts

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Access to government records has been the subject of much debate and legislation in recent years, but the question of private manuscripts has been left, generally speaking, for each archivist to puzzle out in isolation.¹ Since the early 1970s, manuscript archivists at the Public Archives of Canada (PAC) have been collecting a wide range of materials, relating not only to the traditional areas of politics and the military, but also to social history, business and industry, the arts, and all areas of activity that have contributed to the national development of Canada. The subject breadth and the contemporary nature of the material have led to new concerns about access. Furthermore, although the federal Access to Information Act does not apply to non-government material, a certain number of researchers have assumed that it does, and have been disappointed to discover long-standing restrictions still in effect. Manuscript archivists have been criticized both for limiting access too strictly or unfairly and conversely for permitting access too readily and not being careful enough about protecting people's privacy.

Traditionally, access conditions on private papers have been set by the donor. Unless the donor's wish was totally unreasonable (for example, that the papers should be completely closed forever) archivists generally agree to whatever the donor asks. This is considered fair because the papers were the property of the donor and the terms of access were his or her conditions for making the material available to the researching public. Indeed, allowing donors to set restrictions on access is an important element in the manuscript archivist's acquisition strategy.

Some problems have resulted from this policy. First, there have been straightforward administrative problems. If the person who controls access dies, or if the archivist loses contact with him or her, it may not be clear whether the papers may be consulted. This

¹ The expression "private manuscripts" in this paper means non-governmental textual material.

problem can be avoided by careful wording of the restriction. Second, there are complaints from researchers who have been denied access, complaints which may be worded as follows: "I know that Professor X was granted access to the John Doe Papers, but I was denied. X is my professional rival. You are a publicly funded institution, paid for by my tax dollars. It is not fair that my taxes should be used to provide a preferential research situation for my chief rival."

Even more difficult is the third problem area, the group of situations where the donor's restrictions do not seem to be strict enough. In the raw material of contemporary social history, the people discussed are often not well-known and would probably never expect that information about their scholastic achievements, financial situation, involvement with charitable or political organizations (to mention only a few categories) would be placed in a public research institution. In many cases, the donor is not the person whose privacy would be adversely affected by early release of the information.

Some specific cases have caused particular concern. In one case, a man in the prime of life gave an archives his papers, including a personal diary that was to be closed for ten years after his death. It was expected that this would be thirty or forty years into the future, but the donor died prematurely, very shortly after the donation of his papers. Researchers were interested in the diary and eagerly awaited its release. About nine years and eleven months after the man's death, the archivist preparing the material for its opening read the diary and discovered that it was intensely personal and that its release would infringe the privacy of the man's family. The archivist decided to impose a further restriction on the diary. In another case, an individual who had been involved in a professional dispute offered an archives his papers relating to the dispute, but only on condition that they be opened immediately. Some of the letters in the collection could be considered libellous to other members of the profession. The archives decided not to accept the papers. These and other incidents have led to a questioning of the archivist's reliance on the wishes of the donor when setting access restrictions.

About two years ago, the Manuscript Division of the PAC struck a committee to study the whole question of access to private papers. The committee first studied the available literature, such as the access guidelines of UNESCO and the Society of American Archivists, and numerous articles such as the one by Jean Tener, published in *Archivaria* several years ago, all of which suggested a consensus among archivists that papers should be open to researchers as soon as possible, and that restrictions should be imposed for only the minimum amount of time required to protect privacy.² However, what this minimum amount of time should be was not defined.

The committee reviewed Access to Information legislation in several jurisdictions, and the PAC access guidelines.³ The latter specified that several related factors should be considered, including the expectations of the individual, sensitivity of the information, and probability of injury. Helpful as this discussion was, an element of subjectivity remained,

2 A. Wagner, "The Policy of Access to Archives: From Restriction to Liberalization," *UNESCO Bulletin for Libraries* 24, no. 2 (March-April 1970), pp. 73-74; "American Library Association — Society of American Archivists Joint Statement on Access to Original Research Materials in Libraries, Archives, and Manuscript Repositories," *American Archivist* 42, no. 4 (October 1979), pp. 536-38; Jean Tener, "Accessibility and Archives," *Archivaria* 6 (Summer 1978), pp. 16-31.

3 Public Archives of Canada, *Guidelines for the Disclosure of Personal Information for Historical Research at the Public Archives of Canada* (Ottawa, 1985).

especially regarding the definition of "sensitivity" and "injury." Federal Privacy Regulations, moreover, permit the disclosure of personal information for research purposes when 110 years have elapsed following the birth of the individual. In the case of manuscript material, there is often no way of establishing the birth date of the person whose privacy is at risk. The committee therefore felt that a closure based on the date of writing of the document was required. Furthermore, manuscript archivists generally do not have sufficient staff to screen material in the way that government records archivists can. Access to manuscript material involves more uncertainty.

Two of the most sensitive categories of manuscript material are medical and legal case files. Both these types of files are highly confidential, but they contain material that is invaluable for many social studies. The professional associations involved, the Canadian Medical Association and the Canadian Bar Association, place enormous importance on confidentiality and rightly so. Neither of these organizations seems to have an official policy on the placing of records in a public research institution but, in reading their policy statements on related matters, one can easily imagine they would not approve of the deposit of any case files in an archives at least not until many years after the death of the patients or clients involved.⁴ However, individual members of these organizations obviously feel differently because a number of them have donated this type of material to public archives. Study of this area is continuing. In the meantime, the PAC committee recommends that such material be closed for seventy-five years from the creation of the records which should cover the lifetime of most people.

Another category of papers that causes serious concern is intimately personal material, such as love letters and some diaries. On the one hand, this material is highly personal and was not intended to be seen by anyone except the addressee or very close confidantes of the writer. Arguably, an ethical archivist should return or destroy it. On the other hand, it is invaluable primary material. For a biographer and other serious researchers, it provides priceless insights and the record would not be complete without it. The problem becomes one of deciding on a reasonable restriction. For intimate material, the committee decided that access conditions should be determined according to the particular circumstances and the archivist handling the papers would have to exercise considerable discretion.

Eventually the committee identified two levels of confidentiality: "highly sensitive" papers which should be restricted for thirty to seventy-five years; and "sensitive" papers which should be restricted for up to thirty years. "Highly sensitive" material would include medical and legal case files, papers about criminal convictions, information about sexual orientation or activity, if not generally known (such as homosexuality, infidelity, or illegitimacy), orphans' records, information on addictions and any very personal writings intended only for the writer and his or her very close friends or relatives.

"Sensitive" material would include papers other than those just mentioned which reveal a person's age, marital status, racial origins, religion, financial status, evaluations of intelligence or achievement (such as students' marks in the papers of an academic), political affiliation, memberships, social insurance number, minor legal offences and the like.

Although a number of questions remain to be resolved, the provisional recommendations of the PAC committee may be summarized as follows:

⁴ See, for example, "CMA Policy Summary: Confidentiality, Ownership and Transfer of Medical Records," *Canadian Medical Association Journal* 133 (15 July 1985), p. 142A.

1. Access restrictions should be established by agreement between the archivist and the donor. If there are problems of confidentiality of which the donor is unaware, the archivist should take the initiative in suggesting restrictions. If agreement cannot be reached, the archivist should not accept the papers.
2. If sensitive material is found at a later date and the donor is not available for consultation (as when the donor has died), the archivist may impose restrictions unilaterally, but every effort should be made to identify such material at the time of donation.
3. "Highly sensitive" material should be restricted for thirty to seventy-five years from the date of writing. During this time, some access may be permitted for statistical research and other studies where individuals will not be named nor be identifiable. Access will also be permitted with the permission of the person or persons whose privacy might be affected or if these people are known to have died. Individuals will generally be granted access to files relating to themselves.
4. "Sensitive" material should be restricted for up to thirty years from the date of writing and access may be granted during this time on the same terms as above.
5. All restrictions should have a specific time limit or review date.
6. If an individual donor or one designated agent controls access, there should be a back-up or a statement of what is to happen if the person controlling access is not available. For example: "Access is permitted only to researchers having the permission of Mr. Red White. In the event of Mr. White's death, access will be controlled by his wife, Mrs. Lilly White;" or, "Access is permitted only to researchers having the written permission of Mr. Red White. In the event of Mr. White's death, the papers will be open to all researchers."
7. In a publicly-funded archives, all researchers should be treated equally. The fact that donors and their relatives control access to some collections inevitably undermines this principle to a certain extent, but archivists should strive for the greatest degree of fairness that is consistent with the donor's legitimate concerns and the protection of privacy of all concerned.

One predominant unresolved difficulty is that archivists often do not know what is in the papers they hold. They do not have sufficient staff to read every page in all their collections, and it is always possible that some sensitive information will be found in a file that appeared to be totally innocuous. Some archives ask researchers to sign an undertaking not to reveal any sensitive or personal information about a living person without that person's consent. The PAC committee is studying this possibility.

This note is in the nature of progress report, but the committee has covered enough ground that it seems worthwhile to report its conclusions to this point. The committee is convinced that manuscript archivists can no longer avoid the ethical problems of access by depending entirely on the donor or by saying that it is not the archivist's job to act as censor. If archivists abdicate their responsibility, there is a risk that some among them may be sued for libel, and/or that individuals and organizations may start destroying any papers they have that are in any way personal, to be sure that the papers are never placed in a public archives. These possibilities are highly undesirable, but it must be remembered that the archivist's purpose in acquiring papers is to allow them to be used. The challenge is to do this as fully as possible, while also showing scrupulous respect for the privacy of people mentioned in the papers.