

*An Act of Faith: Access to Religious Records in English-Speaking Canada.**

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Oblivion is not to be hired: the greater part must be content to be as though they had not been, to be found in the register of God, not in the record of man.

Sir Thomas Browne, *Urn-Burial; or
Hydriotaphia* [1658]

In 1658, it may have been necessary for the greater part of humanity to be content to be found in the register of God, but today people are lucky if they show up in fewer than a hundred records in their lifetime. From birth to death, the names and some of the most intimate details about the lives of nearly everyone in North America will appear in records created by governments, businesses, social organizations, churches. These individuals are not likely to be cited in documents because they have performed exceptional deeds, as once would have been the case, but because they have simply carried on their lives. Their births, baptisms, confirmations, school registrations, immunizations, marriages, and deaths are all recorded. They will apply for loans, register for health benefits, use credit cards, receive unemployment insurance, buy cars, fishing licences, houses. Almost every aspect of their lives will require the creation of a document of one type or another. Some records, such as the fishing licences, will be destroyed as soon as the season is over. Some, like credit ratings, will be maintained for life. And some, such as baptismal registers, will be retained permanently, and thus shall ordinary people achieve immortality — whether they want it or not.

The problem, of course, lies not so much in the keeping of personal archival records, but in the access to them and what is done with the knowledge gained through that access. Archivists, as keepers of these records, are responsible for the timely and appropriate release of information. For religious archivists, this responsibility can prove troublesome. There is no doubt that facts which people tend to want to hide can be revealed in church records: illegitimacy, adoption, incest, infidelity. Thus, the records produced from the traditional activities of the church, baptizing, marrying, burying, and counselling, can pose problems of access. If people looking for spiritual guidance approach their ministers by letter, or if a minister keeps a journal, then a document exists which will require serious deliberation when access is considered. Persons seeking counselling would not normally expect to have their problems exposed, even in the

course of scholarly research. Sensitive information also appears in the records created from the varied activities conducted by those denominations which have strong social as well as religious programmes. Particularly before the turn of the century, religious authorities were responsible for many of the services which have now been assumed by governments, such as the registration of vital statistics, or the provision of social services for the poor. In addition, churches maintained hospitals, created colleges, built homes for unwed mothers, ran residential schools for native children, managed orphanages, and administered sheltered houses for troubled youths. Records on medical conditions, criminal activity, and educational ability, to name but a few examples, are today being kept by organizations which are not obligated by any governmental laws either to disclose or to withhold that information.

While the release of sensitive information can potentially cause embarrassment, discomfort, even anger on behalf of the record subject, there is also a strong possibility that information revealed through church records may be deliberately misused by those persons gaining access, with much more serious consequences. One of the most extreme examples of such misuse is from the period of Nazi rule in Germany. In order to isolate Jewish people to begin to enact laws which would ultimately lead to their extermination, the Nazi government had to define who was Jewish. It was finally determined that the deciding factor would be the religion of the grandparents. Special "genealogists" who traced Jewish family trees sprang up almost overnight in response to this decree. They provided evidence of religion "by means of records found in state offices or baptismal certificates furnished by churches."¹

Although such large-scale abuse seems currently unlikely (although one need only recall the McCarthy era or the Québec separatist crisis to appreciate the possibilities for abuse of personal information in North America), small-scale abuse does occur.² Consider the perhaps apocryphal story of the researcher who promised faithfully to publish only aggregate information on the discharged mental patients whose records he was studying. Before he reached any conclusions, however, he took the liberty of contacting these patients to find out how they were doing twenty years after their release, using the names that he had gleaned from the archival records. Suffice to say that when information is sensitive, an archivist must be aware that the possibility for abuse exists.

Church records, however, have proven to be of great value to many researchers. Historians have employed preachers' diaries, for example, to reconstruct life during the settlement of Canada, particularly in the West when the church was in many cases the first official presence in new communities. Social historians have employed ministers' diaries and parish registers to develop profiles of communities. One writer noted:

In a Preacher's Book from Fort Hope, Ontario, there is a census dated 1920 which lists the following information for each person listed: name, sex, age, tribe, language, occupation, physical and mental condition, and the number and type of animals hunted that year.³

Medical researchers have utilized parish registers and related church records in their studies of diseases. One Canadian study of an unusually high incidence of a genetic disorder in the Saguenay region of Québec depended upon the voluminous personal records kept by local priests since the region was settled in the 1830s. Medical researchers used the records of nearly 300,000 people to construct genealogical trees stretching back almost 150 years. Similarly, amateur genealogists have depended heavily upon parish

registers for the raw data with which to create their family trees. And many writers maintain that there is a great deal more research use that can be made of religious archives.⁴ How then can religious archivists balance the increasing demands for access to sensitive personal documents against the possible negative outcome of the release of such records?

In order to establish a base from which to consider this question, this writer conducted a survey in the spring of 1988 to determine the access provisions in place in denominational archives in English-speaking Canada and the opinions of religious archivists towards access to the records in their care. The survey was sent out to sixty religious archives listed in the *Directory of Canadian Archives*. The forty-two returned questionnaires represented a 70 per cent response rate. The denominations represented included the Anglican, Baptist, Congregational, Foreign Mission Society, Lutheran, Moravian, Presbyterian, Roman Catholic, and United Church archives. The quick and high rate of response is a good indicator of the interest in the topic among religious archivists.

First, the survey asked the respondent to list the types of records held. Then the archivist was requested to outline the conditions of access that accompanied each record type, and to state how long restrictions, if any, were imposed. The choices of access types included "open," "open with permission" (either written or verbal permission), "confidential" (meaning records are only open to specifically designated people), and "closed" (the records are not open to anyone). The next question asked who established the conditions of access; finally, respondents were asked to comment on the subject of access in general. Although the type of records collected by each archives varied slightly (some churches did not create certain types of records, such as confirmation records), all had both administrative and personal records. For the religious denominations which have only one central archives there was a general consensus on assessing each access request on its own merits. The Congregational, Lutheran, and Presbyterian archives stated that their records were open with the archivist's permission unless restricted by the congregation which donated the records. The decision to allow the archivist to determine access was made by the archivists themselves in most cases. Baptist records are open up to 1920; for access to documents created after 1920, the researcher must obtain written permission. This access policy was arrived at by the archivist and the History Committee. The Baptist archives noted that because of the split in the church in the 1920s resulting from the fundamentalist/modernist controversy (which created two separate Baptist organizations), the minutes of governing church bodies record offenses and misdemeanors which may still prove to be sensitive for some people. Thus these minutes are closed. The Foreign Mission Society records are open with permission. This decision was arrived at by Society superiors. The Moravians, similarly, allow only limited access.

With the larger denominations which have multiple archives serving various levels of church organizations, the answers to the survey were not as consistent as with the smaller denominations. For example, at the time of the survey, the Anglican Church archivists gave a variety of responses to the question of access. Some reported that baptismal, marriage and burial registers were open to all, some reported that the registers were closed for certain periods of time unless permission was obtained, and others declared their registers indefinitely closed, requiring the permission of the bishops to gain access. In contrast, some archives which allowed open access to their registers

closed their administrative records. There was general agreement that personnel records, including those concerning the appointment and election of church officials and clergy discipline cases, were closed, or had at least limited access. In general these restricted records could be opened at the discretion of the archivist or a church official (including the bishop, the executive secretaries, parish rectors and wardens), depending on the nature of the request.

The United Church archives reported generally open access conditions. Only one reported that all of its records were closed, including a ninety-year restriction on personal viewing of baptismal registers. In contrast, one archives policy stated that access to any records older than thirty years old could only be restricted "supported by a valid reason." Another archivist noted: "Regarding ministers' correspondence, most of that which we get has already been laundered of any of the really interesting stuff." However, the archivist added that anything sensitive remaining in the correspondence was restricted.

In the case of the Roman Catholic archives, most reported that records were only open with permission. Again, each access request must pass the scrutiny of the archivist. In one case, publication of any information gleaned from the records accessed required additional authorization. While many archivists granted liberal access for "serious researchers" (and in a few cases this included research which could possibly put the church in a bad light), there generally was a stronger note of caution among the respondents from the Roman Catholic archives than among either the Anglican or any of the single archive denominations. One respondent noted: "It could be stated that the main concern in granting access is Respect for [a] Person's Reputation, which must be of prime concern." The archivist continued, "there exists a certain aura of confidentiality with respect to these records, particularly where entries might reveal certain details which are not publicly known (and which persons do not want revealed) . . ." Two archives had fifty-year restrictions on all of their material. One of them had tightened its access policy as a result of a bad experience in opening its records. The other would consider allowing access to records less than fifty years old on an individual basis. Only one archives reported that access was permitted only to members of the congregation, although one archivist noted: "Some seem unaware of the purpose of the religious records. The church keeps such records for the administration of the sacraments and not for genealogical or historical reasons. Technically no one has a right of access to these records save church authorities — a point that seems lost on many."

It should be noted that since the time of the survey, the Anglican Church has formulated a national access policy in order to relieve individual archivists of access decisions, and to achieve a more standard access policy within its many repositories.⁵ The policy generally suggests good archival practices such as the registration of researchers, the distribution of copies of access rules which the researcher must sign before using any records, and so on. In addition, rules governing access to official church records are outlined. With the exceptions of the records of Marriage Commissions, "in camera" committee meetings, personnel records, parish registers, and the official correspondence of various church officials, which are under various restrictions, all other records are open. The new rules applying to parish registers state that "parish registers are open to the individuals concerned, to their family members, and to scholars who demonstrate valid reasons."⁶ This may make registers in several Anglican archives less accessible than before the rules were passed. This state of affairs is in contrast to the

thinking of one archivist who stated: "Births, marriages and deaths appear to us to be matters of public record and public knowledge." Finally, sensible rules are given for dealing with access restrictions applying to any personal papers which are donated.

The United Church has also wrestled with the question of access recently. In October 1988, the General Council Committee on Archives and History discussed possible guidelines for access to church registers. At that time, the feeling was that there was too great a difference in practice between conferences and too little common ground to create definitive rules. The committee decided to put the issue on hold for the time being for those registers with no access conditions defined by the parent bodies. Instead, it examined access guidelines for personnel records at its fall meeting.

It is clear from the results of the survey that religious archivists are generally in favour of public access to their records, particularly for the person with "legitimate" claims, or for the "serious researcher." The fact that many allow access only with permission indicates that they are concerned about the implications of the use of sensitive information.⁷ They cannot agree, however, about whether baptismal, burial, and marriage registers are public or private, and consequently allow different access conditions. This conflict over the registers stems from the confusion that exists about the whole nature of the ceremonies themselves. Whereas some archivists feel that the ceremony is public, others feel that the ceremony is private. Once the baptism of a baby fathered by its mother's father has occurred, for example, there are only two sources of readily accessible confirmations of the event: human memory and the baptismal register of the church where the child was baptised. While baptisms can be joyful occasions in which the entire church participates, baptisms of children resulting from incest can take place quietly. Are the baptisms then public? Should anyone who was not present at the ceremony have access to the information? Should a man who commits incest be protected? Should the child of an incestuous union discover that fact from religious records, particularly when the mother has petitioned the church not to reveal the information? Whose interests should prevail?

These are just a few of the moral ambiguities in the access issue which need to be addressed. When considering access to personal records, for instance, how does one solve the conundrum of acknowledging one person's need for privacy while accommodating another person's need or desire for access? Take, for example, medical records.⁸ The French have a 150-year embargo on the release of medical records. They feel that this lengthy time restriction is "justified by the necessity to protect living persons from the revelation of hereditary diseases of their parents or grandparents."⁹ This embargo assumes, of course, that all persons would prefer not to know that they are carriers or potential sufferers of a disease. Yet probably a significant proportion of such a population would indeed want to receive this information, and would consider it their right to be informed. Such persons might determine to be sterilized so as not to pass on the disease to their children.

With adoption records, the issue is the parents' right to privacy versus the child's right to know. At the present time, only three provinces, Saskatchewan, Manitoba, and Ontario, allow adoptees to initiate a search for their biological parents. Before a reunion can occur, the parents are asked whether or not they wish to be contacted by their child. Thus, the parents' right to privacy outweighs the child's right to know. In the reverse situation, however, when the parents wish to contact their natural child, their petition is

considered only if the child has already submitted a request. This was done in consideration of the adoptive parents, and so as not to unduly burden adopted children with the need to make a decision. Many adoptees, in provinces where governmentally-sponsored reunions are not available, use church records to help trace their parents. Where is the respect for the parents' privacy when a religious archivist releases baptismal information to the adoptee? Genealogists are also interested in personal family information. Should they have the right to have access to their parent's records when their parent is still alive, even if such access may be against the parent's wishes? What happens when that parent dies? How long should their privacy last? In her comprehensive work on the ethics of access to government records, Heather MacNeil discusses the concept of privacy which goes beyond death by asking the question whether information about an individual's family is information about that individual.¹⁰

Beyond these situations which pit individual against individual, "there is general agreement about ethical principles in research, but some disagreement about . . . what to do in a situation in which there is a conflict of interest, such as between the right of the majority to know and the right to privacy of the minority."¹¹ Scholars have often cited the right of society to benefit from their research as outweighing the right to privacy of the individuals involved in the records. Journalists, too, quote the right of the public to be informed in order to justify their sometimes contentious intrusions into private lives. How does one measure the benefits of such research and reporting in order to weigh them against the possible harm resulting from the violation of privacy? How many persons must be seen to be harmed before such intrusion is deemed unacceptable?

Another aspect of the access question is the right of persons to have access to their own records. At one time it was considered controversial for the recipients of social services to view their own casefiles. It was felt that such access would inhibit social workers from being frank in an effort to spare their clients. Such revelations, it was believed, could actually harm the subjects. Today, "the general principle to allow access is widely accepted at least in theory."¹² No doubt the concerns of social workers still inhibit the application of this principle.

It is clear that each access question is multi-faceted. It is also apparent that any one of these complex ethical dilemmas could one day face every religious archivist. Yet, while the survey results indicate that in general religious archivists are conscious of this possibility, their favour of "legitimate researchers" and scholars reveals their bias. In fact, both religious and secular archivists have in the past been more concerned with access to records than with privacy. They have tended to support access over privacy primarily to serve the cause of history.¹³ Archival science was considered an "auxiliary of history," and archivists were seen to be "advocates for research."¹⁴ Archivists identified themselves closely with historians, and so favoured scholarly requests. Yet such Canadian archivists as John Smart and Kathleen Garay have felt that many archivists have not done enough for the cause of history. "Archivists have a . . . professional responsibility to promote public research." "The continued development of a real archival profession in Canada requires that archivists become identified with the social objective of freedom of information in their society." "It is surely axiomatic that for the archivist of any type of collection, the full and immediate availability of all material is the most desirable state of affairs."¹⁵ Both Garay and Smart remain sensitive to the protection of individual privacy, but some American colleagues have taken their support for historical research much further: "In a conflict of interest between the

researcher's right to know and the right of others to privacy, an open advocacy of the free flow of information puts librarians and like-minded archivists squarely on the side of the researcher."¹⁶ While there can be no doubt that archivists should desire their records to be used, this desire should not overwhelm their responsibility towards the protection of personal privacy. This preoccupation with the scholarly community has in fact caused some archivists to lose touch with the rights of their sponsors and the public. In their eagerness to have their records used, archivists may have supported open access without giving due consideration to privacy.

Many historians have not been terribly sympathetic to the arguments of privacy considerations. They have complained that rules and restrictions are an affront to their honour and integrity. But because their view of what constitutes "history" has become rapidly foreshortened (so that instead of working on records from the last century, for example, they are working on records of living individuals), they are brought into direct conflict with privacy considerations. The birth of this "social history," combined with the widening of the researching public which brought forth the genealogist and the journalist, were first responsible for focusing archivists' attention on the matter of access. Governmental legislation, a growth in societal awareness of the rights to privacy, and a deepening concern about ethics in the archival profession in general have spurred their interest. Moreover, the archival profession has matured sufficiently to assess the problem properly. As a sign of their maturity, for example, archivists are finally coming to grips with their user public. As they better understand the use made of their records, then they are forced to take steps to ensure that that use is both justified and proper.

What use is justified and proper, and what considerations must be made in deciding that use? The first consideration is that privacy has its own innate value. From the American point of view, at least in an abstract sense, the privacy of the individual is very important. "Privacy — the 'right to be let alone' — has been called by Justice Louis Brandeis the 'right most valued by civilized men.'"¹⁷ Archivist Trudy Peterson points out that, in the United States, the invasion of privacy is legally a civil wrong. In Canada, a similar legal situation exists.¹⁸ Although the means to protect one's privacy exists in Canada, few take advantage of the opportunity. Canada rarely witnesses the spectacular legal suits which constantly surface in American courts. If the concept of privacy is examined in the context of Canadian society, it must be conceded that individual rights have never held the same pride of place in Canada as in America. In fact, the attitude of Canadians towards the subject of privacy is ambivalent. On the one hand, increasing anxiety towards the use of the Social Insurance Number by agencies not sanctioned to use it by law indicates that Canadians are becoming more sensitive to the possible violation of their own privacy. On the other hand, Canadians are gradually becoming more socially conscious, and thus more frequently place societal rights over personal privacy. For example, the privacy of the home no longer protects the spouse or parent who inflicts physical or sexual abuse on members of his or her family. Canadians do not place as high a value on personal privacy as do Americans, but they still place a value on privacy, and this must be observed.

In conjunction with the value of privacy is the notion of a termination point to personal privacy. The "passage of time principle" is based on the assumption that the likelihood of sensitive information harming an individual diminishes over time. For some records, this period of time may be as long as the lifetime of the subject. Canada's Privacy Act states that personal records cease to be private twenty years after the record

subject's death. Based on the current mores of Canadian society, it is probably fair to say that this definition is acceptable.

Another consideration one must make when considering what access is justifiable and proper is whether the release of information will harm or benefit the subject of the record. It is difficult to determine what is harmful; the Government of Canada interprets harm to be anything which will have a direct negative effect on an individual's career, reputation, financial position, health, or well-being.¹⁹ But harm is often immeasurable; it is difficult to predict a negative result. A benefit is a positive outcome, but it is equally difficult to determine its value when the benefit is intangible, e.g., a sense of well-being, or a feeling of relief or security. When weighing harm or benefit, however, one should always consider the needs of the subject of the record to be foremost. This will help in determining the final outcome, particularly when contemplating the "benefits to society" which historians may quote.

When regarding the needs of the subjects of the record, one must consider their expectations. Did they, for example, divulge the information on the understanding that it would be kept confidential, and used only for the original purposes for which it was gathered? What were the original conditions governing access? Is the information published anywhere else?

Another consideration archivists must take into account when contemplating access policies is the nature of their parent institution. Unfortunately for religious archivists, the nature of their institutions does not really help them in making their access decisions. Churches have a very narrowly defined constituency. A denomination's responsibility is to whatever higher spiritual authority guides it, and then to the rest of the denomination. There does not exist that broad public mandate that guides the government in its access decisions; there are some secrets which must be maintained by government in the interests of good governing, but the government is still responsible to the people for its actions, and therefore must allow public scrutiny. Yet religious institutions are not private in the same way that companies or businesses are private. A private business can determine any access conditions it likes in order to ensure that no harm comes to the company, because its first loyalty is to the company. Such conditions might even include, in some cases, withholding information from stockholders. The religious institution, however, often serves a public much larger than just its own denomination. Many churches consider that they have a social responsibility; that is, a responsibility to humanity. This was particularly true in the past, when religious authorities were responsible for many of the services which have now been assumed by the government. Today many ministers marry persons who are not even members of their faith, and it is those ministers who are the ones subsequently responsible for the registration of that marriage with governmental authorities. To whom then does their responsibility lie: Their denomination? Everyone they may serve? The concept of public responsibility versus private accountability is an important factor in determining access to records. Thus the guidelines for access to the records religious institutions collect are not delineated by the churches' semi-public, semi-private nature.

A final consideration that archivists must make when establishing access policies is the origin of the records. The nature of records generated by private individuals affects the decisions which must be made when contemplating access. Traditionally, access conditions to private papers have been set by donors. There are problems. It is difficult

to keep track of donors. Should you lose contact, then what is to be done about access? In other cases, donors do not set stringent enough closure periods, and the archivist is left sitting on a time bomb. Private records often hold information relating to third parties. Releasing sensitive information on persons who may not even be aware that material exists on them, never mind the fact that it resides in a public place, can have serious consequences. In the case where the archivist disagrees on open access conditions set by the donor, what are the ethics of closing papers against a donor's wishes? How does the archivist handle selective access procedures where one sympathetic researcher is allowed to view the papers and another hostile one is not? Competing academics, for instance, can make life very difficult when a donor grants access to one academic, but not the other.

In 1980, the Wilson Report highlighted the dual nature of the archival profession:

Archivists must learn to serve two — at times conflicting — objectives: to encourage and promote the use of information contained in their holdings, and to ensure that legitimate needs for confidentiality are respected. Their credibility will depend on their ability to balance and serve both objectives.²⁰

The *raison d'être* of archives is use; archivists as custodians of the records are of necessity obliged to advance that use, and assist the users. The problem arises when those users desire access to records concerning living individuals. The acceleration of time between creation and use of records has caused stress on the archival system which is just beginning to be felt. The situation is unlikely to change in the future, unless to get worse; it is imperative therefore that archivists come to terms with the second component of their professional responsibility: that is, their responsibility to those who might be affected by use of the records.

Part of the reconciliation between use and protection of privacy requires archivists to acknowledge that they are maintaining records for as long as society and the records exist, not only for today's users. If that is the case, then there is not the same pressure to bow to users' demands for immediate access to all records that are being maintained in repositories. Archivists must shed the frustration they may feel that their records are not being used, or the fear that if their materials do not get used immediately, then no one will want to use them at all. Unfortunately, archivists must also then give up the gratification of having their records used. The notion that the records may as well be destroyed as to sit in an archives, unused for a generation, is ridiculous. A far more important consideration is that "some individuals believe that privacy is valuable in itself — that there is an aesthetic value in preserving private areas of experience and therefore it is not only the misuse of personal records but their very existence (sic) which is disturbing."²¹ This fact, and the possibility of abuse, must be of concern to all archivists. Above all, archivists must remember that they are not only custodians of records, but trustees as well; the persons to whom property is committed in trust. They must achieve optimum use for the maximum number of people, "optimum" being use which considers everyone's best interests, both users and subjects of records, but which ultimately places the concerns of the subjects foremost.

How can archivists know what is in the best interests of all parties involved? They are not judges, nor should they be required to possess the qualifications of a magistrate in order to enter the archival profession. There are practical steps to achieving a solution to

this problem. Archivists, being fully appreciative of all the uses to which their records might be employed, and as the guardians of the records in their care, must be responsible for drawing up access guidelines with the creators of the records. The guidelines will then be based upon the creator's intimate knowledge of the records. This also means that the creator's consent to the access policy is officially obtained and that the archives' policy and that of the parent institution are congruent. Once the policy is in place, archivists are sworn to uphold that policy, whatever their own preferences are in the matter. The policy should define access terms (i.e., who has access to confidential material) and relevant time limits, and will be an administrative tool for the archivist to employ on a daily basis. All researchers should be made aware of the policy as a matter of course, so that they know where they stand. All situations which fall outside the guidelines, or which are deemed exceptional for some reason, should be dealt with by an access committee.²² Such a committee, which would automatically include the archivist, could weigh the risks and benefits of allowing access to a body of personal records and come to a compromise which balances need for privacy with desire for access. This avoids placing the onus of granting or refusing access to sensitive personal records on the archivist. This solution would be patterned on the Canadian legal system, which tries to effect a balance, achieving the best answer at the time and under the given circumstances rather than determining a definitive answer. Like the legal system, a jurisprudence of practice would be developed for future decisions.²³

An access committee can achieve a reasonably impartial decision which considers both research demands and the protection of privacy. This solution avoids some of the problems encountered with the methods advocated by other writers.²⁴ Some, for example, have suggested that data should be anonymized. The possibility does exist that a researcher might still be able to identify an individual, but more to the point, particularly if the records are not on-line, could many archives afford the time to remove identifying information, even from a small body of records? How much should they remove? Should they get involved in censoring? For records gathered over time, how could a researcher match records of the same subject? Many writers feel that archives should introduce various safeguards to protect privacy, including screening research projects and researchers, before allowing access to occur. While in a practical sense a researcher's level of study, for example, may affect considerations of her/his application, "the application of an intellectual means test . . . is an elitist policy that is incompatible with the democratic spirit of archival principles that have been developed since 1945."²⁵ In addition, various archival statements on the ethics of access have counselled archives to make their holdings available to users on an equal basis. This ensures that no researcher can accuse a repository of preferential treatment. As Jean Tener argued in her seminal article on the topic, access

cannot be divided into open categories for "scholars" and closed categories for "sensational writers," or available to those with a "genuine" interest and unavailable to those who lack an appropriate "appreciation." Access should be indivisible.²⁶

Other writers suggest that access may be granted after safeguards against abuse are in place; this can include having researchers sign a contract stating that they will publish information only in an aggregate form, or that they will not identify any living individual. The contract is useful in that it makes a researcher aware that there is an obligation to adhere to the rules of publication of personal information. As an actual

deterrent, however, archivists must be aware of its limitations. We cannot depend solely upon the good will and intentions of researchers. They each have their own agendas to follow, and those agendas do not necessarily include maintaining the privacy of individuals. It is unfair to suppose that, in a morally difficult situation, they will always choose the way we would prefer. Another post-disclosure measure might include having the archivist screen research notes and draft publications. This situation returns us to the archivist as judge. Obviously such a position is untenable; by what authority could an archivist inform researchers that their work could not be published? Other writers suggest that informed consent should be obtained before research is done. This is a fine idea, if it could possibly be realized. Perhaps for a single record, or a very small body of recently gathered records this step is possible, but this is not very practicable for the majority of personal records.

For records donated by private individuals, archivists must clearly understand what access provisions the donor wishes, and must agree to those provisions, or should refuse to accept the records. These access conditions should be set down in writing and signed by both archivists and donors so that there is no chance for either party to plead misunderstanding should some problem arise in the future. Every effort should be made to steer the donor to a time-limited restricted access period instead of one in which access is dependent upon the donor's consent. If the archivist disagrees with a lengthy donor-imposed restriction, s/he can once again refuse to accept the collection.²⁷ If, after processing, the archivist finds material which makes her/him concerned that access is not restricted for an adequate period to ensure the protection of privacy, then the donor should be immediately informed, and access conditions renegotiated. If the donor refuses to consider a longer restriction period, and the situation is of sufficient import, the archivist should inform the donor that the archives cannot keep the records. The donor should be informed at the time of donation that such a possibility may occur. Archivists must realize above all that the exposure of personal information in private papers is impossible to police. They cannot review every letter to make sure there is nothing potentially harmful to someone within them. It only takes one word, one sentence sometimes, to cause harm. They can only try to achieve an equitable balance between privacy and access with the help of the donor.

For the future, all archivists might consider the following. Everyone should be aware of what information is being kept on himself or herself, and where it is being kept. To this end, the Roman Catholic Church now insists that the father's consent must be obtained before his name is added to the baptismal certificate of a baby. Archivists might help their organizations determine what information it is absolutely necessary to collect. Any other information which is gathered should then be purely voluntary. Record subjects should be given the choice of whether or not the record will be used for research earlier than a potential lifetime.²⁸ Guidelines as to how the information would be used (e.g., publishing of statistical or aggregate information only) would need to be provided. For either computer or hard-copy records, archivists could advise information gatherers to label records with impersonal identifiers, using a number, for instance, which could be linked to persons' names only when necessary. The link could be severed at the time the record passed from active use to research use. Finally, there should be a complaint mechanism in place for those persons who feel that their privacy has been violated, and there should be punitive measures sufficient to act as deterrents should a researcher transgress privacy guidelines.

It is an act of faith every time a religious archivist allows a researcher to use the personal records of living individuals: faith that users will not abuse the information they receive; faith that no one will be betrayed by the act of the opening. It is the nature of religious institutions to want to help; it is typical of their generous nature that they often extend that help to as many as will avail themselves of the opportunity. However this generosity should not mislead archivists of these institutions into violating the privacy of persons who are the subjects of their records. The survey of religious archives has established that religious archivists are already aware of the danger. By considering the ramifications of the access/privacy issue, and by formulating access policies and guidelines which acknowledge these ramifications, religious archivists will be able to meet the challenges of the coming decades with confidence.

Notes

- * The basis of this paper was a presentation to a meeting of the Religious Archives Special Interest Section at the Association of Canadian Archivists Conference in June 1988.
- 1 This new profession was known as the "Sippenforscher." Raul Hilberg, "The Anatomy of the Holocaust," *The Holocaust: Ideology, Bureaucracy and Genocide*, Henry Friedlander and Sybil Milton, eds. (Millwood, 1981).
- 2 Political circumstances which may make personal information dangerous are constantly occurring. In the McCarthy era in the United States in the 1950s, private and public records which even hinted at a person's socialist/communist leanings were being used to create a "Security Index": a list of those people to be arrested and imprisoned in the event of an emergency. In Canada, in 1973, as part of "Operation Ham," the RCMP broke into the offices of a private computer company and removed membership lists of the Parti Québécois. The 1987 report of the Canada Commission of Enquiry Concerning Certain Activities of the RCMP details how the RCMP used "human resources" in Federal Government departments to get access to personal records during their criminal and security investigations.
- 3 "Anglican Records," *Archives Bulletin* 6 (September 1981), p. 9.
- 4 "My most firmly held opinion about denominational archives is that historians have not begun to use the materials that are available to anywhere near the extent that they could." J.R. Miller to S. Sweeney, 19 July 1988.
- 5 The "Access and Restrictions Policy Guidelines" were approved by the National Executive Council of the Anglican Church of Canada, March, 1989.
- 6 [General Synod Archives Committee], "Access and Restrictions Policy Guidelines for Anglican Church Archives," (March 1989), p. 3.
- 7 It is interesting to note that only one archives reported having had a bad experience with open access. Another archivist stated about his open access policy: "When I get my fingers burned, I shall undoubtedly think about a more conservative policy."
- 8 Nowhere has this conflict been more obvious than in the current AIDS debate. The Hippocratic Oath, the code of medical ethics, counsels doctors to confidentiality. Because of AIDS' potential for harming others, however, many interested parties wish to receive the information that someone has tested positive for the disease. Thus, doctors must weigh maintaining privacy by only revealing the results of positive AIDS tests to their patients, against the need of spouses to receive such information and the desire of governmental health authorities to be informed.
- 9 M. Duchein, "Access to Archives in France," *Archives: the Journal of the British Records Association*, 15, nos. 65-68 (1981-82), p. 27.
- 10 Heather Marie MacNeil, "In Search of the Common Good: the Ethics of Disclosing Personal Information Held in Public Archives," (University of British Columbia thesis, 1987).
- 11 Kenneth D. Bailey, *Methods of Social Research* (New York, 1987), p. 406.
- 12 Penelope Pearce, "Data Protection in Social Services," *The Journal of Social Welfare Law* (May 1985), p. 135.
- 13 The famous opening of the Vatican Secret Archives in 1881 probably marks the turning point when religious archivists in general began working towards more open access to the records in their care, on behalf of scholars.
- 14 Elio Lodolini, "The War of Independence of Archivists," *Archivaria* 28 (Summer 1989), p. 36.

- 15 John Smart, "The Professional Archivists's (sic) Responsibility as an Advocate of Public Research," *Archivaria* 16 (Summer 1983), p. 141, and Kathleen Garay, "Access and Copyright in Literary Collections," *Archivaria* 18 (Summer 1984), p. 220.
- 16 Elena S. Danielson, "The Ethics of Access," *The American Archivist* 52 (Winter 1989), p. 55.
- 17 Alan F. Westin and Michael A. Baker, *Databanks in a Free Society: Computers, Record Keeping and Privacy* (New York, 1972), p. 17.
- 18 In Saskatchewan, for example, the "Privacy Act" declares: "It is a tort, actionable without proof of damage, for a person, wilfully and without claim of right, to violate the privacy of another person." This violation can include, "use of letters, diaries or other personal documents of a person." In addition, legal action can proceed over libel, slander and defamation of character. The Statutes of Saskatchewan, 1979, c. P-24, s.2. and s.3 (d).
- 19 Public Archives of Canada, *Guidelines for the Disclosure of Personal Information for Historical Research at the Public Archives of Canada* (Ottawa, 1985).
- 20 Consultative Group on Canadian Archives, *Report to the Social Sciences Research Council of Canada* (Ottawa, 1980), p. 99. (Commonly referred to as the "Wilson Report.")
- 21 Glen E. Isaac, "University Student Records: Privacy and Research Access," (University of British Columbia thesis, 1986), p. 179.
- 22 See also MacNeil, "In Search of the Common Good." Many universities, for example, have ethics committees which examine applications for research on human subjects using SSHRC guidelines.
- 23 Ibid.
- 24 Glen Isaac, in his thesis on access to student records, for example, suggests that "the archives itself can perform various statistical analyses for researchers." This precludes the existence of information on computer, one assumes. How is the researcher supposed to know whether those analyses have been done correctly? Should archivists be statisticians? How many archivists would have the time to do such analyses?
- 25 MacNeil, "In Search of the Common Good," p. 126.
- 26 Jean Tener, "Accessibility and Archives," *Archivaria* 6 (Summer 1978), p. 18.
- 27 Not all archivists, of course, will be in a position to refuse collections, due to the acquisition policies of their institutions.
- 28 Employing a method of prior consent would be particularly easy for computerized records, where a field could be designated for such an option, and affirmative answers tagged so that those records would be separated from the main body. This procedure would introduce a possible bias in the research group, but the results would be similar to obtaining informed consent prior to each research use, something which would be much harder to achieve.