The International Scene

Access to Archives and Privacy: The Twenty-third International Archival Round Table Conference Proceedings

ANN CLIFFORD NEWHALL

"Access and privacy may seem to be contradictions. But, as in modern quantum physics phenomena which formerly looked contradictory are matched, the archivist's task is to find the proper balance between the interests of the State, the right to privacy of the individual, and the right to know of Society." So stated Eric Ketelaar, secretary of the International Council on Archives, during the ICA's twenty-third conference, held in Austin, Texas, on 25–28 October 1985. The *Proceedings of the Twenty-Third International Archival Round Table Conference: Access to Archives and Privacy,* published in both English and French, provide a thought-provoking introduction to the ways in which different nations have been grappling with the access/privacy conundrum.[1]

As is customary, the *Proceedings* fall into two parts: Reports Submitted to the Conference; and Minutes and Annexes, which include the recommendations of the conference, the conference program, and an index to the minutes of the discussion by participant name. Part I, however, departs from the usual practice of including a long discussion of the ICA's members' responses to a questionnaire on the subject at hand. Instead, in a brief "Annotated Agenda," Eric Ketelaar refers members to a 1983 UNESCO Records and Archives Management Programme (RAMP) study by Michel Duchein.[2] Ketelaar then attempts to establish basic terms of reference for the concepts of access and privacy. He men-

About the author: *Ann Clifford Newhall holds master's degrees from Yale University and Southern Connecticut State University. She is an archival consultant and chairs the SAA Committee on International Archival Affairs. Previously, she has been Archivist of the Ford Foundation, and worked in the Manuscripts and Archives Department of Yale University Library.*

[1] Paris: International Council on Archives, 1987. List of Participants, annexes, index. 182 pp. The Ketelaar quote is at p. xx. (The proceedings of the first nine conferences may be purchased from: Documentation française, 29–31 quai Voltaire, 75007 Paris. The proceedings of the subsequent conferences and the General Index may be purchased from the Round Table on Archives Conference headquarters, 60, rue des Francs-Bourgeois, 75141 Paris Cedex 03.) See Ben Primer's discussion of the twenty-second conference proceedings in the *American Archivist* 49 (Summer 1986): 333–4.

[2] "Obstacles to the Access, Use and Transfer of Information from Archives: A RAMP Study" (PGI/83/WS/20).

tions the landmark 1890 article by Samuel Warren and Louis Brandeis, "The Right to Privacy," which proposed a definition of privacy as the right "to be let alone."[3]

Ketelaar notes that ICA's *Dictionary of Archival Terminology* defines *privacy* as "the right to be secure from unauthorised disclosure of information contained in records/archives relating to personal and private matters"[4] and *access* as "the availability of records/archives for consultation as a result both of legal authorization and the existence of finding aids."[5]

Ketelaar's piece is followed by six case studies:

1. "The Use of Documents of the State Archival Fonds of the USSR to Safeguard the Private Interests of Citizens," by F.M. Vaganov (USSR).
2. "Special Clearance: Competences, Procedures, Criteria," by Sven Lundkvist (Sweden).
3. "The Privacy Act and the Public Archives of Canada," by Lee McDonald (Canada).
4. "Protection of Privacy and the Government Archives Organisation," by Gail Finlay (Australia).
5. "Protection of Privacy by Measures Taken Inside the Archival Institution: How Can Archives Guarantee that Restrictions on Access are in Fact Adhered to?" by Habibah Yahaya Zon (Malaysia).
6. "Federal Records, Privacy and Public Officials in the United States," by Trudy Huskamp Peterson (U.S.).

Vaganov refers to the "private interests" of the citizens of the USSR, which include a right to visit archives and work with records of interest to them. He also notes that the basic rules for work in the state archives of the USSR specify that records "the use of which can be to the detriment of the interests of the state or of a particular citizen" are not available for use. He provides a brief list of examples of such records.

Beginning with the observation that in Sweden secrecy is the exception rather than the rule, Lundkvist discusses the provisions of the Act on Secrecy and the procedures and criteria for granting exceptions to it. He also outlines the kinds of restrictions usually applied to private records.

McDonald reviews the Canadian Privacy Act, which applies only to Canadian federal government institutions, and describes the role of the Privacy Commissioner.

Finlay cites the Australian Law Reform Commission's definition of the concept of information privacy as "the need for proper respect for the autonomy of the individual. . . . The individual's claim to privacy is therefore a claim to control, to an appropriate extent, the way that others in the community perceive him." She provides an overview of the Australian Archives' position within the government and its involvement in privacy issues as a records custodian; as an adviser on policies, procedures, and machinery in relation to records and information; as an information giver; and as a promoter and interpreter in the debate over personal information in relation to technical matters and social and conceptual issues.

Yahaya Zon describes the access provided to a wide variety of materials within the National Archives of Malaysia, the kinds of access restrictions in effect, and the measures taken to enforce them.

Peterson explains the scope and principal provisions of the Federal Freedom of Information Act, the Federal Privacy Act, and the Presidential Records Act and briefly discusses how these laws came to be enacted. She also makes the point that in the United States the invasion of privacy is legally a tort, or civil wrong.

[3] Samuel Warren and Louis Brandeis, "The Right of Privacy," *Harvard Law Review* 4 (15 December 1890): 193.

[4] *Dictionary of Archival Terminology* (Paris: International Council on Archives, 1984), 372.

[5] Ibid., 2.

In Part II, the minutes of the opening, working, and closing sessions show why it is so important for the professional archivists of the world to get together to air their differences and share their ideas. Points of view expounded by the representatives of newly independent states differ from those of former imperial powers. For instance, the "right to forget," which is recognized by several nations alongside the right to know, includes the permanent closure of police and judicial information involved with a person granted amnesty. Yet, it was argued, police records provide an excellent source for the history of nationalism and of movements for national independence.

In some nations the concepts of family honor and the importance of keeping family secrets are deeply ingrained and, as a result, the principle that one cannot libel the dead is not accepted. Rather, some private acts are felt to have consequences beyond one generation. In some nations the autonomy of the individual is paramount, whereas in others the family or the tribe is considered more important and the concept of individual privacy is a new one. Considerations of the question of what constitutes a breach of privacy led to differentiation between the disclosure of personal information and unwarranted disclosure.

Another question was the extent to which public officials are entitled to privacy. In the U.S. and other countries, the private citizen is entitled to a broader concept of privacy than the public official, for example in the area of financial interests. Some concern was expressed that officials may attempt to cover up evidence of wrongdoing under claims of privacy; and that private life should not be confused with personal secrets. In fact, some participants felt that one of the prime duties of a national archives is to prevent government from improperly destroying records in order to escape the possibility of retroactive democratic control. This access was seen by some as a civil right of even greater importance than the right to privacy.

Even when participants agreed that restricting access to some records was occasionally necessary, they debated sharply the means of accomplishing this. Methods proposed included destruction of records (when human life is in jeopardy or when the records have outlived their administrative usefulness); retention, but with permanent closing of records; making information anonymous; and delaying access (for from 25 to 150 years). Another topic of strong debate was whether or not to provide special clearance to closed records and, if so, under what conditions. Some participants felt that special clearance was contrary to the concept of equal treatment under the law. Some consensus was reached on the principles that destruction of records should not occur without archival approval and that permanent closure would result in researchers resorting to illegal means to obtain access. It was noted that archivists living today do not have the right to tie the hands of future generations.

The concluding recommendations of the *Proceedings* are a tame follow-up to the debates. They attempt a certain consensus, agreeing, among other things, that special clearance procedures are necessary, especially for archives that are closed for a long period, and that the protection of privacy requires legislation, efficient intellectual and physical control of the records, proper storage conditions, and an adequate and well-trained staff. The recommendations conclude with the recognition that a number of controversial issues are emerging, such as new developments in privacy and freedom of information legislation and jurisprudence, the demarcation between public and private archives, the implications of office automation on the control and disposition of records, and the distinction between private citizen and public official with respect to the right to privacy.