

Exceções legais ao direito de acesso à informação: dimensões contextuais das categorias de informação pessoal nos documentos arquivísticos

By Welder Antônio Silva. Rio de Janeiro: Arquivo Nacional, 2022. 371 pp. Softcover.
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The catastrophic scenario was worthy of any horror movie. Chairs were dragged out of rooms and buildings; antique furniture was turned over and destroyed; official documents were used as toilet paper; and glass was shattered everywhere. Gifts presented to Brazil by foreign dignitaries were looted from their permanent exhibitions, damaged, or stolen; the statue *Justice* by sculptor Alfredo Ceschiatti was vandalized; six knife piercings were found in the canvas of *The Mulattos* by painter Emiliano Di Cavalcanti; a seventeenth-century clock built by Frenchman Balthazar Martinot was smashed and thrown to the ground. This was the devastating state of affairs after the mayhem at the Three Powers Plaza, which affected all three main buildings of Brazil's federal government—the House of Representatives and Senate, the Supreme Federal Court, and the presidential Planalto Palace—on that fateful day of January 8, 2023.¹

Similar to what happened at the US Capitol on January 6, 2021, self-proclaimed “patriots,” supporters of former president Jair Bolsonaro and his colleagues, had for months been gathering at the entrances of military headquarters in most Brazilian states, instigated by far-right political groups, evangelical groups, and people from various business sectors. Thousands of “patriots” from across Brazil² chose to vandalize public property and dispute the results of the democratic election, paradoxically asserting that they were protesting in support of democracy. Through surveillance cameras, tracking of personal text messages, and videos posted on social networks (some of which were sent using the free Wi-Fi offered within public buildings), the police identified and arrested more than a thousand people for acts of vandalism.³ Access to personal information was vital to identifying the criminals and to bringing these individuals to justice.

The situation raises interesting questions for archivists. Given the varying degrees of misconduct committed by Bolsonaro's supporters, how should archivists, including Welder Antônio Silva, a professor of archival science at the Federal University of Minas Gerais (UFMG) and an archivist at the Legislative Assembly of Minas Gerais, decide which personal information should be published and whose privacy should be preserved? How should legal exceptions to the right of access to personal information be weighed against the public's interest in knowing? Published just months before the events of January 8, Silva's 2022 award-winning work, *Exceções Legais ao Direito de Acesso à Informação: Dimensões contextuais das categorias*

de informação pessoal nos documentos arquivísticos (*Legal Exceptions to the Right of Access to Information: Contextual Dimensions of Personal Information Categories in Archival Documents*), provides valuable insights into this complex issue.

Drawing from his doctoral thesis, Silva's book has gained renewed significance in the current heated context of Brazil's modern political history, making it an essential resource for comprehending the challenges and strategies related to access to personal information and its legal exceptions. Silva's central thesis posits that every document comprises, to varying degrees, categories of personal information. Consequently, to understand the nuances of legal exceptions between the right of access to information and the right to privacy, as well as to effectively balance these two rights, archivists must possess a deep understanding of a document's archival context.

Silva argues that the principle of provenance essentially defines this archival context, and his interpretation extends to a comprehensive expansion of this principle. The consideration of archival context involves more than just identifying the direct factors and phenomena that influenced documents' content. It entails pondering their sociopolitical, cultural, and economic circumstances as well as interpretation, structure, and management. In making this argument, Silva builds upon the work of multiple international archival theorists on the topic, such as Steven Bingo,⁴ Elena Danielson,⁵ Michel Duchein,⁶ Heather MacNeil,⁷ and Helmi Raaska.⁸ Silva's work is distinguished by its distinctive perspective from the Brazilian archival community, which enriches ongoing discussions primarily led by legal professionals in the country. However, with its dense and technical writing style, especially for those unaccustomed to legal literature, some readers may find it challenging to fully engage with the book's content.

The book is well structured, consisting of ten chapters, a conclusion, and references. In the first three chapters, Silva contextualizes his research theme, scope, problems, and objectives from the archival science and information science perspectives and systematizes the current legal rights that support the policy of full access to documents and archives in Brazil.

In chapter 4, Silva discusses problems related to information access requests and denials, referring to the fact that every Brazilian citizen is guaranteed the right to request information about services provided by the government and the functioning of federal executive agencies. These requests are made through the Electronic System of the Citizen Information Service (e-SIC),⁹ with rules, deadlines, and guidelines set by Law 12.527/2011 (Information Access Law)¹⁰ and by the Comptroller General of the Union (CGU).¹¹

Based on reports provided by e-SIC, Silva conducted a study of the reasons why the government denied information access requests between 2012 and 2016. According to Silva's analysis, of 377,457 information access requests made during this period, 16,586 requests were denied or partially granted because they referred

to personal data; for 892, applicants filed appeals at the first instance, for 288 at the second instance, for 150 at the third instance, and for 38 at the fourth instance; and nine complaints were lodged (p. 80). Silva's research highlights those applicants who frequently filed appeals and complaints due to unsatisfactory or unreported reasons for secrecy, the absence of legal justification for classification, and undisclosed degrees of secrecy. These findings suggest that the Brazilian federal executive branch, along with its officials and entities, faced challenges in effectively defining personal information. Notably, the research underscores the importance of assisting citizens in comprehending their right to access information.

In chapters 5 and 6, Silva delves deep into Brazilian law.¹² It is notable that Silva conceives of the right of access to information and the rights to public image, honor, private life, and privacy as fundamental rights (p. 99). Silva conducts an in-depth analysis of the crucial requirements that must be met when applying legal exceptions in situations where the right to access information is at odds with privacy rights. These prerequisites involve understanding the foundational contexts of archival records, given that every document harbors components or categories of personal information relating to one's public image, honor, private life, and privacy. Silva defines the right of public image as the right to demand privacy and prevent unauthorized capture, publication, or reproduction of one's image (p. 181). The right to honor is the right to be protected from disclosing, degrading, or harmful statements based on social circumstances that could cause offense or ridicule (p. 263). The right to private life allows individuals to live freely without intrusion or disclosure of personal aspects (p. 307). The right to privacy involves keeping personal information private and safeguarding subjective intimacy from unauthorized exposure (p. 307).

In chapters 7, 8, and 9, Silva provides compelling examples that shed light on the rights to image, honor, private life, and intimacy, firmly rooted in national and international legal frameworks. These examples prove immensely valuable to archivists, as they offer insights into the application of legal principles within the context of archival work. Archivists can draw upon these examples as a quick reference guide, enabling them to navigate the intricate landscape of balancing access to information and privacy effectively. Notably, Silva's chapters culminate in the presentation of a meticulously crafted schematic table (pp. 308–309). This table, which identifies possible violations of the right to privacy, is thoughtfully organized under the categories of “what,” “when,” and “exceptions,” and it serves as an indispensable resource, providing clarity and guidance when grappling with the complexities of safeguarding privacy while ensuring access to information (p. 310).

In chapter 10, Silva calls on archivists to reflect on the ultimate goal of their work: the responsible promotion of full and quality access to archival documents and their information. To achieve this goal, he emphasizes the need for openness to interdisciplinary collaboration. By engaging with professionals in fields such as law,

information science, and informatics, archivists can enhance their understanding of the disciplinary domain of records management and archival science and develop exemplary interdisciplinary cooperation.

However, it is important to note that while Silva's work on legal exceptions to the right of access to information provides valuable theoretical insights and analysis, it lacks a practical application or demonstration of its principles in action. The text primarily focuses on conceptual discussions, contextual dimensions, and theoretical frameworks surrounding the balance between access to personal information and privacy rights within the archival context. It falls short in providing concrete examples or case studies that illustrate how archivists can effectively navigate the complexities of this delicate balance in real-world scenarios. As a result, the work may leave readers who are seeking practical guidance or actionable strategies for decision-making in archival settings feeling somewhat unsatisfied. While the theoretical foundation established by Silva is significant, future research or additional resources may be necessary to bridge the gap between archival theory and practice.

In the face of growing political tensions around the world and the increasing challenges posed by access to information and privacy, archivists have an opportunity to learn from Silva's work. We can embrace the call for interdisciplinary dialogue, strive for a comprehensive understanding of the archival context, and navigate the intricate balance between access and privacy. Silva points the way: "We need to understand, with propriety and security, the spaces, the agents, the aspects, the principles, the reaches, the changes, the trends, the demands, the factors, and the significant phenomena that comprise the disciplinary domain of Archival Science" (p. 360). By doing so, archivists can play a vital role in safeguarding information, upholding democratic principles, and promoting responsible and ethical practices in their day-to-day work.

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NOTES

- ¹ For more information, visit Presidência da República, Gabinete de Segurança Institucional, "Nota à Imprensa: acesso às imagens do dia 08/01/2023, do circuito interno de segurança do Palácio do Planalto," Publicado em 22/04/2023 22h01. Atualizado em 23/04/2023 12h22, <https://www.gov.br/gsi/pt-br/assuntos/noticias/2023-1/nota-a-imprensa-acesso-as-imagens-do-dia-08-01-2023-do-circuito-interno-de-seguranca-do-palacio-do-planalto>.
- ² For more information, visit Senado Federal, Manual de Comunicação da Secom, "Estilo," 8 de janeiro, <https://www12.senado.leg.br/manualdecomunicacao/estilos/8-de-janeiro>.
- ³ For more information, visit Wagner Lucas Rodrigues de Macedo, "OPINIÃO Invasão das sedes dos Poderes, crimes multitudinários e individualização," January 9, 2023, 20:18, Consultor Jurídico, <https://www.conjur.com.br/2023-jan-09/wagner-macedo-invasao-crimes-multitudinarios-individualizacao>.

- ⁴ Steven Bingo, "Of Provenance and Privacy: Using Contextual Integrity to Define Third-Party Privacy," *American Archivist* 74, no. 2 (2011): 506–21, <https://doi.org/10.17723/aarc.74.2.55132839256116n4>.
- ⁵ Elena Danielson, "Privacy Rights and the Rights of Political Victims: Implications of the German Experience," *American Archivist* 67, no. 2 (2004): 176–193, <https://doi.org/10.17723/aarc.67.2.1w06730777226771>.
- ⁶ Michel Duchein, "Los obstáculos que se oponen al acceso, a la utilización y a la transferencia de la información conservada en los archivos: un estudio del Ramp," Paris: UNESCO, 1983, <http://unesdoc.unesco.org/images/0005/000576/057672so.pdf>.
- ⁷ Heather MacNeil, *Sem consentimento: a ética na divulgação de informações pessoais em arquivos públicos* (Belo Horizonte: Editora UFMG, 2019), 220.
- ⁸ Helmi Raaska, "Personal Privacy and the Archivist." Dissertations/Theses—NARA, Professional Career Training Program, National Archives and Records Administration, Washington, DC, 1989, <http://files.eric.ed.gov/fulltext/ED344609.pdf>.
- ⁹ For more information, visit Observatory of Public Sector Innovation, "Electronic System for the Citizen Information Service (e-SIC)," <https://oecd-opsi.org/innovations/electronic-system-for-the-citizen-information-service-e-sic>.
- ¹⁰ Presidência da República Casa Civil, Law no. 12.527, November 18, 2011, "Lei de Acesso à Informação," http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm, captured at <https://perma.cc/BM72-8F53>.
- ¹¹ Brasil, Controladoria Geral da União, "Painel Lei de Acesso à Informação," <https://www.gov.br/acessoainformacao/pt-br/perguntas-frequentes/painel-lei-de-acesso-a-informacao>, captured at <https://centralpaineis.cgu.gov.br/visualizar/lai>.
- ¹² Presidência da República Casa Civil, "Constitution of the Federative Republic of Brazil," October 5, 1988, http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm, captured at <https://perma.cc/3SN7-CTCE>.