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Use Records: A Dilemma

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How should archivists handle circulation records? It sounds like an easy question—the cynic would probably answer carefully—but the ramifications of the question are much larger, encompassing that hydra-headed monster of personal privacy vs. the public's right to know. The question of privacy, of course, concerns all archivists not only as keepers of records but as private citizens. The issue as it has arisen in the 1970's has a number of possible concerns to archivists: the fear of government encroachment; the right of an individual to his or her personal privacy; the right of an individual to gain access to public records; and not the least of all, the security of repositories.

It would be beneficial to study the question of access to circulation records of libraries and the response of professional librarians and the American Library Association (ALA). However, in spite of their similarities, there are many basic differences between libraries and special collections. A special collections repository contains a select group of records, most often unpublished and many times unprocessed. Inferences made from manuscript/archive use records therefore would be more amorphous than those made from library circulation records.

The question of confidentiality of library use records is a recent phenomenon arising with the ferment of the Nixon era. Before then, use records were consigned to dimly lit rooms and dingy file cabinets only to be frantically resurrected when statistics needed to be compiled. In 1970, however, United States Treasury
agents attempted to survey circulation records at Milwaukee Public Library in an apparent effort to find out which patrons read books about explosives. After an initial denial of the request, the city attorney released the records to the Treasury Department. On July 11, 1970, Internal Revenue Service agents attempted to look at circulation records at the Atlanta Public Library, searching for patrons reading "militant or subversive" books. The library's board of trustees denied the agents access to the records.2 There were also attempts in 1970 to search circulation records in Cleveland, Richmond, and California. In most of these and other reported attempts, there was no formal court-ordered process or subpoena.3

The threat of government agents brought an immediate and strong response from the Executive Board of ALA which accused the government of "an unconscionable and unconstitutional invasion of the privacy of library patrons."4 The ALA Intellectual Freedom Committee drafted a policy on the confidentiality of library records which was adopted by the ALA council in January 1971. The policy recommended three main tenets for adoption by libraries: implementation of a policy which recognizes the confidentiality of circulation and other records which identify the name of the user; withholding designated records from state, local, or federal governments unless a "process, order or subpoena" is served; and resistance to such a court order until a "proper showing of good cause has been made in a court of competent jurisdiction."5

This action served to establish guidelines, but even a change in administrations did not lessen the demand for access by federal agencies. In October 1974 the Mesa Public Library in Los Alamos, New Mexico, reported FBI agents had requested access to circulation records. The request was denied.6 In March 1975 the city editor of the Odessa (Texas) American asked to see the circulation records of Ector County Library. The ALA's general counsel entered subsequent litigation on the dispute arguing that "disclosure of
circulation records would constitute an invasion of privacy and that it would have the effect of limiting a patron's freedom to read." The attorney general of Texas found for the library and stated that "information which would reveal the identity of a library patron in connection with the object of his or her attention is excepted from disclosure." 7

As recently as 1979 the question of access to library records was still alive and disputed. An incident in Massachusetts highlighted the problem and also mirrored the changing temper of the times. The Boston Globe reported on March 15, 1979, that the librarian of the Goodnow Library in Sudbury, Massachusetts, had refused access to police who apparently were trying to trace the last reader of a book which contained a small amount of marijuana. The library's board of trustees, after the incident, adopted guidelines based upon those of the ALA. 8

Although the reasons for access to circulation records might have changed somewhat, it is evident that librarians and their professional organization have taken a strong stand in defense of the individual's right to privacy. This was expressed eloquently in 1975 by I. M. Klempner at a joint meeting of the ALA Intellectual Freedom Committee and the Information Science and Automation Division:

It should be clearer now that whereas the individual's right to privacy is an all-pervasive and guaranteed right under the U.S. constitutional form of government, society's right to know particularly of private, i.e., personal, information is a delegated right, is a right narrowly defined and to be narrowly applied. 9

Possibly because of the differences in the situations or maybe because, by nature, archivists are a more subdued lot, the response from archivists to the question of access to use records has been muted. Although state and federal laws governing access to
public records affect use records in many institutions, there have been few incidents involving access to use records at an archival or manuscript repository.10 Archivists concerned with personal privacy have interpreted the Privacy Act of 1974 mainly in terms of the confidentiality of case records and personal data included in archival records rather than their self-generated records.

The Code of Ethics for Archivists proposed by the Society of American Archivists (SAA) takes a more liberal view on access to use records than does ALA. Section VIII in the commentary on the code, Information on Researchers and Correction of Errors, states that "in many repositories public registers show who have [sic] been working on certain topics, so the archivist is not revealing restricted information. By using collections in archival repositories, whether public or private, researchers assume obligations and waive the right to complete secrecy."11 The latter statement stands in almost direct contradiction to the ALA's policy on the confidentiality of library records. The ethics committee was not, it is assumed, thinking in terms of government records, but only individuals seeking further information on their specific topic, and possibly was not thinking in terms of deriving this information from use records.

Archivists seem to have a Jekyll and Hyde approach to the problem of confidentiality of use records. The public examination of the National Archives by the joint American Historical Association-Organization of American Historians' (AHA-OAH) Ad Hoc Committee to Investigate the Charges Against the Franklin D. Roosevelt Library contributed to this schizophrenic character. A perusal of the Final Report of the committee makes it quite evident that historians believe that it is the duty of archivists to inform researchers of all known comparable research being carried out. This makes the archivist the arbiter between personal privacy and the public's right to know. To promulgate this information means that use records will have to be divulged.
The ALA believes in the complete sanctity of use records, the AHA wants complete identification of all parallel research projects, and the SAA holds a tenuous middle ground. The proposed Code of Ethics suggests that archivists should "endeavor to inform users of parallel research by others using the same material" but not at the expense of an individual's privacy. The University of Virginia has altered its registration form so that the researchers have an opportunity to decide whether or not they want to make their research project public and allow investigation of their use records. In the year since this form has been used, only two applicants out of 725 have requested confidentiality. This is a partial answer, of course, but does help to extricate archivists from becoming both judge and jury.

Maybe, though, archivists have been too cowed by implied compulsion to reveal all that is in repository records, both institutional and personal, and have not paid enough attention to personal privacy. Over the past five to ten years, archivists, in response to increasing pressure from donors and institutions to improve security measures, have required more detailed personal information on registration forms. While applauding the improved security, archivists sometimes forget about the responsibility of keeping these records confidential. The Ethics Committee has attempted to resolve the conflict between personal privacy and the public's need to know, but archivists should profit from the experience of librarians.

Requests for information from use records must be evaluated on an individual basis after archivists seek advice on the legal status of their own records. There should be no problem with the patron who wants to know if there are others working on John Dos Passos. Archivists can check use records and report the answer. However, if a patron wants to know what specific researcher is working on John Dos Passos, or what materials so and so looked at, archivists must be more careful. A form cleared through appropriate legal
authorities that allows dissemination of information is fine, but archivists confronted with a request which might encroach upon personal privacy must study it, discuss it, and have a policy on which to fall back.

NOTES

1"Circulation" or "use records" in this context refers to any form or correspondence which documents what materials a patron used or intends to use.


4Ibid.

5Ibid.


10During the 1976 presidential campaign, a number of patrons requested access to use records for Jimmy Carter's gubernatorial records. The Georgia Department
of Archives and History determined that the records fell under the Georgia Open Records Act, which opened all records not specifically exempted from coverage, and that use records were therefore available for inspection. As a result of this decision Republicans, Democrats, and journalists were able to ascertain which of the Carter gubernatorial papers had been used by the others (Harmon Smith, Georgia Department of Archives and History).