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Parish of Trinity Church

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ACCESS TO CHURCH RECORDS:
TRINITY CHURCH, AN EXAMPLE*

Phyllis Barr

One of the constant problems facing archivists is the tension created between the twin goals of access and the right to privacy. As a result of state and national freedom of information acts and debate in the post-Watergate era about sunshine laws, this problem has come into the forefront of discussion in recent years. Although private institutions are not subject to these laws, neither have they been immune from questions regarding access. For the church archivist, the conflict between making records accessible and, yet, protecting the privacy of the church’s members can pose real dilemmas. It is necessary, therefore, to formulate policies to alleviate this tension while at the same time respecting the needs of historians and the privacy of individuals. Archival policies developed at Trinity Church can be modified for almost any parish and probably for hospitals and schools and other institutions dealing with records of private persons.

The scope of the Trinity Church Archives is different from those of many other church archives, primarily because the church has had eleven chapels over the years and has also been the owner of a considerable portion of lower Manhattan (New York City). Chartered by King William III of England in 1697, Trinity is the oldest Episcopal parish in Manhattan. Not only has the church built many chapels and established a variety of institutions and programs, but it has also aided fifteen

*This article is based on a paper given at a meeting of the American Society of Legal History in Washington, D. C., September, 1982.
hundred parishes and other institutions around the world. The archives reflects Trinity's unique and very special history. It contains minutes of meetings; real estate records from the seventeenth through the twentieth centuries; financial ledgers; architectural renderings and drawings; maps; legal case records dealing with the title to Trinity's property; correspondence; diaries; sermons; prints, photographs, etchings, and newspapers; printed materials; and, most important for the question of privacy, official acts records (baptismal, confirmation, marriage, and burial records, as well as lists of communicants and pew deeds).

Diverse groups use the archives—including genealogists, the general public (for copies of baptismal, confirmation, marriage, or burial records), scholars, and journalists. In the past few years, the proportion of scholars to genealogists and members of the general public has shifted. More researchers are using the records for undergraduate papers as well as master's theses and doctoral dissertations. In addition, writers of both fiction and nonfiction often turn to the archives for information about a particular period.

Until five years ago researchers were for the most part offered only limited access to the archives. They were not permitted, except in special cases, to do genealogical research, and it was necessary to obtain permission from the rector to do any other kind of research, including doctoral dissertations or articles. If people wanted copies of baptismal, confirmation, marriage, or burial records, they were able to obtain them by writing or calling. No identification—personal or familial—was required for the person requesting such information.

In 1978 a consultant archivist joined the staff, and in 1980 the office of Parish Archives and Recorder was established. After consideration of the policies of various other institutions, it was decided that the archives should be open to the public, although it was felt that Trinity in general and the archives in particular had a duty to protect the privacy of the members of the church. The office of Parish Archives and the rector's office have formulated a policy which, to some extent, is standard in most repositories. The general rule is that all
records which are in the public domain according to the new copyright law are open to the public regardless of their nature. Records that are not in the public domain have various restrictions. For example, researchers may not examine vestry minutes, legal records, or financial records without permission from the office of the rector. If a person is interested in obtaining baptismal, confirmation, marriage, or burial records or information, he must write to the archives or come by in person and indicate his relationship to the individual so named in the records. Obviously, it is impossible to check the background of anyone requesting this information and, therefore, it is necessary for the information given by researchers to be taken on faith.

Every researcher must fill in a "Use of Archives" form each day he uses the archives, indicating his professional, school, or other affiliation, and the purpose of his research. Individuals doing genealogical research fill in a separate, less detailed form. Researchers are told that they must be aware of their own of the copyright laws and the laws of libel. Those requesting photocopies of material are given an additional form to complete, which explains the copyright law in relation to photocopying. If a researcher plans to publish materials from the archives, permission must be obtained and credit must be given the archives in the published work. The policies of the archives are explained in a brochure, which is given to all researchers.

There are also rules for the staff who wish to use the archives. No member of the staff, except for certain members of the executive and senior staff, may see the restricted records without permission from the rector's office. All members of the staff using the records must fill in a form and are held responsible for the records while they are in their possession.

The parish has also established some rules and policies for particular situations. For example, information is not given to adoptees in most cases. One adoptee who sought information on place of birth knew the name of both parents but did not know the date of baptism, in what chapel, or by whom. In this instance, it was decided to give the information. If an adoptee were
to write in requesting other information—such as the name of the parents or date of birth—it would not be given, because Trinity feels the privacy of the parents should be protected.

In addition, the Parish Archives does not respond directly to questions from lawyers. Those involved in probate and other cases are informed that it is necessary for them to obtain a letter from the individual involved giving permission to send material either directly to that individual or to the lawyer. This is done to protect the privacy of the individual. One unusual situation involved a visit to the archives from a man who had a jailed friend about to be deported unless it could be proven that the friend was the father of a child baptised in Trinity Church. The man wanted a copy of that baptismal record, which stated father unknown. Apparently the mother was unwilling to recognize the paternity of the child for personal reasons. The archives refused to give a copy of the record to the man who was planning, he said, to fill in the father’s name himself. The archives also had a hypothetical request from an historian who wanted to know what the response of the archives would be if he wished to do a study on illegitimacy rates in the last ten years. He was told that he would not be permitted to see the baptismal records, because it would be an invasion of the privacy of the individuals so named, but that the archives would be willing to tell him how many fathers unknown were listed.

The archives also has access policies regarding oral history interviews. After an interview has been processed, a copy of the transcript is sent to the interviewee who then has the opportunity to make sure that there are no errors. After the corrections have been made, a legal agreement is sent in which one can indicate when the interview may be made available to researchers and whether there should be any restrictions on access. The agreement is based in part on those of other institutions, although it has been reviewed by Trinity’s lawyers. This release also assigns and transfers to the parish the exclusive right to publish the materials and all other rights to use and sale of the materials, including, without limitation, the exclusive
right to copyright the materials in the name of the parish in any country or countries and to renew such copyright. The parish does permit the interviewee to publish any part of the material, provided that the interviewee gives the parish at least thirty days' notice.

One of the considerations in drawing up this agreement was the necessity of not only protecting the privacy of the interviewee but also that of anyone mentioned in the interviews. Even if the interviewee gives the parish unrestricted rights to use the materials, the archivist does have the right to close portions when they deal with living people to whom access might prove a problem. Similar procedures are followed for gifts of papers to the Parish Archives. A legal agreement is drawn up between the donor and the parish, and the gift is then accepted formally by the vestry of Trinity Church. The donor has the right to restrict portions of it for particular periods of time.

During 1981 when this article was first conceived, a number of church institutions were canvassed as to their policies. It was discovered that the churches questioned did not have any policies. Most did not have archivists and did not permit researchers to do genealogical research in the office. Information about baptisms, confirmations, marriages, and burials was sent to people in answer to telephone or written queries. Several of those interviewed stated that they realized that they should have some policies and would take this up with their rectors or vestry.

A questionnaire mailed early in 1982 to each of the 110 Episcopal dioceses in preparation for a paper on Episcopal church records indicated some of the problems facing churches on both the diocesan and parish level. Among the questions were: (1) do you have a diocesan archives; (2) do you have a professional archivist on the staff; (3) how many of your parishes have established archival programs; and (4) do you have a policy regarding the retaining of records?

Of the seventy-eight who responded, fifty-one said that they had established archives, but only nine had professional archivists. Seven had volunteer archivists with professional training; two had temporary archivists;
and two had librarians with archival training. Only forty-seven said that they had policies regarding retention of records. Thirty-eight of the respondents have given parts of their collections to other institutions such as universities, state libraries, historical societies, seminaries, and the Archives and Historical Collection of the Episcopal Church in Austin, Texas. These have usually been given as loans and not as outright gifts. Most of the people in charge of records at diocesan or parish levels are registrars, historiographers, or parish recorders. In other cases, members of the clergy are responsible for records.

Given the answers to this questionnaire as well as the telephone survey, it is not surprising that most church institutions do not have established policies regarding access. In addition, diocesan and parish archives are consulted infrequently by historians. Whether this is because Episcopal and Anglican church records are not of great interest to social historians or whether historians simply are not aware of the wealth of material lying undisturbed, it is hard to say. A greater awareness and use on the part of historians would undoubtedly lead many of these institutions to formulate very needed policies.

One of the most important things that archivists could do is to formulate written policies and regulations so that patrons will not think in any way that they are being discriminated against or that rules are being made solely for them. For this reason, Trinity printed a brochure that gives all its policies in addition to other information on the archives. This has been extremely useful in preventing potentially difficult situations.

As previously noted, there has been a spate of articles written recently in the scholarly journals on access to private records. These deal in theoretical terms with some of the practical problems which have been discussed here. In addition, numerous articles have appeared in newspapers and on television dealing with the so-called sunshine laws. The Freedom of Information Act (U.S.) states that all records are accessible, except records or portions of records which fall within one of eight categories--among them, records
to which access is denied by the government; those exempted by state or federal statute; those that would result in unwarranted invasion of personal privacy, affect collective bargaining, or involve trade secrets. The question, both for the government and private institutions, is what is unwarranted invasion of privacy? Unfortunately, there is no hard and fast rule.

New York State also has a freedom of information law which states that "an agency may withhold a record, or portions thereof, when disclosure will constitute an unwarranted invasion of personal privacy.... Each individual has the interest of protecting his or her personal privacy against unreasonable disclosure...." It also specifies that the right to privacy is not absolute but relative. One section deals with genealogical records; it notes that rights of access to vital records, such as births, deaths, and marriages, are not governed by the freedom of information law but rather by the public health law and the domestic relations law. Each of these statutes states that access must be granted upon showing of a *proper purpose*, but the law does not define a proper purpose. Although, as noted above, these laws do not govern private institutions, they do pose problems that such institutions face.

In the case of a church, such as Trinity, the archivist would have to be concerned not only with the right to privacy of its staff members, but those who are communicants of the church and who have been baptised, married, or buried there. This raises a particular question in regard to clergy correspondence. Should clergy records comprised of letters to and from communicants be even given to an archives? If so, for how many years should they be restricted? Many of these letters deal with personal problems such as divorce, abortion, deaths in the family, and money matters. How can historians be served so that they will know what issues people faced at a particular time while at the same time the privacy of those who wrote to members of the clergy will remain protected?

It is in the interest of the archivist, the historian, and all researchers to preserve the past and to make it as accessible as possible without invading
anyone's privacy. This involves a great deal of care, attention, thought, and consultation with lawyers who are familiar with privacy and copyright laws. Lawyers familiar with probate and adoption laws should review a church's archival policies on access in order to make sure that there is no infringement on the rights of individuals involved. It is also incumbent upon historians and other researchers to make themselves familiar with the copyright law, particularly those portions dealing with public domain and photocopying.

There is undoubtedly tension between historians and archivists, although many archivists are also historians and, therefore, are very sympathetic to the needs of other historians. For example, the archivist-historian can understand very well the desire of other historians to have access, yet, the archivist has a certain responsibility to his institution, and therein lies most of the problem. Each institution has the right to set access policies and procedures, and the archivist is then given the daily responsibility to implement them. Each institution also has the right to control the dissemination and the use of any materials in the archives, as long as it does not conflict with any law.

Historians should be aware of the problems facing archivists and understand that archivists have certain duties and responsibilities which go beyond the historian's right to know. With care, attention, and cooperation, it is possible—as demonstrated by the Trinity Church Archives program—to create a balance of these interests.

NOTES


2 Robert Rosenthal states, "The scholar's access to the record is not a right, but is determined by his needs and the needs of a democratic society. His access
to public records is the same as any other citizen's." Another problem that archivists face is the matter of the right to privacy of third parties. Rosenthal, "Who will be Responsible for Private Papers of Private People? Some Considerations from the View of the Private Depository," in The Scholar's Right to Know versus the Individual's Right to Privacy: Proceedings of the First Rockefeller Archive Center Conference, 5 December 1975 (Tarrytown, New York: Rockefeller Archive Center, 1975), 3–6.

3 John Lockwood says that one of the criteria the archivist should keep in mind is what documents involve the home and family life of an individual donor or a staff member of an institutional donor. Lockwood, "Private Papers and the Doctrine of Delayed Retribution," in The Scholar's Right, 11–19.

4 Norman Graebner believes the scholar's right to know mandates the retention and preservation of records beyond the period that they are needed for legal requirements, but the scholar must also respect the privacy of individuals and correspondents. Graebner, "History, Society, and the Right to Privacy," in The Scholar's Right, 20–24.