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The Public's Right to Know and the Individual's Right to be Private

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"If information is power, its possession should not be monopolized by the state.... But... the government that gives away information... might be taking away another man's privacy. Man can be manipulated by being kept in the dark or by being exhibited in the open. How these two rights are reconciled will be one of the critical constitutional tests of the cybernetic age."

The central archival concern is the preservation of the record and access to that record. If archivists wish to be taken seriously as professionals, they must actively participate in resolving the conflict between the public's right of access to part of that record and the right of the individual to privacy and the protection of confidentiality. Having this in a code of ethics is only a first step. Resolution of this conflict is made necessary by research in current history, the size of twentieth century collections, and the data being collected in state, federal, and private data banks.

The tension between the right of the public to know what the government is doing and the right of the individual to control his public identity is not computer-generated. But the computer's ability to store and retrieve so much information about so many people has increased the potential for governmental abuse. Thus, the development of a conception of privacy to check that potential abuse has advanced in the United States and Western Europe.

It may have been Virginia Stewart who first made the archival profession aware of the rich source of documentation which existed in state agency case files. The major source of documentation of non-elite groups probably exists in governmental case files and data bases. Technically, these data bases can be linked one with
another, creating a wealth of material for social and historical research and also making Harvard law professor Arthur R. Miller's "womb to tomb dossier" a reality. The data bases will not disappear; entitlement programs alone will make this impossible. Therefore, there is a compelling need to ensure the protection of privacy and limited access and control over these files. For, in William O. Douglas's words, "The right to be left alone is indeed the beginning of all freedom."³ This means freedom from government and researchers alike.

In a paper presented to the Society of American Archivists, Gerald Grob stated, "...the tendency of most scholars has been to make their claim for access take precedence over all other rights, a position that is both irresponsible and dangerous. A system that rests solely on good intentions is, in effect, no system; there are few individuals who would admit to harboring anything but the best of intentions. Consequently, it is imperative that [historians] recognize that the interests of different groups, each with different concerns, must be taken into account."⁴

The problem of access and protection of privacy and confidentiality, as well as the future of the historical record, is compounded by the existence of many state and federal data bases outside of the usual archival holdings. These data bases have remained in the offices of creation because the archives or records centers have not wanted them, or because the creating agencies did not want to give them up. What is of crucial importance here is that scholars have been getting and are likely to continue to get access to these data bases. The desire to protect privacy and confidentiality is one of the motivating factors which encourages the creating offices to keep control of these records. Archivists should begin to think about this problem because it is likely that these records will be kept outside of archives and records centers. Cooperative arrangements must be developed with these creating offices to establish appraisal, description, and access policies, or the central concern for the preservation of the future historical record will be lost. David Flaherty has documented these practices at the federal and international level, and Alice Robbin has
documented these practices in the fifty states. 5

Archivists must not lose the opportunity to help resolve the question of whether there is a point in time when the right to know overcomes the need to protect confidentiality. The time is right to become involved, because the current preoccupation of the privacy debate and the use of government data bases focuses on current access and not on long-term preservation and access. The time is over for ad hoc decisions on access, both for the protection of the repository and for the protection of privacy rights of individuals archivists are ethically and legally bound to uphold.

Each repository should establish formal record-keeping practices, including published access policy and a set of procedures for access to restricted records, and an appeals procedure for access which has been denied. The repository should keep records on who is allowed to use restricted records, and why, and who is denied these records, and why. Archivists must demonstrate fair, rational, and even-handed application of the policy. It is one thing for archivists to be told to change; it is another to be told one is irrational, capricious, and negligent. At the same time, the researcher should be requested to describe his project and state why the need for access to certain confidential records or papers and to be accountable for the use of that information. These procedures are used in repositories across the United States.

Integral to the notion of proper archival management of records, and especially those which require decision making, is the necessity to demonstrate a pattern of practice which shows care and concern. It will be important for the profession to document practice and to share that documentation, for archiving, like the writing of history, is a collective enterprise.

NOTES


