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Privacy Issues Affecting Lesbian and Gay Archival Collections

Diane Shannon

Introduction

Originally, I planned to discuss more broadly in this paper issues of access in lesbian and gay archives. Not only did I intend to research and write about the issues surrounding the confidentiality of information contained in those archives, but also the benefits and losses associated with cooperative agreements between those archives and local community groups, and between the archives themselves. Additionally, I planned to discuss the ways in which a lack of funding at smaller lesbian and gay archives affects their operation (hours of operation, the materials and expertise they use, climate control, etc.). My mechanisms for analyzing all of these issues were to be readings combined with information from responses to a survey I sent to the managers of lesbian and gay archival collections across the United States.
As I became involved in my research, however, I realized that in order to do any one of the above-mentioned topics justice, I would have to choose one as the focus of my research. I became highly interested in the problems lesbian and gay archives face when deciding what types of restrictions they should place on some of the documents embedded in the collections they acquire. My initial readings showed these problems to be particularly troublesome for lesbian and gay archives because of the prejudice that still exists towards sexual minorities.

Once I had decided the main focus of my research would be issues surrounding privacy and confidentiality in lesbian and gay archives, I began studying articles in legal journals about the ethical issues surrounding outing\(^1\) and the ways in which the invasion of privacy tort does not protect those who are outed. I focused on those legal debates because statements made in many of my readings and some of the responses to my surveys suggested that the managers of lesbian and gay archives often side with proponents of outing in their arguments for providing access to private information. This is not surprising, since many of those managers are homosexuals themselves and, as a part of that minority, are likely to have adopted some

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of the positions advocated by many participants in the gay rights movement. By studying the ethics of outing through articles found in legal journals, I hoped to provide a framework for thinking about whether or not the concept of outing is ethical, and how archivists can act ethically in their management of materials that could out closeted homosexuals.

Further analysis of the responses I received to my surveys on access to lesbian and gay archival collections helped me to understand better the various ways archives are dealing with (or failing to deal with) privacy and confidentiality issues in the management of their lesbian and gay collections. My readings of archival literature relevant to the privacy issues in archives helped me compare what is generally being done in the archival profession as a whole to manage sensitive information in archives with the views on access to private information held by the respondents to my survey.

Additionally, one archivist working at an archives documenting Acquired Immune Deficiency Syndrome (AIDS) discussed on the Archives Listserv (an e-mail discussion group for archivists) his views about the restrictions that should be accorded records containing potentially damaging personal information; and I found articles explaining the problems a couple of archivists have faced in managing lesbian and gay collections. I used this information to help me further consider how archivists managing collections of lesbian and gay papers should develop access policies for those records.
Finally, I searched readings from journals and books about issues of access in archives for possible solutions to the problems lesbian and gay archives face as they attempt to manage documents containing information about the sexual orientation of individuals who may not be out. The final portion of this paper analyzes the benefits and problems inherent in the many solutions that have been posed to help archives deal with documents containing sensitive information, and offers possible guidelines for lesbian and gay archives to use when managing such materials.

Archives, the Privacy Tort, and Debates Surrounding the Practice of Outing

Making sexuality-related collections available for use while attempting to solve the privacy problems to the satisfaction of all parties means that the archivist must navigate a thicket of legal questions, ethical debates and processing demands unequalled in many other collections.²

As is the case with the privacy issues surrounding all collections of private papers containing sensitive

information, those managing lesbian and gay archives cannot rely upon existing laws to find their way out of the above—mentioned thicket. The decisions that must be made by archivists about the levels of access that should be provided to such materials cannot be made by studying federal and state privacy acts (since those only cover the management of government records), but they may be reached with the help of legal interpretations of the privacy invasion tort.3

What lesbian and gay archives should do with records containing information which could reveal a closeted homosexual's sexual orientation is a question closely linked to recent debates in the gay community and legal circles of the United States surrounding the practice of outing. Because of the discrimination lesbians and gay men face, the debates in the American gay community about whether or not outing individuals is an ethical practice are debates intimately linked with the problems lesbian and gay archives

are grappling with as they try to manage access to personal information contained in their collections.

Some of the co—workers of one archivist, Mary Bowling, argue that by placing restrictions on documents containing information that could out individuals, the archives they work for is harming the gay community. They believe such restrictions give the impression gays should be ashamed of their homosexuality. Bowling disagrees, however, when she writes:

I would argue empathetically that at NYPL it is just the opposite: we are restricting specific things to protect individual privacy, and not to do so would be homophobic.\(^4\)

She believes that, by not being careful to protect the privacy of the individuals whose sexual orientation is disclosed in the repository’s records, the NYPL (New York Public Library) would be harming gays. The debate between Ms. Bowling and her co—workers is echoed in the responses I received to my surveys on access in lesbian and gay archives,\(^5\) and in legal articles I read in law journals which discuss the ethics of outing and the ability of the tort covering invasion of privacy to protect those who are outed.

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\(^4\) Bowling, 11.

\(^5\) I will discuss later in this paper the responses I received to one question I posed in those surveys. In that inquiry, I questioned survey participants about the restrictions their repositories use on records containing sensitive private information.
Because those managing lesbian and gay archives are often gay themselves, and because their interest in working in lesbian and gay archives is often politically motivated (out of a desire to provide positive role models for other gays, and to educate heterosexuals about gay culture/history), archivists at such institutions are likely to support open access to the records they manage even though those records contain information that may out a closeted individual. As members of the gay community themselves, it is not surprising that many of these archivists support a viewpoint on outing that has become common in the gay community as a whole.

I believe the personal stake held by these archivists in the success of the gay rights movement makes their understanding of the ethical and legal issues surrounding outing important to their ability to decide wisely what should be done with sensitive materials in lesbian and gay archives. As a graduate student studying library science wrote about the statements of purpose developed for lesbian and gay archives, the statements:

...are much more than policies about the physical collection of documents, they are political

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statements, calls to action, requests and demands for social change.\textsuperscript{7}

Those who manage lesbian and gay archival collections, because they usually see themselves as supporting the gay rights movement, need to "step outside" of the viewpoints many of them hold about the ethics of outing in order to objectively view the ethical issues inherent in providing access to records containing information that would out others.

One author of an article on outing explains the ways in which that practice moved from being something committed by only a few within the gay community to a much more common practice backed by a fairly widely—held set of political views. Outing was introduced in the United States by a militant faction of the gay community in the 1980s who were pushing for increased funding to fight AIDS. They believed making the public aware of prominent gays would encourage funding to combat AIDS, since some of the most vocal opponents to legislation that would benefit gays were said to be gay themselves.\textsuperscript{8}

\textsuperscript{7} From page 10 of an unpublished paper by Lois Lloewen entitled "Presentation on Lesbian/Gay Archives," (March 1994); a paper read for a presentation at the School of Library and Information Studies at Dalhousie University in Canada. Note: My copy of this paper was sent to me via e-mail by Ms. Lloewen. The page numbers given in my footnotes to information taken from her paper, therefore, are numbers from my printout of that e-mail. They do not necessarily coincide with the page numbers on the original paper.

\textsuperscript{8} Moretti, 858.
Though the practice of outing originally was one used against prominent gays, no gay person today is safe from it. There is now a belief held by many gay men and lesbians that all homosexuals should be out and those who are not are harming the struggle for gay rights. One writer describes this newer, more encompassing view of outing when he writes that its proponents assume all homosexuals owe an obligation to other gays to come out.9 He explains that this is believed by many proponents of outing to be true even for gay people who don't participate actively in gay life. Another author notes that "nonactive" gays are believed by them to benefit from the advances made by more outspoken members of the gay community and to, therefore, have a responsibility to eventually "repay" that community by coming out themselves10

Most of the articles on outing that I read from legal journals, however, argued that the practice is unethical and does more to harm the gay rights movement than to help it. The authors of those articles emphasized the harm often done to those who are the victims of outing who attempt to obtain settlements to help compensate them for the harm they have endured.

The arguments these lawyers make are worth the consideration of archivists who manage lesbian and gay collections because, even though archivists are not usually

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9 Ibid., 885.

10 Pollack, 720.
implicated in cases involving invasions of privacy, they should be concerned that the work they do is conducted in an ethical manner. Those archivists managing such institutions who are themselves gay should further be concerned that their actions, if they are not careful, could greatly harm other members of the gay community and damage the very political movement they wish to support.

The arguments advanced both in support of and in opposition to the practice of outing are summarized by David H. Pollack in his article "Forced Out of the Closet: Sexual Orientation and the Legal Dilemma of 'Outing" when he writes:

Those in the gay community who view outing as a political tool to combat AIDS and homophobia see their action as an affirmative political duty arising out of an obligation to fellow gay men and women. Outing for them is not simply a choice between competing alternatives, but an ethical imperative, akin to a religious conviction. Others, primarily those in the media, view the question as a matter of situational morality, requiring a case-by-case analysis of the particular circumstances, rather than a per se rule. Still others argue that the right to


privacy with respect to matters of sexuality is absolute, and that exposing someone's sexual orientation is morally wrong, regardless of the circumstances.\textsuperscript{13}

The advocates of outing say the practice serves three purposes. First, it is often used to expose the illogic of government policies that discriminate against gays and the hypocrisy of gay officials who support such policies. Secondly, the outing of individuals is said to provide positive role models for other gays\textsuperscript{14} and "ambassadors to mainstream America." Lastly, it is argued that outing helps to break down the stigma surrounding homosexuality by making it appear to be more commonplace.\textsuperscript{15}

Those against outing often argue that the "public disclosure of private facts can result in severe psychic distress" because such an act "assaults the person's individuality." Studies support this view by showing that the outing process is often painful even when participated in

\textsuperscript{13} Pollack, 716.

\textsuperscript{14} One problem with the "role model argument" is that if "gays need role models, so does every other troubled minority, such as AIDS patients, rape victims, and victims of child abuse." (Elwood, 773) Such an argument could be used to justify invasions into the privacy of individuals in all of these groups.

\textsuperscript{15} Elwood, 747-748.
voluntarily and that "it stands to reason that forced disclosure would be far more traumatic."\textsuperscript{16}

Other arguments advanced against the practice of outing state that it harms its victims because disapproval of homosexuality in our society makes the social pressures for gays to conform very high;\textsuperscript{17} "without a viable right of informational privacy, the danger of stultifying free thought is great."\textsuperscript{18} Also,

...by chipping away at privacy rights, gay activists may cause setbacks in other areas in which they still desire privacy, such as in mandatory AIDS testing and reporting.\textsuperscript{19}

\textsuperscript{16} Ibid., 763.

\textsuperscript{17} Though some would argue that the acceptance of gays in our society has increased enough in recent years to make concerns about discrimination against homosexuals unwarranted, recent studies do not support this view. Pollack cites a 1990 Roper survey in which fifty-two percent of the respondents replied that they would not want to work with gays, and twenty-five percent of those "strongly object" to working with homosexuals; twenty-five percent of survey respondents replied that they believe it should be legal to keep gays out of jobs and housing; thirty-five percent admitted to being uncomfortable around gays; thirty-three percent replied that they avoid places where gays may be present; and forty-nine percent stated that they believe AIDS is causing unfair discrimination against gays.

Also, in Broward County, Florida where an estimated twenty-five percent of the population is gay, a vote in 1990 to pass a human rights amendment preventing discrimination based on sexual orientation failed by sixty percent. (Pollack, 733).

\textsuperscript{18} Pollack, 766.

\textsuperscript{19} Ibid., 768.
Pollack further states that outing an individual takes away that person's autonomy (their right to define who they are as a human being) and creates serious possibilities that they will be separated from their family and friends as a result of their homosexuality being made known.\(^{20}\)

Besides some of the reasons stated above, the writers of the legal journal articles I read on outing gave several more reasons why outing harms those whose homosexuality is exposed and damages the gay rights movement. Rather than making outing an acceptable form of political protest, they argue, it should be considered by the courts to be a punishable invasion of privacy because it takes away from gays one of the few legal weapons they have.\(^{21}\) It often harms people who are struggling to define their own sexual identity. They are denied the chance to sort out their own feelings and beliefs for themselves and must, additionally, sometimes watch their acquaintances and loved ones become the objects of public ridicule. Victims of outing also come to be judged by "ugly stereotypes" rather than their individual strengths.\(^{22}\) Several authors further argue that the belief that outing helps to change positively public attitudes towards homosexuals has no supporting evidence. One of those authors supports this argument by comparing the struggle

\(^{20}\) Ibid., 722.

\(^{21}\) Ibid., p. 732.

\(^{22}\) Moretti, 866.
for gay rights to the struggle African Americans have had in the United States to obtain equal treatment, and by mentioning that racism is still pervasive in our society, even after thirty years of civil rights laws.\textsuperscript{23}

So, it can be seen that outing, by taking away the rights of individual gays to protect themselves from harm and develop their own sense of identity, does little to advance gay rights. Furthermore, unlike other forms of political protest, the damage done to the victims of outing is irrevocable. (A person, once out, cannot choose to go back into the closet.)\textsuperscript{24} As one author states:

\begin{quote}
Under present circumstances, public disclosure can destroy lives while accruing only marginal gains for gay rights. The only lasting effect is the burden on the target.\textsuperscript{25}
\end{quote}

Archivists managing records containing information that could out closeted individuals should take the above—mentioned damage caused by outing seriously because, besides causing all of those problems, gays also have little legal recourse when they are victims of an outing. The tort available to individuals who wish to sue for defamation of character is ineffective in cases of outing because the proof of libel in such cases is unavailable to

\begin{footnotes}
\footnote{23} Elwood, 767 and Moretti, 897.
\footnote{24} Pollack, 749.
\footnote{25} Elwood, 767.
\end{footnotes}
those victims. One writer explains that, "The simplest defense against a libel suit is truth, and in the typical outing case, the allegations of the subject's homosexuality are true."26 Also, many courts will no longer recognize the imputation of homosexuality as slander because they believe that the stigma attached to homosexuality has diminished considerably as the gay community has become more visible and acquires more political power.27

Additionally, many victims of outings do not want to use the defamation tort because of the stigma our society attaches to homosexuality. For a lawsuit involving outing to be successful under the privacy tort, the plaintiff must be able to show that revelation of their homosexuality was a damaging revelation of a true fact. In contrast, for such a lawsuit to prevail under the defamation tort, the "fact" of the plaintiff's homosexuality must be shown to be an untrue statement, the dissemination of which injured his or her reputation. Even though court cases involving outing are seldom successful under the defamation tort, the majority of such lawsuits are actions for defamation because either the plaintiff actually is heterosexual; because they are homosexual and do not want to admit their sexual orientation by bringing a privacy action; or because they


27 Pollack, 732.
falsely believe that their chances of recovery of damages are better if they resort to the defamation tort.\textsuperscript{28}

Unable to effectively use the defamation tort in court against their assailants, victims of outing must resort to the privacy tort (a tort currently in operation in thirty-eight states and the District of Columbia\textsuperscript{29}). This privacy tort is commonly described as involving four requirements for cause of action: "1) public disclosure, 2) of private facts, 3) concerning a matter which would be highly offensive and objectionable to a reasonable person, and 4) which is not of legitimate concern to the public."\textsuperscript{30} In a rereading of this outline of the privacy tort, Ronald Wick, in his article "Out of the Closet and Into the Headlines: 'Outing' and the Private Facts Tort" states that:

A close reading of this definition reveals three issues relevant to the determination of an action when the matter disclosed is the plaintiff's homosexuality. The first issue is the extent to which the plaintiff must have kept his lifestyle secret in order to be able to claim that his homosexuality was a matter concerning his "private life." The second issue is whether the disclosure of one's homosexuality "would be highly offensive to a reasonable person." The third issue...is the extent to

\textsuperscript{28} Elwood, 749.

\textsuperscript{29} Ibid., 753.

\textsuperscript{30} Ibid., 754.
which the plaintiff’s homosexuality is "of legitimate concern to the public."  

Wick goes on to argue in his article that, the "private facts" and "legitimate public concern" portions of the tort "significantly undervalue the privacy rights of the victims of outing."  

John Elwood, in his article "Outing, Privacy, and the First Amendment", agrees, writing that the "public disclosure tort is...anemic" and offers almost no protection against outing.

The problem for gays with the "public disclosure" or "private facts" portion of the tort is that many homosexuals attend gay marches and rallies, even though there are many people in their lives they are not out to. Attendance by a gay man or a lesbian at such events does not mean that person has disclosed their homosexuality to everyone, or that they want to. Oftentimes, because the individuals they wish to keep the knowledge of their homosexuality from live away from where those gay rights marches and rallies are being held, gays feel relatively safe participating in them. In court cases against outing, however, participation in such events are likely to be seen as intentional public disclosures

31 Wick, 418.

32 Ibid., 416.

33 Elwood, 762.
by those individuals of their homosexuality and would more often than not cause them to lose such lawsuits.\textsuperscript{34}

It is less difficult to prove an outing case meets the second criteria Wick lists in his rereading of the tort than it is the "private facts" criteria. In many courts, it can be argued effectively that the revelation of one's homosexuality by another was highly offensive to the victim. Moretti explains that:

\begin{quote}
...when a plaintiff suffers severe social or professional repercussions as a result of the disclosure, the requirement is surely met. Accordingly, a disclosure of homosexuality could be considered highly offensive in that it exposes the individual to hatred, prejudice, and discrimination.\textsuperscript{35}
\end{quote}

Wick agrees that proving an outing was "highly offensive" to the plaintiff is not a problem because of the stigma many in our society still attach to homosexuality, and because sexual relations in our society are commonly held to be private.\textsuperscript{36}

The final criteria to be met in such a court case is that of proving that the outing was not of "legitimate public concern" and, therefore, newsworthy. In lieu of actually defining "newsworthiness," the Supreme Court has merely stated that the determination of whether or not information

\begin{footnotesize}
\textsuperscript{34} Wick, 886.

\textsuperscript{35} Moretti, 872.

\textsuperscript{36} Wick, 424.
\end{footnotesize}
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is newsworthy must take into account "community mores"—the mores of the local community surrounding the incident claimed to be an invasion of privacy. Wick argues that the vagueness of the term "newsworthiness" in the privacy tort, and the yardstick of "community mores" which is used to determine the relevance of a piece of information to "public concern" creates great problems for victims of outing who come from communities that are less tolerant of homosexuality than others. In those communities, he explains, victims of outings are likely to face juries that will not be sympathetic to gay plaintiffs. Such homophobic juries are much more likely to support defendants in outing cases by arguing that, according to their community mores, outings are newsworthy and, therefore, not a punishable invasion of privacy.37

Wick concludes his explanation of why the privacy tort cannot be relied upon to protect gay men and lesbians from outings when he writes:

Under these rules, only the most private of gay plaintiffs, with the most limited interaction with public life, with the most uncharacteristic of juries in the most socially conservative of states is likely to prevail.38

His argument should cause archivists managing lesbian and gay archives to pause and think about the damaging affects their sloppy handling of the confidentiality of information in their collections could cause individuals

37 Ibid., 425-426.

38 Ibid., 426.
whose sexuality is revealed in documents contained in those collections.

**Survey Responses and What is Currently Being Done**

In early March 1994, I sent twenty—two archivists working with lesbian and gay collections in the United States surveys asking them about their access policies. I received eight survey responses, and only four of those responses answered the question in those surveys that was most relevant to the privacy issues being discussed in this paper.

The list of individuals I sent surveys to was compiled in two ways. First, I posted a message on the Archives Listserv asking people who were members of that listserv and who worked at lesbian and gay archives to contact me if they were interested in completing my survey. The remainder of my contacts were obtained through the current membership lists of LAGAR, the Lesbian and Gay Archives Roundtable of the Society of American Archivists.

The archivists I sent surveys to are working both at separate lesbian and gay archives, and with lesbian and gay collections in archives. Some of them are employed at lesbian and gay archives such as the Gerber—Hart Library and Archives in Chicago, the Kentucky Gay and Lesbian Education Center, and the Stonewall Library and Archives in Fort Lauderdale, Florida. Other respondents work with (or have worked with) lesbian and gay collections that have either been transferred to an archives, or were originally accessioned at a more "mainstream" repository for inclusion
in its holdings. For example, one response I received was from a woman who briefly worked on processing a lesbian and gay collection at the University of Washington.

Along with my analysis of portions of the survey responses I received, I will include in this section of my paper information about the restriction policies of lesbian and gay archives that I have read about in articles. Also included will be portions of a posting one archivist working at the AIDS History Project sent the Archives Listserv, giving his views about how archives should manage sensitive records in their holdings.

The question in my survey that asked about the policies used to address issues of privacy in the archives survey respondents work in reads as follows:

How has your archives dealt with issues surrounding the confidentiality of its holdings? Please explain the reasoning behind the decisions workers at your archives have made regarding confidentiality. The small number of answers I received to this inquiry were very mixed.

One respondent from the Kentucky Gay and Lesbian Education Center (a collection currently being housed in a person’s home) stated that, because of the low use of its materials, the archival project has had few problems with confidentiality. He did state, however, that he tries to

39 See Appendix A of this paper for the entire survey. To view responses I received to that survey, see Appendix B. (A few of the respondents, rather than directly answering my questions, sent me responses in the form of newsletters, press releases, and brochures about the archives where they work. Those items are not included in Appendix B and are not discussed in this paper.)
control access "to certain files, such as the names of local
gay and lesbian businessmen and artists whose sexual
orientation may not be known to the general public."40

Two respondents seemed irritated by the "paranoid"
notion that personal papers revealing individuals as
homosexuals should be restricted. One respondent from
the Gerber/Hart Archives states "We do not encourage
stipulations on our materials. The notion is a paranoid
mentality that people have lamented for years." Another
archivist, writing from the National Museum and Archives of
Lesbian and Gay History (in New York City), commented
that those working at his institution "do not consider the
mere revelation of someone's homosexuality to be a
grounds for...placing restrictions on the materials."

The final answer to my inquiry about policies came from
the woman I mentioned earlier who has worked on
processing a couple of lesbian and gay collections for the
University of Washington's archives. She seemed genuinely
concerned about providing proper restrictions to the private
information included in those collections and explained in
her survey response that she wrote the people who might
be outed by a policy of open access to those materials to
"double—check" and make sure the archives "understood
their wishes."

Though this sample of four responses is far too small to
use to draw generalizations about the views of

40 See a copy of the survey response from the Kentucky Gay and Lesbian
Education Center in Appendix B. The remaining quotations I use in this
paper from the copies of responses provided in Appendix B will not be
footnoted.
confidentiality most archivists managing lesbian and gay archival collections hold, it does support the concern I raised earlier that at least some of those archivists have taken on the viewpoint proponents of outing hold towards the confidentiality of the knowledge of a person's sexual orientation. The fact that two out of the four responses I discuss above came from archivists who believe the concerns of some over possibly outing individuals through careless access policies at archives are "paranoid" would indicate that the belief that all gays should be open about their sexuality is alive and well among those who manage lesbian and gay archival collections.41

One Archives Listserv member (Bill Walker from the AIDS History Project in San Francisco, California) posted a message to the listserv in which he explained his view on what archivists should do when managing private

41 In an e-mail message the gentleman from the National Museum and Archive of Lesbian and Gay History sent to the Archives Listserv on 24 February 1993, he also stated that, to place restrictions on materials simply because "they included information that specific persons were Lesbian or Gay" would "imply that there was something to hide in this simple fact." The archives he works for at first tries to talk donors out of requests that their records remain restricted, but does comply with such requests if donors cannot be talked out of them. This compliance seems to be given more out of a sense of necessity, however, than out of an ethical concern that individuals not be outing against their wishes. He explains:

Ultimately we would comply with the request, regardless of any legal or ethical reasons for doing so. To do otherwise would make us appear to be "outing" people, and result in a serious public relations problem, which would do more harm than any temporary restriction would.

This information and quote is used with permission from the writer of that message.
information in "'recent' or 'current' manuscript collections (that is, the donor is alive or just recently dead). Concerning the management of personal correspondence in archives, he writes:

It is much clearer to approach this situation from an ethical perspective. If you write me a personal letter, you are giving me the letter itself and the information it contains. Your intent is clearly to communicate directly with me. There is an assumption between us that this is a private communication. Unless it's filled with personally revealing information, you probably wouldn't object if I wanted to share it with my mate. Regardless of the content, you probably would not be pleased if I decided to hand out copies of it to a bunch of mutual friends. And I'm certain you would be livid if you found out I had decided to display it in a glass case in the University Library. Depending on the contents of the letter you might have grounds to sue me.  

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42 Bill Walker to the Archives Listserv (17 February 1994). Used with the permission of Bill Walker.

43 Ibid.
He goes on to state that "the point, however, is not whether it's actionable; it really is a simple matter of right and wrong. I violated your trust, and more importantly, your privacy." Mary Bowling agrees with Bill Walker that lesbian and gay archives should be concerned about being careful not to out individuals who may wish to keep their sexual orientation private information. In her article "The Repository and the Responsibility to Restrict: Privacy Protection in Sexuality—Related Collections," she lists the different types of records contained in a lesbian and gay collection she works with at the New York Public Library as being records that present privacy/access problems. She explains that those "problem papers" (personal letters revealing a person's sexual orientation, personnel records of lesbian and gay organizations, requests for help made by individuals to lesbian and gay organizations, etc.) are "segregated and closed, usually for 75 years from the latest date in the file." Though those "problem papers" represent only five to ten percent of the lesbian and gay records

44 Ibid. I find Mr. Walker's comments particularly interesting in light of what I stated in section I of this paper—that outing is a dangerous practice because it makes it more difficult for gays to request privacy in areas other than knowledge of their sexual orientation, such as the privacy surrounding information about AIDS patients. Mr. Walker works at an archives that collects much information about gays, but which attempts to document the experiences of those people as AIDS patients. From his comments, it can be assumed that he believes the rights of those patients to keep personal information about themselves confidential should be of foremost concern to those working at the AIDS History Project, regardless of the patients' sexuality. It would be informative to research the impact the AIDS epidemic, and discrimination AIDS patients have faced, have had on the information access policies of lesbian and gay collections.
NYPL holds, Bowling comments that item level examinations in many of the series of those lesbian and gay collections are made to locate sensitive information that should be restricted.\textsuperscript{45}

The Lesbian Herstory Archives (LHA) in New York, on the other hand, tries to acquire collections with no restrictions on them. Failing that, they try to have only restrictions on use, not on access. As is the case at the National Museum and Archive of Lesbian and Gay History, workers at LHA try to talk donors out of requesting that measures be imposed on collections to protect the privacy of the information found in them. Barring that, they try to get as few restrictions as possible, for as short a time as possible. Their reason for complying with such restrictions is the same as the National Museum’s — because they do not want the public relations problems they believe would surface if they were appearing to out someone.\textsuperscript{46}

Some archivists managing lesbian and gay collections have not yet decided what to do with the "problem papers" (such as the ones Bowling discusses in her article) they find in the records they acquire. Sara Hodson, for example, in her article "Private Lives: Confidentiality in Manuscripts Collections," describes a problem collection the institution

\textsuperscript{45} Bowling, 6. Since the original writing of this paper, Mary ("Mimi") Bowling has e-mailed me to tell me that she is sorry she used the term "problem papers" in her 1990 paper. She writes that "The term is laden with negativity that I'm now more consciously trying to get away from." [Mimi Bowling to Diane Shannon (8 October 1994).]

she works at (the Huntington Library) has in its holdings. The collection consists of the papers of a Lord Kinross, who was himself a homosexual. He was a confidante to many other gays who "wrote openly" to him "concerning rather intimate details of their lives." She comments that many of the authors of the letters are likely to still be alive, and that they had no say in "this disposition of their correspondence." Ms. Hodson believes "their privacy cannot be ignored," but admits that she has not decided upon a solution yet to what should be done with those letters.\textsuperscript{47}

As the above discussion in this section shows, there is a great need for clearly articulated access policies for lesbian and gay archival collections — policies that respect the rights of individual privacy while they prevent such stringent restrictions on access that the value of those records to researchers is seriously diminished.

In the final section of this paper, I will discuss the various solutions that have been posed by archivists in archival literature to the problems of providing access to personal records containing private information. Those solutions will be examined to determine their usefulness to the management of lesbian and gay archival collections, after which I will present my personal opinion of what lesbian and gay archives should do to lessen the chances that closeted individuals will be outed because of the improper management of those collections.

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**What Can Be Done?**

Providing unlimited access to information in contemporary personal papers creates a risk of damaging living people and exposing to public view communications and revelations which were made in complete confidence.\(^{48}\)

As has been noted earlier in this paper, the damage done to individuals who are outing is often serious and irrevocable.\(^ {49}\) Because of this, archivists need to develop clear restriction policies for lesbian and gay collections containing information that could out closeted individuals. Some archivists who would justify open access to those documents by saying restricting them would "imply that being lesbian or gay is bad" are avoiding their professional responsibility to protect the subjects of the information contained in the collections they manage.

In fact, the dangers posed by outing are serious enough to prompt some to argue that lesbian and gay archives, by not showing adequate concern for the privacy issues surrounding the collections they hold, may be endangering their own future as well as the future existence of institutions like them. Mary Bowling clearly articulates such an argument when she writes that archivists working with lesbian and gay collections can only get more collections by

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\(^{49}\) See appropriate pages of this paper.
demonstrating to potential donors that they are sensitive to concerns about privacy.\textsuperscript{50}

The tangled "thicket" of issues surrounding the confidentiality and privacy of such collections can easily lead an archivist to the conclusion that there are no solutions to the privacy problems surrounding documents in lesbian and gay archival collections that could outcloseted individuals. A review of the archival literature concerning access, privacy, and confidentiality, however, provides several strategies for effectively managing personal papers in archives. These policies suggest ways archivists can provide adequate restrictions to sensitive documents while they respect both the privacy of individuals and the needs of researchers.

One possible solution to the dilemma of how archivists should manage access to sensitive information in their collections is hinted at in the SAA Code of Ethics. It is that archivists should impose restrictions they feel are needed on collections even when donors do not request such restrictions. The code suggests that:

Archivists respect the privacy of individuals who created, or who are the subject of, documentary materials of long—term value, especially those who had no voice in the disposition of the materials.\textsuperscript{51}

\textsuperscript{50} Bowling, 11.

\textsuperscript{51} Quoted in Greene, 33.
There are several problems with the view that archivists should place themselves as the main decision-makers over what will be restricted and what will not. For one thing, many collections contain too many records for it to be possible for archivists to determine everything that should be restricted by reviewing every page. Furthermore, when lesbian and gay collections are concerned, there is no way of knowing whether the individuals who are the subjects of archival records are out or not.

Additionally, the recent case surrounding the Thurgood Marshall Papers gives examples of public relations problems that can arise when archivists take full responsibility for determining what levels of access should be given to personal papers. One archivist discusses those problems:

Had the donor contract stated simply that the papers would be open upon Marshall’s death, instead of being “made available to the public at the discretion of the Library,” there might have been less fire directed at the Library.

As an alternative to the suggestion discussed above, some have recommended that archivists encourage different professional groups whose members use archival

\[52 \textit{Ibid.}, 34.\]

\[53 \textit{Hodson, 111.}\]

\[54 \textit{Greene, 36.}\]
materials (for example, historians, sociologists, and writers) to develop their own codes of ethics to guide those members in their use of information found in private papers. Some degree of safety for donors could be maintained if such organizations would enforce ethical codes showing sufficient concern for the ways researchers use the personal information found in archival collections. The OAH (Organization of American Historians) was at one point reviewing arguments over whether or not they should develop such a code.55

While it certainly would not hurt for professions that frequently use archives to develop such codes of ethics, archivists can by no means rely solely on those codes to protect individuals who could be outing by collections in archives. For one thing, it is well—known in the archival profession that the primary user group of most archival collections is not professional researchers.56 Some would also argue that a reliance by archivists upon other professions to solve the privacy issues surrounding archival collections will likely result in more privileged access to a few (professional researchers) than greater access for everyone.57


57 Ibid., 444.
Furthermore, for lesbian and gay archival collections, such a solution would not work because of the lack of a lesbian and gay studies professional organization that has the influence to enforce a code of ethics. The *Encyclopedia of Associations* under "lesbian" and "gay," has almost a full page of organizations listed for gay men and lesbians, only two of which actively support lesbian and gay studies. One of those is the Center for Lesbian and Gay Studies (CLAGS) in New York, which states its purpose as "encouraging" work in lesbian and gay studies, but which is not a policy-defining society for historians of lesbian and gay history; the other is the Lesbian Herstory Association (also in New York) which works to educate lesbians about lesbian history, but which also is not a professional society with governing power over its members.58

There remain other alternatives, however, for archivists who wish to develop appropriate access policies for the private information found in their collections. One writer argues that the best way of dealing with sensitive information in the papers held by archives is for archivists to rely entirely upon donors' wishes for the restrictions placed on collections they donate. He supports this solution because he believes donors are in the best position to judge the sensitivity of information in those documents. They often know the people who are subjects of the

58 *Encyclopedia of Associations* (Detroit, MI: Gale Research Company, 1993).
information contained in collections they donate, and such a policy would reduce the problems archivists face when they attempt to determine the sensitivity of such materials themselves.

There are many problems associated with donor—imposed restrictions, however. Donors may specify the removal of certain types of information from the collections they give to an archives, creating time—consuming and costly screening jobs for repositories. They also may require that researchers obtain permission from them to use a collection or cite a quote from it, or may ask that their collection be closed to certain types of users.

Those donors wanting researchers to contact them before they use a collection must be warned by archivists that such policies may result in those donors being frequently bothered by researchers and

...archivists need to be certain donors will grant access on a rational, equitable basis, because they, the archivists, will have to invest time and effort into processing the papers to get them ready for research use and will also have to deal with researchers and their reactions to donors' responses to their requests for permission.

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59 They are often friends and/or colleagues of the individuals those documents are about.

60 Greene, 36.

61 Floyd Desnoyers in Bradsher, 84.
Restrictions requiring that collections be closed to certain types of users should not be allowed because they are discriminatory and usually impossible to enforce.\(^{62}\) The access policies of public institutions containing lesbian and gay archival collections do not allow the exclusion of categories of researchers and realistically could not if they wanted to.\(^{63}\) Even in private repositories, however, such attempts by donors to limit access to their collections to certain types of users is an example of how donors sometimes use the "restrictions option" not to ensure privacy "but to wield power by granting or denying access, or to make the material and its use a forum for personal, political, racial, or other biases or prejudices."\(^{64}\)

An example of such an unrealistic restriction used to be in place at the Lesbian Herstory Archives (LHA) in New York, where the policy was that only lesbians could have access to the archives.\(^{65}\) To begin with, since there are no

\(^{62}\) Ibid., 85.

\(^{63}\) Bowling, 5.

\(^{64}\) Hodson, 109.

\(^{65}\) Lloewen, 7. Mary Bowling has commented to me in an e-mail message that the Lesbian Herstory Archives has recently modified its stance on lesbian-only access, although she is uncertain whether the archives has issued a formal policy reflecting those changes. She writes:

In doing my own research there, I made no attempt to "pass" as a lesbian, and beyond the not inconsiderable difficulty of arranging research time at a volunteer-only institution, didn’t have too much trouble...They now also allow men in, occasionally. Fred Wasserman, one of my co-curators on the
distinguishing physical characteristics which separate homosexual women from heterosexual women, the policy was impossible for the archives to enforce. Secondly, it discriminated against researchers who were not lesbian, but who wished to study lesbian culture and/or history. Though some archivists would argue that the LHA had a right to bar men, for example, from its repository in order to create a safe environment for women, I believe such a policy is discriminatory, and harmed the lesbian community by limiting who could learn and write about lesbian history. Many men and heterosexual women who may have had legitimate reasons for wishing to use the archives (such as an interest in studying lesbian culture to better understand lesbian friends or family) were unfairly prevented by the LHA’s restrictions on access from using the records held in the archives.

65 (...continued)
(Stonewall) exhibit, was eventually able to schedule a few research trips there...and they have a male volunteer who comes to clean. (I love it.) Since LHA does have to balance its mission as information-provider and "lesbian space," my feeling is that they’re doing about the best they can to provide access that, if not strictly equitable, does make an effort to accommodate everyone within limitations. [Mimi Bowling to Diane Shannon (8 October 1994)]

66 Some may argue, however, that the statement of such a restriction does effectively discourage use of the archives by heterosexual women who do not wish to be assumed homosexual. A similar strategy was used by a gay-friendly dance club I used to frequent in Olympia, Washington. The owner of the club placed a large sign on the establishment’s door which said "We welcome our lesbian and gay customers. Bigots keep out!" He claimed that such an up front, bold statement about the types of individuals he did not want in his club discouraged homophobic customers from entering.
Where lesbian and gay collections are concerned, I believe that archivists who are sensitive to the dangers of outing the subjects of their holdings must make the final decision about what types of access should be imposed upon a collection. I contend this because donors often, in their recognition of the importance of records for research and education, desire open access to the lesbian and gay archival collections they donate without adequately considering how such open access might out a closeted individual. I would suggest archivists use several guidelines when deciding whether or not to place restrictions on documents in lesbian and gay collections.

Several types of materials in such collections should not be considered problems. Archivists usually consider materials by or about people they know are dead be a part of this category. It is argued that a dead person cannot be injured, so the privacy of the information found in archival collections are usually considered to end upon the death of the person who is the subject of such information. More research and thought needs to be

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67 As was apparent from the responses I received to my survey on access, some archivists believe all homosexuals should be out. There is a need to educate archivists about the real damage victims of outing fall prey to.

68 These guidelines are based upon those used by the NYPL to manage its lesbian and gay archival collections. See Bowling, 8-9.

69 Hodson, 116. It should be noted, however, that Ms. Hodson also states that archivists "are, however, bound by ethical constraints to honor any reasonable restrictions of sensitive material requested by the descendants of those individuals."
applied, however, to the question of whether or not the dead have privacy rights. Others could argue equally forcefully that people should have rights to privacy which protect their reputation from being affected after they die in what they feel are adverse ways.

Letters to lesbian and gay organizations which do not reveal the sexual orientation of the writer should also not be considered "problem papers." The fact an individual writes such an organization does not mean that they are homosexual; they could be writing to obtain information for a friend or relative, or to obtain information for a research topic.70

Another group of letters that should be considered valid candidates for receiving open access policies are those letters written by service providers seeking referrals of clients from a lesbian and gay organization. Such businesses, because they actively target gay customers, can be safely considered to be seeking public disclosure.71

The correspondence and files of officers of lesbian and gay organizations can usually also be safely made available to most (if not all) archives users. By the time such individuals assume leadership roles in the gay community, they are almost always out, making the fear of possibly outing them irrelevant.72

70 Bowling, 8.

71 Ibid., 9.

72 Ibid., 9.
There are also several other types of records commonly found in lesbian and gay archives which should almost always be restricted. Included in that group are records detailing financial contributions made to lesbian and gay organizations. The philanthropic choices of individuals are their own business, so such information should be protected.\textsuperscript{73}

Letters written by a closeted individual to a friend or to a lesbian and gay organization which reveal that person’s homosexuality should be restricted. Such letters should include any written by individuals who are probably still living and who are not known to be out — until the repository receives proof that those individuals are out, it should assume they are still closeted. Restrictions on those letters are necessary because of the harm that can be done to individuals who are outed.

Beyond guidelines for determining which documents in a lesbian and gay archival collection are "problem papers" and which are not, several other suggestions may be helpful to those managing such collections. One is that archivists should always consider the costs of processing collections containing sensitive materials, and consider whether or not such costs are reasonable expenditures for records that will not be open to researchers for a long time.\textsuperscript{74} Will the money spent on such collections prevent other equally important collections from being acquired and processed by

\textsuperscript{73} Bowling, 5.

\textsuperscript{74} Dearstyne, 181.
Lesbian and gay archives? The cost of screening collections containing substantial amounts of personal information is high, and should be considered by any archives that is deciding whether or not to accession such collections.  

The use of forms can also help in the management of private papers containing sensitive information. Some archives, for example only permit access to sensitive information on the condition that researchers sign written agreements promising that individuals' names or other specified information in a collection will not be published.

Whichever of the above suggestions a person managing a lesbian and gay archival collection chooses to use, the details of the resulting restrictions should be clearly defined in writing and made available for researchers to refer to. Additionally, the archivist should identify exactly what has been removed from files and why; placing a withdrawal notice on each file where a document(s) was removed, or annotating such details in a finding aid. A statement of when restrictions on the collection will expire should also be written down and made available to the researcher. By making the details of restrictions clear and available in writing to researchers, archivists help assure them that

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75 Floyd Desnoyers, 90. One possible alternative to help defray the cost of screening materials is to postpone screening them until they are requested. The disadvantage of such an approach is that researchers must wait while boxes are examined. (David Kepley, "Reference Service and Access," in Bradsher, 171-172.)

76 Dearstyne, 181.
decisions to restrict certain materials are not made arbitrarily.\textsuperscript{77}

There are "no ready solutions" to the dilemmas archivists face when dealing with materials in lesbian and gay archival collections which contain information that could potentially out closeted individuals.\textsuperscript{78} It is also clear, however, that the harm caused by such outings is severe and irreversible; and that archivists managing such documents should make every effort to protect those who are the subjects of such materials. Guidelines such as the ones given above can be used to help increase the chances that closeted individuals will not beouted by the careless handling of lesbian and gay collections.

\textbf{Diane Shannon} graduated with the MLS from the University of Pittsburgh School of Library and Information Science in December 1994. She presented a paper at the Fall 1994 Midwest Archives Conference. Her undergraduate degree is in social science with a minor in English literature from Evergreen State College.

\textsuperscript{77} Kepley, 171.

\textsuperscript{78} Hodson, 116.
APPENDIX A: SURVEY
Survey On Issues of Access in Lesbian and Gay Archives

1) Is the archives you work for in a large institution, with plenty of funding, or is it a smaller/grass-roots archives situated in a community center (or other small, community—based building)? What are the benefits/problems you have encountered with your archives being either at a large institution or community center? What benefits/problems do you think lesbian and gay collections in the opposite general type of institution from the one yours is housed in face that you don’t?

2) Should lesbian archives have the right to prevent men access to their collections? Should lesbian and gay archives be able to prevent heterosexuals access to their collections? Can partial access be granted to men and heterosexuals in such cases? What are the ethical issues affecting such restrictions? How has your archives dealt with such questions involving access?

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79 As was noted in the introduction, this survey was originally written to collect information about access issues in general which gay and lesbian archives face. The only question and responses to that question which are discussed, therefore, in the main body of the paper are those for #7. It may also be noted that most of the questions in this survey require essay responses and probably, because of that, discouraged people from spending the time to answer them. Were I to redo the survey today, I would rewrite the questions in a short-answer format so that the busy archivists I sent them to would be much more likely to respond.
3) What does your lesbian and gay archives collection consider its user population to be? How has that definition affected your archive's policies? Do you see researchers as your main user population, the gay community in general, or the entire community surrounding your institution as its user population?

4) What problems has your archives had with having lesbian and gay materials damaged or stolen? What has your archives done to prevent such problems?

5) What hours are your lesbian and gay collection able to remain open during the week?

6) What materials/expertise does your archives have at its disposal? Are you able to provide citations to your records using the MARC format on RLIN or OCLC? What types of climate control do you have?

7) How has your archives dealt with issues surrounding the confidentiality of its holdings? Please explain the reasoning behind the decisions workers at your archives have made regarding confidentiality?