Access versus the 'rage for privacy'

Adrian Cunningham, vice-president, Australian Society of Archivists

Ten years ago at the National Convention Centre in Canberra I sat enthralled and horrified as I listened to Ric Throssell describe how he lit a bonfire of the most private papers of his late mother, the novelist Katharine Susannah Prichard. The event was a fascinating seminar on 'Privacy versus Access', organised by the ACT Branch of the Australian Society of Archivists (ASA), the proceedings of which were subsequently published and still provide fascinating and illuminating reading.

At the time I was working in the Manuscript Section of the National Library of Australia. I was intimately familiar with the Prichard Papers that had survived the holocaust, having been responsible for the arrangement and description of the papers that Throssell had lodged with the Library. And what a rich source the surviving papers were! It therefore came as something of a shock to me when I learnt how much richer the collection could have been had Throssell ignored his mother's wishes and preserved only those papers that he 'believed to be of more than a personal nature'.

Indeed, the Throssell bonfire was merely the culmination of many decades of systematic destruction of records by Prichard herself. According to Throssell, his mother was a deeply private individual. It was what a fellow writer, Catherine Duncan, had once called her 'rage for privacy' that had led Prichard to destroy her unpublished manuscripts and letters that she regarded as purely personal. Like her fellow novelist Patrick White, Prichard believed that the only creative writings of hers that anyone ever needed to read were those already published with her explicit approval.

As curators of history and enablers of the research endeavour, archivists are always aggrieved by stories such as these. However, while we might question the wisdom of these acts of destruction, we do not question the right of private individuals to destroy their own property in a sincere attempt to protect their own privacy. If records destruction is the ultimate denial of access, at least once the destruction decision is taken and acted on by the records creator, there is little that archivists can do about it other than regret the loss of what might have been.

But there are more ethical dilemmas here than might be immediately apparent. Almost universally, archivists have a positivist attitude towards scholarly research. Indeed, supporting scholarly research is usually our very *raison d'être*. Arguably, however, the dividing line between legitimate scholarly enquiry and sheer gratuitous prurience is rarely clear-cut. One's position on this question inevitably depends on one's perspective — a perspective that is almost certain to be different if your own private life is the subject of so-called 'legitimate scholarly research'. The elicit thrill of reading someone else's mail might be rationalised and sanctified in the context of the noble pursuit of scholarly truth, but it might equally be viewed in more pejorative terms *à la* Patrick White, who described those who engage in such practices as 'ferrets'.

Many of these ethical dilemmas were clarified for me by reading Martha Cooley's outstanding novel *The Archivist*, published in 1998. The subject of this novel breaches two sacred ethical codes of practice by first providing a favoured researcher with unauthorised access to a restricted collection of T S Eliot letters, and then later secretly destroying those very letters. While we naturally recoil from this portrayal of the archivist playing God, the circumstances portrayed in the novel highlight that the rights and wrongs of such cases are rarely clear-cut. Eliot himself had wanted the letters destroyed. Against that, are there not circumstances where the right to personal privacy is outweighed by issues of public good? Who has the right to make decisions when faced with these kinds of dilemmas?

In honouring their professional codes of ethics, archivists are also guided by their individual sets of values and frames of reference. Is an archivist an archivist first and a human being second, or must we always subjugate our personal instincts to our professional ethics? Consider the question of the archivist as whistleblower. Would we expect an archivist in the Third Reich, who became aware of the Jewish holocaust because of access to top secret records, to have honoured their professional ethics or their moral instincts in breaching the confidence with which they had been professionally entrusted?

Of course, decisions that archivists need to make on issues of privacy versus access rarely reach this extreme, but the underlying dilemmas and uncertainties are ever present. A consistent, professional, consultative, accountable and transparent approach is always required when negotiating and/or determining access arrangements for records that contain personally sensitive information. One generally cast-iron rule of thumb is that the protection of privacy is no reason for an archivist to destroy a record. Such privacy considerations should instead be managed through a suitably balanced regime of access restrictions or closures.

Very often, however, there are laws to govern such decisions. For instance, for the first hundred years of census-taking in this country, Australian governments ruled that name-identified census records should be destroyed once the Bureau of Statistics had gleaned all the statistical information it needed from these records. A century of invaluable genealogical source material was routinely destroyed in the name of protecting personal privacy and the integrity of the census data. A few years ago a Parliamentary Committee inquired into this issue. The Australian Society of Archivists wrote a submission and presented oral testimony

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to the inquiry, arguing that, while it is appropriate to restrict access to the name-identified census records for a long period — say 100 years — in order to protect personal privacy, it is not appropriate to destroy those records. The ASA was delighted when the Government accepted the Committee's recommendations, which were broadly consistent with the ASA position. This year when you fill in your census return, you will be asked to indicate whether or not you want the name-identified records to be destroyed or retained by the National Archives under strict closure for 100 years and then released for research. The Government has characterised this decision as a Centenary of Federation gift to the nation.

Census records are but one example of the broader legal landscape in the area of privacy that has a direct impact on the work of archivists. Later this year the Commonwealth *Privacy Amendment (Private Sector) Act* comes into force. While the Act has been criticised by privacy advocates for having inadequate privacy protection provisions, one of its guiding principles is potentially catastrophic for archivists. National Privacy Principle number 2 reads:

> *An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection.*

Because most archival research represents the pursuit of a secondary purpose, allowing any such research on records created after 1 July 2001 is potentially illegal. The ASA argued unsuccessfully for a sunset clause or archival exemption to be incorporated into the Act. Having failed in that attempt, we must now work with the Privacy Commissioner to develop a public interest determination that articulates a code of practice governing research use of such records in an archival institution. This will be one of the most significant issues facing the archival profession over the coming year or two.

Fortunately we have some previous experience to draw upon. The equivalent New South Wales privacy legislation has been in place for some time and the ASA has worked with the authorities in that State to develop a Privacy Code of Practice for Research. In so doing, it has been important for archivists to acknowledge the legitimacy of the concerns of the privacy lobby, but also to argue for a code of practice that strikes a reasonable balance between those concerns and the equally legitimate needs of researchers. With our long-term perspective on the use of records, archivists have argued consistently that, while many personally sensitive records should be closed, such closures should never last indefinitely. Privacy concerns diminish and eventually disappear with the passage of time. The length of time this takes will vary from case to case, but it is important for the general principle to be recognised in law.

Recently in Queensland we had the ludicrous situation of government medical records from the 1860s, which had been on open access for years, being closed by the Government in response to petitioning from a small group of privacy advocates. Admittedly, medical records are especially sensitive and, as such, warrant lengthy closures, but to argue that such records should remain closed after 140 years is patently indefensible. A better approach is that proposed in Victoria last year in its *Health Records Bill*, which had a clause stating that privacy protection for medical records ceases to apply once the individual in question has been dead for more than 30 years.

Professional associations such as the ASA have a responsibility to lobby governments to adopt balanced and responsible privacy laws and regulations in relation to archival records. In addition to its *Code of Ethics*, the ASA has adopted formal position statements on privacy and on equity of access to records. Archives and archivists are very experienced at developing and implementing responsible and balanced access policies for personally sensitive records. While it is important for us to acknowledge the individual's 'rage for privacy', we cannot lose sight of the public good that accrues from the responsible and professional use of records containing sensitive private information. ■