Archives, Documentation, and Institutions of Social Memory

Essays from the Sawyer Seminar

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The Question of Access

The Right to Social Memory versus the Right to Social Oblivion

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In most modern societies public administrations process and handle huge amounts of private and personal data concerning individual citizens, thus producing great numbers of case files containing often highly sensitive information about identifiable individual persons.

It is my contention that some of this information is a vital part of the social memory of modern societies. When evaluating modern public political and administrative records, the focus is often on records containing information about political decision making and the political and administrative deliberations behind new legislative initiatives. However, the vast numbers of personal case files contain—among other things—information about how public laws and regulations and public institutions affect individual citizens in various aspects of their lives. A lot of the data contained in such files are of a trivial, repetitive, and routine character. But it is also in these kinds of public administrative files—and often only here—that we find information on the interaction of public administration and the individual citizen. These files are of value both for the individuals and for society as such. For the individual they may contain information of vital importance for the self-knowledge and self-concept of that individual. This information is also of vital importance in the formation of the self-concept of that society, particularly to the extent that these files contain information about the interaction between society as represented by public authorities and individual citizens.

Preservation of these kinds of records is threatened both by tendencies in the public debate and by practical necessities, policy, and habits of modern archival administration. The ever-more-widespread use of modern technology in public administration makes it possible both to preserve and handle a larger amount of this kind of information and to utilize the information in new and more effective ways. This might well tend to strengthen the public debate on principles concerning the creation, retention, and accessibility of such information.

When discussing questions relating to regulations concerning the retention or the disposition of official documents containing personal or sensitive information about individual and identifiable persons, the points of view tend to differ widely according to the setting/framework of the discussion. In a political setting the stress will tend to be on questions relating to the possibilities of political control of the individual. Prevailing opinions in most democratic countries will tend to favor the disposition of such data as quickly as possible, perhaps even to prohibit the creating of such data where possible. If the civil rights of individual citizens are the focus of attention, the opinions might differ. If, for instance, an individual citizen wants to complain about and to appeal the decision of a local government concerning him or her, access to all available information is of vital importance. That, of course, favors retention of all such data. On the other hand, if the focus of attention is on the right to privacy, as such, opinions will tend to favor disposition from an ethically founded point of view. That is to say a view that is respectful to the right of the individual to preserve privacy.

If we remove this discussion from the public or political sphere and place it in the world of the archives, things

might once more look different. The official documents will have acquired the status of archival records, and the questions concerning retention or disposition will tend to be addressed with arguments relating to the research value of the records in question. The users of the archives—the historians, the social scientists, the ethnologist, and so forth—usually tend to argue in favor of retention of practically all archival records. And quite rightly! Every time archival records are disposed of, information of some kind disappears. The users of archival records will furthermore be interested in the retention of precisely the kind of archival records that contain detailed information about individual persons. That goes for both the genealogist and the professional researcher who wants that kind of information as the basis for a broad statistical analysis or for narrowly conceived microstudies.

The archivist, on the other hand, will tend to have a more differentiated view. As long as we are talking about traditional paper records, the archivist will be aware of the necessity of disposition of the greater part of those records that are being produced in any modern administration. Personal files tend to be bulky. To the archivist falls the burden of evaluating what kind of information is essential for future research and therefore should be retained. The other side of the issue is the determination of what can be discarded. Most archivists can get into heated debates on the principles of retention and disposition, but the necessity of making these decisions is a fact of the realities of professional practice.

As more and more official documents are created in electronic form (and that often is the case with personal files) and can be retained and used in that form, the necessity of disposition lessens. The preoccupation of the archivist will then tend to change to the questions concerning the retention of the electronic records and the retrieval of information from these records. Perhaps as a result, the difference in opinion between users and archivists may lessen.

Summing up the differences between the discussion in the public sphere and in the archival world, it could be said to be a difference between having as the center of attention, on the one hand, the rights and the protection of the individual citizen and, on the other hand, the protection of the cultural heritage. In a way it is a question of the right of the individual to be forgotten through the protection of privacy versus the right of society to its social, cultural, and historical memory as contained in the archival records.

To solve that conflict is one of many challenges for modern archives. As a basis for further discussion I describe the way in which the Danish State Archives has tried to handle that challenge. In so doing I focus on the developments in its policy of retention and disposition as well as on its administration of the legislative rules on access.

Archival Records Containing Individual, Personal Files and Information

The Danish State Archives contains a wealth of detailed personal information about individual Danish citizens that has been assembled during the last three hundred to four hundred years. It is information concerning religious confession, private economy, marriages, divorces, childbirth, death and burial, criminal records, places of living, occupations, illegitimate childbirth, adoptions, hospital records, including physical and psychological disorders, social relief and other kinds of social services, and so on. The historical background for this wealth of information is partly the administrative traditions of the Danish absolute monarchy, which lasted until 1848—traditions that were to a very large extent taken over by the social democratic state in the beginning of the twentieth century in its efforts to create a society that took care of the welfare of all citizens. Following is a selection of these kinds of records that illustrates their scope and variation.

For taxation reasons the Danish administration kept careful track of the population. Since the seventeenth century the parish registers of the official state church were used as a civil registration of the whole population—that was also true of the small part of the population that did not belong to that church. All childbirth had to be registered, as well as marriages and death. On top of that the church registers to some extent also kept track of people arriving and leaving the parish. Since the late eighteenth century recurring censuses were conducted. These censuses contain information about the whole population, household by household, including people's religion and age; whether they were married, divorced, widowed, servants in a family, children of the family, or employees in the family; where they were born; and whether they were the owner of the house they lived in. The resulting archival records have all more or less been retained.

The Danish absolute monarchy was extremely inventive when it came to finding new objects to tax. At various times during the seventeenth and eighteenth century, the city population, for instance, had to pay special taxes on wigs, oak coffins, and special wagons. This resulted in

special tax records where individual citizens reported on their possession (or lack of possession) of these taxable objects. These records have been retained and are to be found in the archives.

A system of poor relief developed since the late eighteenth century. At first the focus was on keeping track of beggars and making sure that all capable persons were employed and not traveling around begging. For that reason systems of registering people were developed that could keep track of people when they took employment and when they left employment, when they left a parish and when they arrived in a new parish. As the poor relief systems developed, there was careful tracking of who got what kind of poor relief—and for what reasons. These are records that have survived and are kept in the archives. Especially in the first half of the twentieth century these records are extremely rich in detailed information about the persons who received poor relief or, as the laws and the terms changed, relief or assistance of one kind or another from the social services.

Other instances of records containing very personal and sensitive information can be found among legal records concerning legislation on domestic relations. From the end of the nineteenth century a woman giving birth to an illegitimate child was secured economic assistance to bring up the child, but only in so far as she contacted the police and told whom she presumed was the father of her child. The police would then trace down that person if possible and bring him to court. If he admitted to being the father, he would then have to contribute to the upbringing of the child. If he denied, a proper hearing would be held in court, often giving extremely detailed information about both parties and their sexual lives and habits. The accused might well mention other men as possible parents to the child in question. They would also have to appear before the court, and a case like that might very well end up with the result (before the age of DNA testing) that three different men would be considered by the court as possible biological parents. Huge amounts of court records like these have been transferred to the archives, and many people are today seeking access to these records in order to establish the identity of their biological parents.

Institutions treating people with mental illness, as well as institutions treating children and adults with some kind of psychical and/or social handicaps, have to a large extent transferred their records including the personal files of their patients and/or inmates to the archives. In many cases these files contain very detailed information about the social background of the people concerned, such as the treatment they had and the progress they made—or had not made. Again we find very detailed and highly sensitive information about individuals. During the twentieth century many other kinds of personal files containing private and sensitive information about individuals were generated by the state and municipal administration. These include detailed tax records, detailed social services records, detailed hospital records, detailed civil and criminal court records, detailed police records, and detailed records from the various public educational and social institutions.

Archival Policies of Retention and Disposition

Up until the middle of the twentieth century many of these personal files have been retained and transferred to the Danish State Archives. From the middle of the century—especially since the end of World War II—the growth in public administration at both the state and municipal level (resulting in an equal growth in the amount of administrative records created) made it necessary to formulate a conscious policy within the archives regarding retention and disposition of archival records. According to Danish archival law all public archival records, with the exemption of municipal records, have to be transferred to the state archives. The state archives also makes the decisions on what state and municipal archival records are to be retained and what can be discarded. Since the end of World War II, regulations on retention and disposition of official, public records have become ever more strict in the sense that a higher and higher percentage of the records created has been discarded. And that development is very explicit when looking at personal files, which in many local state and municipal administrative bodies during the last fifty years have been created in such huge amounts that total retention would be a physical impossibility.

For about the last twenty to thirty years only a subsection of such personal files has been retained. It has very largely been the same subsection that has been retained for different kinds of personal files: for instance, personal files concerning people born on one day in each month (that is, about 3 percent of such files). This has been done first and foremost to allow research in the same segments over time and to allow research combining many different kinds of personal files.

During the last twenty to twenty-five years this policy of retention for files containing personal information about individual citizens has been supplemented by a

growing number of state and municipal electronic registers containing summary information of the same kind on an individual level. The most important of these registers have been retained and transferred to the state archives.

In the future the question of retention will be less important, in so far as these kinds of files will be created electronically and thus can be retained in their totality at no large costs—at least in so far as archival space is concerned. The Danish State Archives has already received the first electronic document systems of this kind. If this is an accurate estimate of the future, it will be only for a limited amount of time—say some fifty to seventy years—that these kinds of personal files will have been discarded in any great amount in Denmark.

Reasons behind the Danish Policy of Retention

All in all it is fair to say that the Danish State Archives in its retention policy has placed great stress on retaining at least segments of archival records containing very private and sensitive personal information concerning individual citizens. Why is that so?

According to the archival legislation, the purpose of the state archives is to make sure that those official archival records are retained that

> are of historical value
>
> serve to document circumstances and events of significant administrative or legal importance for the citizens and the official authorities

It is, of course, always possible to discuss the historical value of archival records. Personal files—of the kind that have been discussed here—will mostly tend to be a result of the practical administrative implementation of laws and regulations concerning individual citizens. As such these files are of historical value not only—and perhaps not even mostly—in relationship to the personal information they contain but far more as evidence of the way in which the administration itself actually worked. Only by studying this kind of historical evidence will it be possible to judge the relationship between legislative intent and administrative practice. It is in this administrative process that the individual citizen gets into contact with the official authorities. It has been the view of most Danish archivists that it is of crucial importance to retain a fair amount/segment of archival records that document the relationship between the state and municipal bodies and the citizens. If anything, this can be characterized as part of the social memory of any society.

As already stated, personal files will, of course, also be regarded as archival records of significant importance for the individual citizen in so far as they concern him- or herself or members of the family. It may be more difficult to judge what—if any—kinds of personal files might turn out to be of significant administrative importance for the official authorities. The tendency would presumably be to determine importance on grounds of administrative principles, that is, cases where administrative decisions have been questioned and administrative practice thereby changed.

Prospects and Questions of the Future

The possibility of retaining all important personal files in electronic form at reasonable costs, however, does not mean this will actually take place. Even given the strong administrative traditions in Denmark for registration of private and personal information as part of the public administration on both the local municipal and the local and central state levels, there are signs of a growing awareness of the ethical and political problems in connection with retaining that information.

During 1964 and 1971 fundamental laws concerning the public access to political and administrative documents at both state and municipal levels were passed. These laws are increasingly being used, not just by journalists and historians but also by members of the general public to gain access to their own personal case files before these are transferred to the archives. This, of course, has heightened the awareness of the content of these kinds of files and thereby also opens to discussion the appropriateness of the retention of such files. So far there has been no serious public debate concerning these questions, but with the growing possibilities of retaining personal files, and the growing possibilities of using these files, and combining different personal information from different electronic systems, it is a fair guess that such a discussion will come.

To my knowledge the Danish State Archives has so far had only one instance of disposition of archival records on ethical grounds. During the early 1980s a political debate arose quite incidentally concerning reports written by school psychologists on schoolchildren with various behavior disorders or other problems. The debate—and the resulting public interest—led to a revision of the regulations for retention and disposition of archival records from the public elementary schools. It was decided that

these reports should be discarded after a period of ten years in order to protect these children from a possible later misuse of such information.

Other debates like this are to be expected. And the Danish State Archives has to be able to meet such challenges. How then shall the state archives respond to such a debate, which might very well put strong political pressure on the archives to carry through other mandated dispositions of various personal case files?

Social Oblivion: A Case of Limitation of Access?

One way of meeting this challenge may be to regulate and limit public access to records containing personal files holding sensitive information of identifiable individual citizens. Another similar—but in principle different—way is to regulate and limit the utilization of the information gained through access to such records.

In contrast to the United States the access to public documents/archival records produced by public authorities in Denmark is regulated by several laws, the most important of which are

the law on public administration, which regulates access to citizens who are parties to a case handled and treated by public administrative authorities

the law on publicity in public administration, which regulates the access of the public to all records in the possession of public administrative authorities

the archival law, which regulates the access of the public to archival records transferred to the archives

The first two of these laws are administered by the public administrative bodies themselves, whether their records have been transferred to the state archives or are still in their own keeping.

The first of these laws gives individuals who are a party to a case administered by a public authority access to most documents concerning the case in question, apart from that authority's internal working notes. The second law gives the public in general a far more restricted access to all records produced by public authorities. Exempted from access are—among other things—documents containing information about

1. individual persons' private and economic circumstances
2. sensitive national security and defense interests, foreign policy interests and the like, and public economic interests
3. criminal lawsuits where the protection of the accused, witnesses, and other parties to the case is a major concern

The archival law governs access to all public archival records that have been transferred to the state archives or are more than thirty years old. The law is administered by the national archivist and, by delegation, his or her staff of local directors. As a general rule public archival records and documents are accessible by the public when they are thirty years old unless there are special reasons to protect certain kinds of information for a longer period. Normally the kind of information to be protected will be the same as mentioned in the law of publicity in public administration, that is, information about individual persons' private and economic circumstances, about sensitive national security and defense interests, foreign policy interests and the like, public economic interests, and criminal lawsuits where the protection of the accused, witnesses, and other parties to the case is a major concern.

Archival records containing this kind of information are accessible to the general public when the records are eighty years old. Apart from archival records containing information about national security, defense, and economic interest, we are talking here about records containing sensitive information about individual citizens. The archival law is meant to give the public broader access to public archival records than the two administrative laws on access. When access is given according to the general rules of the archival law, access is given to these records in their entirety and with no exemptions.

Furthermore there is the possibility for individual researchers to apply for dispensations from the general rules of access. And this possibility is being widely used. Last year the state archives got approximately three thousand such applications, of which 97 percent were granted. Half of these were applications concerning archival records containing private information about individual persons. Dispensations from the general rules are given to researchers to use specific archival records for specific purposes and on specific conditions that take into consideration the need to protect sensitive information. These principles allow the archives to grant access to the majority of applications.

I'll illustrate this with an example: A woman born in 1946 seeks access to the lawsuit dealing with the question of child support for her and her mother with the explicit purpose of getting information about her presumed father. Her mother is dead, and all the applicant knows is that she was born out of wedlock. She has never

known her father. The case file is not yet eighty years old, and on closer inspection it turns out that her mother apparently had had intimate relationships with several men, three of whom the court finds can be considered equally as possible parents of the child. All three are therefore sentenced to pay child support. This is certainly a case file that should not be accessible to the general public. It contains extremely sensitive private information that should be protected out of consideration for the parties involved.

Nevertheless the application is granted because the child is considered a party to the case and therefore thought to have a legitimate right to the information. But the application is granted on the explicit conditions that the information the applicant thus gains must not be published and must not be used to make contact with the people mentioned in the file. If the same woman had applied for access to the file with the explicit purpose of finding and making contact with her presumed father, the application would have been denied. Such a purpose would not be in accordance with the legitimate need for protection of the private lives of the involved parties.

Yet another example: A historian wants to study the living conditions and patterns of social behavior among unmarried women in a specific county during World War II. For this purpose he seeks access to a selection of case files on child support for illegitimate children during this period. He states in his application that he wants to be able to quote from the files but no information will be published in such a way that individual people involved in these cases can be identified. An application like this would also be granted on the condition that no information gained through the files would be published in a way that would allow identification of individuals mentioned. And further, that quotations must not be presented in such a way that those individuals can be identified even though no names are given.

The history of the German occupation of Denmark during World War II and the following judicial purge has attracted the interest of a new generation of Danish historians. This has resulted in a growing number of applications to use archival records that are not yet generally accessible because they contain sensitive information about private individuals. Among these are the files created during the judicial purge. They contain information about the liquidation of informers carried out by members of the Danish resistance movements during the war. There are also files containing, among other things, information about economic cooperation with the Germans. Almost all such applications for access are granted on conditions similar to the ones mentioned in the preceding. In other words when dispensing with the general rules of access, what is considered is not so much the mere access to archival records and their information but how and to what purpose information thus gained will be used.

Because the archival law grants the archives the authority to give access under specific conditions relating to the use made of the information gained through the archival records, it is possible to administer the legal regulations concerning access in a very liberal way. As long as the state archives can guarantee the protection of legitimate rights to privacy for individuals, the state archives can give liberal access both to individual citizens seeking information about themselves and their families and to the professional historian who wants to unravel recent historical events or social developments. Seen from this point of view, there is no necessary conflict between the right to social memory and the right to social oblivion, as long as this is not taken literally. And it might well be that this is part of the reason why there has not as yet been a serious public debate in Denmark concerning the retention or disposition of files containing sensitive private and personal information.

There has been a heated public debate about access to archival records in general, but this debate has focused mostly on access to records containing more general information on internal and external political questions.

The Danish archival law is due to be revised by parliament next year, and with the massive interest for public access to files and records of this kind, it is a fair guess that this revision will lead to a general twenty-five-year rule on access instead of thirty. So far there has been no indication of any wish to change the general eighty-year rule for access to records containing sensitive private and personal information. If this comes under debate, it might be in the interest of the archives to suggest that the span of years in which archival records of this kind are restricted be increased from eighty to ninety or perhaps even one hundred years. The general life expectancy has increased, and therefore there are good reasons to consider a comparable increase in the span of time these records are protected against general use.

In order to save personal case files from mandated disposition, the Danish State Archives might thus be brought into the rather paradoxical situation that it will have to accept stricter rules on access to these kinds of files while administering more liberal rules on access to all other kinds of records. As long as this is combined with the possibilities of granting access through dispensation

according to the principles discussed in this essay, this will—in my opinion—be a price well worth paying.

Concluding Remarks

Social memory seems such an ambitious term to use when talking about such pragmatic things as public administrative records. Records of this kind are first and foremost historical sources to the way our public administration has interpreted its tasks and how it has implemented that interpretation.

Nevertheless archival records in the form of personal case files give us a rare opportunity to study the meeting between the public administration and the people it administers. It is, of course, important to remember that the information we find in these records is created largely in terms of the administrative bodies. Still it is here that we have an opportunity to gain the insight that will allow us to understand both the impact of official laws and regulations and the public response to these. It is also here that the historian often finds the life and color that can illustrate and personify abstract and theoretical reflections. Combined with other kinds of material, records of this kind are an important part of our social memory. During at least the last half of the twentieth century these records also have been threatened from both within and without the archives.

The sheer bulk of personal case files and other kinds of files containing personal and private information about individual persons has made them an obvious target for disposition in the attempt of the state archives to handle the huge amounts of modern administrative records. At the same time fear of political control and ethical considerations concerning the citizens' right to privacy have also threatened to pass a sentence of disposition on these records. The possibility of retaining these files in the future in the form of electronic documents makes it vital to reconsider current retention policy in archival institutions in all countries. At the same time the legitimate claims for the right to privacy make it necessary for the archives to consider how these claims can be met without disposing of valuable and vital data. Here various methods of regulating access have been brought forward as a possible solution. This essay is to be considered as a call to both researchers and archival institutions to take serious the challenges raised by the conflicting interest raised in the essay's title.