

Access to Local Government Records: The New South Wales Situation

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This paper was presented to the Public Libraries Section, Library Association of Australia, N.S.W. Branch, at a Forum on 'Freedom of Information', held on 16 June 1982. It outlines the basic similarities and differences between archivists and librarians and points out some of the problems which librarians, who have custody of local government records, may face in granting access to those records for members of the public.

The paper covers the legislative requirements regarding access in N.S.W. and the policy and practice of access at the Council of the City of Sydney Archives (the only formally-established local Government archives in N.S.W.)

1. INTRODUCTION

In a forum on Freedom of Information, why should municipal librarians wish or need to know about the issue of access to local government records?

The answer is quite straightforward — municipal librarians are sometimes faced with the problem and given the responsibility for what would usually be termed the 'archives' or those records of council which have passed out of active use and which have been deemed worthy of permanent preservation.

Many municipal libraries, for example, hold the minutes and annual reports of their council, photographs, rate and assessment books, correspondence files, financial records, maps and plans (including building applications and plans, subdivision plans).¹

However, in being the custodian for council records such as these, the municipal librarian should be aware of the problems and issues involved in access to council records by members of the public.

2. ARCHIVISTS AND LIBRARIANS — THEIR RESPONSIBILITIES AND DIFFERENCES

Before considering such issues and problems, the municipal librarian should understand the significance and the uniqueness of the records under his/her custody.

The term 'records' is used to include

a document (including any written or printed material) or object (including sound recording, coded storage device, magnetic tape or disc, microform, photographic film, map, plan or model or a painting or other pictorial or graphic work), that is, or has been, made or received in the course of his official duties by an officer or servant of the Council.²

'Archives' is used to mean those 'non-current records of an organisation, institution or individual, selected for preservation because of their permanent value'.³

While the 'main objectives of libraries relate to information and to its collection, arrangement and dissemination,' librarians will have a primary responsibility to the users of their libraries.⁴

Archivists, on the other hand, have two responsibilities —

- (i) primary — to the records under their control and to the creators of those records;
- (ii) secondary — in making the records available for use.

Records have a collective rather than a unitary significance. They have a meaning as a group rather than as single items. They lose their significance if they are dealt with as single items rather than collective units. Publications on the other hand, have a meaning that is not dependent on their relation to other items. Each publication stands alone.⁵

Another important difference is that records are unique, whilst publications usually exist in multiple copies. Differences are also evident in the methodology used in libraries and archives.

In order to manage records in their custody properly, librarians must literally change their thinking about methodology. They must learn to deal with collective units that have an organic significance. If they do not do so, they are likely to persist in applying unsuitable techniques to records.⁶

The issue of access to local government records has been seen by one former Shire Librarian as 'probably the most difficult of all areas to be considered' by the librarian who has custody of council records.⁷

There are two aspects of access — physical access and intellectual access. In both areas, the librarian will come up against different archival practices from those usually encountered in the normal library work. These will be

dealt with a little later.

Suffice to say at this stage that library staff who have the responsibility for the custody of Council records should be made aware of the following points:—

- (i) the unique nature of the records;
- (ii) the significance of the physical preservation of those records;
- (iii) what Council's records consist of;
- (iv) the problems created by having these records and by the public being granted access to them;
- (v) the 'in-house' finding aids, their use for research purposes, and their limitations.

3. LEGISLATIVE CONTROLS OVER ACCESS TO LOCAL GOVERNMENT RECORDS

The retention of records and the access to them by members of the public in New South Wales is governed solely by the Local Government Act 1919, and ordinances under this act.

(a) *Retention of Records*

- (i) Ordinance 1, Clause 55a of the Local Government Act lists certain records that must never be destroyed, such as the Minute Book, Register of Legal Documents, Register of Correspondence, Legal Documents, Register of Returning Officers' Declarations of Elections, and of Polls, and Declarations of Elections and of Polls.
- (ii) By Clause 55b of Ordinance 1, however, records or papers relating to accounts are not to be destroyed until a resolution of Council has been passed and the Auditor has reported that such record or paper is of no further value, but once these two conditions have been met, records and papers relating to accounts may be destroyed.
- (iii) By Clause 55b of Ordinance 1, 'any other records or papers of the Council may be destroyed . . . after the expiration of six years from the last entry therein or transaction thereon' once a Council resolution authorising destruction has been passed.

(b) *Access to Records*

- (i) Clause 54 of Ordinance 1 provides for access to *current* records by a *member of the council*. (i.e. an alderman).
- (ii) Section 215 of the Act provides for an *elector* to inspect *current books of account* and the corresponding report of an auditor or an Inspector of Local Government Accounts and for any person to inspect the *current* valuation book.
- (iii) under Ordinance 1, Clause 50a the *press* has access to *documents* furnished to a *council meeting* — that is, correspondence and

reports, provided that such may be withheld when the council so decides by resolution on the grounds that publication may prejudice the Council's interest in threatened or pending litigation. This issue would rarely arise where research into all but recent records was being carried out.

- (iv) under Ordinance 1, Clause 38e an *elector* or *newspaper representative* may peruse *Council minutes*.
- (v) except when the Committee otherwise determines, *Committee Business* under Clause 48a is not to be disclosed other than to the Council.
- (vi) there is right of access to information about development or redevelopment of flat buildings available to persons on adjoining land or to persons who would be detrimentally affected by the development, under Section 342a of the Act.
- (vii) finally, as to *non-financial information* and matters not part of minutes, the *public* may be allowed access with the leave of Council — under Ordinance 1, Clause 56.

In allowing public access to local government records, Councils and relevant staff must be aware of the above legislative controls. Under the current Local Government Act and Ordinances, Councils have a flexibility and are able to resolve, in fact to grant, public access to a wide variety and range of Council records.

4. FACTORS TO BE TAKEN INTO ACCOUNT WITH ACCESS

The factors are seven in number:—

- (i) the sensitivity of the information content;
- (ii) the protection of individual privacy;
- (iii) the current moves for freedom of information at all levels of government;
- (iv) a rapidly increasing public interest in both local history and family history;
- (v) the ease with which records can be retrieved;
- (vi) the physical condition of the records;
- (vii) facilities for both research and close supervision during research.⁸

The problem has been seen as reconciling (iii) and (iv) i.e. freedom of information and public interest in history, with (i) and (ii), i.e. the sensitivity of the information content and protection of individual privacy, and at the same time paying due regard to (v), (vi) and (vii), i.e. easy retrieval, physical condition of records, and close supervision.

How many municipal librarians encounter these seven competing factors in the access to *published* materials in their libraries? I venture to say, none at all.

5. THE COUNCIL OF THE CITY OF SYDNEY: ACCESS TO RECORDS AND ARCHIVES

(a) *Policy*

The City Council has a general policy concerning access to its records, namely to

foster public awareness of past achievement, and add to the cultural heritage of the City by permitting limited and controlled access to archival records by approved bona fide researchers.⁹

In addition, one of the objectives of the Archivist is to 'direct the provision of user services for research purposes', and a principal responsibility is 'to ensure the compilation of finding aids in order to facilitate both the retrieval of information, and the promotion of their research use'.¹⁰

One of the duties outlined in the Archivist's Schedule of Duties is:

Reference Service Activities, which include furnishing information from or about accessioned records; finding and lending such records to departments, making such records available for research use, selecting and identifying records for exhibit or reproduction, and authenticating reproductions of accessioned records.¹¹

(b) *Access Form*

In addition, access to archives is provided for by means of the Access Form 'Conditions of Access to Archives' which is to be completed by all non-Council researchers, and approved by the Archivist and a senior officer of Council.¹²

The following conditions are required for access:—

1. That all research on records of the Council be carried out under the direct control and supervision of the Archivist.
2. That records made available for research will not be interfered with in any way, or have notations made thereon.
3. That no reprographic or photographic copies of records be made without specific permission being given. The written permission of the Council must be obtained before any reproductions are given away or sold. Any copying will be subject to the physical condition of the record.
4. That no publication of the archives of the Council, or extracts therefrom, shall be undertaken without the written permission of the Council. Approved publication of Council's archives must acknowledge the Council as its source of any quotations or extracts.

As well, the applicant is required to sign the following undertaking:

I have read the conditions set out above and I agree to observe them in full and in consideration of Council agreeing to granting me access to Council's archives I undertake to comply in all respects with the said conditions and I hereby agree to hold the Council harmless and to indemnify it against all actions claims demands or liability of whatsoever kind resulting from the granting of access by it herein.¹³

The access form was drawn up by the Council's Archivist in conjunction with Council's Solicitor. The final phrases of the undertaking, indemnifying Council against any actions or claims resulting from the granting of access is significant.

(c) *Other aspects of the Council's Access Policy*

- (i) On the access form, researchers are requested to define, as precisely as possible, the range and scope of their research. This serves two purposes — Council knows why and for what purpose access is required (this is useful for weeding out 'nuisance' requests and for the determining of 'sensitive' matters), and it assists the archivist with ascertaining what records are likely to be of interest and assistance to the researcher, and the scope and depth of the research.
- (ii) Researchers are required to apply *each year* for access. Often a researcher changes topics from year to year. This requirement also enables Council to have a 'current' list of those undertaking research from its records.
- (iii) It is part of Council policy that the times of access are confined to those hours during which the Archivist 'may exercise proper supervision, this to be by prior arrangement with the Archivist'.¹⁴
- (iv) Access is permitted only to those records which are already sorted and in order (for ease of retrieval), and which are in an appropriate physical condition.
- (v) No photocopying of records prior to 1900 is permitted. Any photocopying of records after 1900 is subject to physical condition of the record. The Archivist has the final say and uses discretion. No record pre-dating 1900 can be used by Council staff away from the direct supervision of the Archivist.
- (vi) Smoking is not allowed in the search room. Bags may not be brought into it and only pencils may be used for the purposes of taking notes.

(d) *Restrictions of access to Council records*

These are rare; they usually occur in issues in which Council has a legal interest, matters of political sensitivity or personal or privacy matters. They involve:

- (i) personal information about individuals. This covers a narrow field — medical histories, financial status and earnings, worker's compensation. It would be regarded as an invasion of privacy if such information were released generally to researchers or to the public;
- (ii) details of prosecutions and details of complaints on health matters. These are not strictly private; generally, however, they are not made available to the public, due to law enforcement;
- (iii) volunteered information. Secrecy of information must be preserved;
- (iv) planning records. These are generally regarded as fundamentally public records in the sense that they relate to the use to which land may be put by the public. For this reason, planning records should be generally available to the public, except in cases where premature disclosure of information would be contrary to public interest (e.g. in cases of re-zoning).
- (v) Thirty year rule. It is Council policy that public access be allowed to Council's archives, providing the applicant completes the access form and this is approved by the Archivist and a senior officer of Council. This is for records at least thirty years old.

For records less than thirty years old, the application is considered on its merits. The decision depends on the scope of the research, why the information is required, and on sensitivity and privacy issues.

A researcher's application to use records in current use by a Council department is treated on its merits by the department head. Few examples of refusing access are evident. A fairly liberal consideration is generally given to a person's application to use recently-created records.

6. CONCLUSION

In the area of public access to local government records therefore, the Archivist must balance competing factors, not least the issue of freedom of information versus privacy, and the issue of primary responsibility to the records and their creator (the Council) versus the opening of those records to the public.

Whilst archivists are trained to perceive and understand such issues, librarians do not have the benefit of training in this specific area. Thus the municipal librarian who finds himself/herself the custodian of Council records would do well to ensure that the Council decides on a policy of access which covers the points raised in this paper.

Defining such a policy does not have the aim of *restricting* records and hence information, but rather assists the librarian in the carrying out of her/his responsibilities in this area. Public access to Council records must

be governed by a policy; otherwise the Council could be accused of favouritism in respect of who it allows to look at its records, and even become involved in legal action.

In conclusion, I draw on a passage written by the noted American archivist, Theodore Schellenberg, which librarians responsible for local government records might find interesting. On the subject of the provision of access to records and hence reference services, Schellenberg wrote:

The end of all archival effort is to preserve valuable records and make them available for use. Everything an archivist does is concentrated on this dual objective. He reviews and appraises public records to determine if they should be kept or destroyed, and in doing this he has in mind the future use that may be made of them. He brings records into his building for such use. He houses and repairs records so that they will be preserved and used. He administers records in such a way that an arrangement that served official needs will also serve scholarly needs. He describes them in finding aids so that their content and character will be made known. He intercedes with government officials to lift restrictions so that records will be open for use. He provides access to records under conditions that will satisfy both government officials and the general public and makes records equally available to both.¹⁵

FOOTNOTES

1. *Sydney Gazette*, February, 1982 (Organ of the Sydney History Group.)
2. The Local Government Records Action Committee (N.S.W.) Minutes of Meeting, 7th April, 1982
3. Council of the City of Sydney, *Manual of Standard Procedures*. Section 5.01.
4. Sargeant, B., "Access to Local Government Records: The Role of the Public Library", in *Local Government Records in New South Wales: Control, Management, Preservation and Use* Australian Society of Archivists/Library Association of Australia, 1982, p. 46.
5. Schellenberg, T., *The Management of Archives*, 1963 p. 67.
6. *ibid.*, p. 69.
7. Sargeant, *op.cit.*, p. 48.
8. Smith, K., "Access to Local Government Records: The Archivist as Custodian", in *Local Government Records in New South Wales: Control, Management, Preservation and Use*, p. 56.
9. Council of the City of Sydney *Manual of Standard Procedures*, Section 6.02.
10. *ibid.*, 7.03 and 7.04.
11. *ibid.*, 8.00
12. *ibid.*, 10.05, "Conditions of Access" Form (S.A.5)
13. *ibid.*
14. Council of the City of Sydney, *Correspondence Files*, 19/16/0044, report of 10/1/80.
15. Schellenberg T., *Modern Archives*, 1956, p. 224.