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SI 580 Understanding Records and Archives: Principles and Practices

Week 12 – Legal, Policy, & Ethical Issues
Themes of this presentation

- Who owns the archives?
- Who has rights to access records and archival materials?
  - Archival balancing acts
  - Codes of ethics
- When are restrictions justified?
- How will access and restrictions be administered?
- Who controls the past?
Who owns the archives? ...1

- Public archives
  - presumably owned by the governed
  - maintain records as part of a public trust to:
    - protect individual rights
    - serve accountability
    - maintain an institutional memory
    - document national history
Who owns the archives? …2

- **Institutional archives**
  - owned by the institution
  - maintain records to:
    - protect institutional rights
    - maintain an institutional memory
    - document institutional history
Who owns the archives? ...3

- Collecting archives
  - owned either by collecting archives, the donor, or a third party, depending on the nature of the collection and the donor agreement
  - maintain records to:
    - document particular periods, themes, entities......
Who has rights to access records & archival materials? …1

Access can depend upon:

- archives legislation
  - e.g., 44 USC §2108 - US NARA
    “responsibility for custody, use, and withdrawal of records”

- other legislation
  - e.g., “Security”, FOIA, Privacy Act, Copyright…

- corporate policy
  - tied to internal needs & external requirements / considerations
Who has rights to access records & archival materials? …2

- Access can also depend upon:
  - administrative will / capabilities to comply with access laws
  - donor agreement
  - researcher access contract
  - status of collection’s processing
Archival balancing acts …1

(Danielson)

Who owns archives?
Who has access rights?
When are restrictions justified?
Access administration
Who controls the past?

- getting donors to relinquish control over their papers
- accepting collections without excessively long or inequitable restrictions (e.g., selective access)
- dealing with researchers who will go to any length to obtain access
Archival balancing acts ...2

- administering institutional policies that you disagree with
- dealing with competitive scholars who want to ‘own’ a collection
- determining the appropriate level of physical / intellectual control to enable access

Who owns archives?
Who has access rights?
When are restrictions justified?
Access administration
Who controls the past?
SAA code of ethics
(1992) - previous version

Who owns archives?
Who has access rights?
When are restrictions justified?

Access administration
Who controls the past?

- collecting policies
- relations with donors
- description
- appraisal, protection, & arrangement
- privacy & restricted information
- information about researchers
- research by archivists
- complaints about other institutions
- professional activities
SAA code of ethics
2005 revision …1

Commentary, guidelines, procedures for interpretation, dispute mediation eliminated “on advice from council”

Individual conduct / institutional best practice removed to “simplify and clarify”

“aspirational”

Provide “ethical framework…not… specific solutions to particular problems.”

Who owns archives?
Who has access rights?
When are restrictions justified?
Access administration
Who controls the past?
SAA code of ethics
2005 revision ...2

Who owns archives?
Who has access rights?
When are restrictions justified?
Access administration
Who controls the past?

- professional relationships
- judgment
- trust
- authenticity and integrity
- access
- privacy
- security / protection
- law
ARMA code of professional responsibility (1995) under revision ...

Who owns archives?
Who has access rights?
When are restrictions justified?

Access administration
Who controls the past?

Social principles “responsibilities to society”

- support free flow and oppose censorship of publicly available information
- support accuracy and integrity of information
- condemn and resist unethical or immoral use or concealment of information
- privacy must be upheld and promoted
- support compliance with laws associated with recorded information
ARMA code of professional responsibility (1995) under revision …2

Professional principles
- responsibility to employers / clients / RM profession
- Pursue appropriate educational requirements and ongoing education
- Accurately represent qualifications and credentials
- Serve employer at highest level of competence
- Recognize illegal or unethical situations and apprise employer of them
- Avoid personal interest or improper gain
- Maintain confidentiality of privileged information
- Enrich profession by sharing experiences and knowledge
- Actively commitment to recruitment of individuals into the profession

Who owns archives?
Who has access rights?
When are restrictions justified?
Access administration
Who controls the past?
ACRL Code of Ethics for Special Collections Librarians (October 2003)

Who owns archives?
Who has access rights?
When are restrictions justified?

Access administration
Who controls the past?

- personal collecting / competition
- personal dealing & appraisals
- gifts & dispensations
- personal research
- confidentiality
When are restrictions justified?

- protect privacy
- protect security
- protect intellectual property
- satisfy legal obligations
- satisfy donor obligations
- others?...
Who controls the past?

- access to records and archives determines in large part what is knowable
- active control archives and records can involve issues of power, politics, law, ethics … --> deeply connected to notions of “accountability”
  - Examples
    - King Leopold II of Belgium and the archives of the Belgian colony
    - Mau Mau war in Kenya and the archives
    - “Archives of Terror” in Paraguay
    - Other examples from week’s readings…
Thank you!

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