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ACCESS TO PUBLIC ARCHIVES: A RIGHT OR A PRIVILEGE?

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ABSTRACT

This paper traces the evolution of access to public archives. It takes a look at the concept of liberalization of access, particularly the perceived citizen's right of access. It critically examines the various conditions of access in the light of which it concludes that access to public archives is a privilege rather than a right.

INTRODUCTION

The keeping of records is not a recent phenomenon. It dates back to the early cave paintings. From that humble beginning came the art of writing which greatly facilitated and still facilitates the process of information recording. From stone to clay tablets, from papyrus to parchment and from paper to disk, the archives of this world have undergone a great transformation and have served mankind in various respects.

ARCHIVES

The traditional definition of the term 'archives' is that which was given by the celebrated English archivist, Hilary Jenkinson and echoed and re-echoed by other practitioners of the archival profession. Jenkinson (1948) sees archives as "the documents accumulated by a natural process in the course of the conduct of affairs of any kind, public or private, at any date; and preserved thereafter for reference, in their own custody, by the persons responsible for the affairs in question or their successors". Reflecting appraisal as a key activity in the administration of archives, Wagner (1980) has defined 'archival material' as "that part of the documentary material (records), resulting from the administrative activity of an agency, which has been selected on determined criteria to be preserved temporarily or permanently for legal, administrative and/or historical purposes". Here, Wagner sees archival material from the public point of view.

Archives are indeed records of permanent value which have been selected for permanent preservation for reasons of their intrinsic or enduring value. More often than not, archives are records which have satisfied the primary purpose for their creation and are therefore inactive as far as the current business of the creating/accumulating body is concerned. They are, however, by no means limited to this category as archival materials which, by our definition, are records of permanent

value, are found even among active records.

The term 'archives' has its institutional and structural definition. Institutionally, it refers to an organization or agency usually a public establishment set up to take custody and administer records of permanent value. In terms of structure, it denotes, according to Anne Marie Schwirtlick, (1987) "the building, part of the building, or storage area in which the archival materials are housed".

EARLY ARCHIVES

The invention of writing served as a great impetus to the survival of and the keeping of early archives. Two of the most popular earliest forms of writing are the Egyptian hieroglyphics and the Sumerian cuneiform. Closely related to this invention was the development of writing materials such as clay tablets, parchment, papyrus and, later, paper. Administrative records of the old empires of Sumeria, Assyria, Egypt and Babylon have survived on these media of information recording which have played a significant role in documenting the civilization of these empires.

The ancient archives were maintained not only for the sake of record keeping but also for reference purposes. Thus, Wagner (1980) records that 'from the 2nd millennium B.C. two cases are reported when archivists were instructed to provide evidence in court by personally producing the pertinent records in the court session.' This is by no means an admission that the ancient archives were allowed to meet the research needs of the citizens except in the City-State of Athens with a more liberal archives policy which, according to Wagner, "permitted occasionally the use of Athens' archives by citizens for research purposes."

The secrecy attached to early archives was reflected in the nature of the places designated for their custody. While Athens kept its public archives in a temple called the Metroon, the Roman archives were kept in the Tabularium. Archives of this period were kept in sacks and locked-up boxes and generally in strict secrecy. They were regarded as the arsenal of law.

MODERN ARCHIVES

The French Revolution heralded the modern concept of archives. The French Archives Act of 1794 was the first archival law while the French Archives was the first modern archives in the world. The Archives Act brought about the liberalization of access to archives and its Article 37 granting unrestricted access to archives to every citizen has been hailed as the Declaration of the Archival Rights of Man. Thus archives graduated from being solely the arsenal of law to assuming an added responsibility of being the arsenal of history. In the words of Wagner (1970), "... archives were developing their modern function, while keeping much of their classi-

cal ones: the old function of the spiritual treasury, the arsenal of law, serving the ruler, his government and administration, was supplemented by the new one of the arsenal of history.”

From France, the modern concept of archives spread to other parts of Europe and the rest of the world. Thus, the emergence of institutional archives, the enactment of archival legislation and the liberalization of access policy became the fundamental French legacies bequeathed to the archival world.

ACCESS POLICY

Despite the gains of the French Revolution particularly in the area of access to archives, there is no absolute or unfettered access to the archives of any nation. The terms and conditions of access are to a large extent influenced by the access policy. Access policy varies from country to country. To begin with, the term access has been defined as the availability of archives for consultation as a result of both legal authorization and the existence of finding aids. According to Hinchey and McCausaland (1987), “access refers to the terms and conditions of availability of records or information maintained by an archives for examination and consultation by researchers.”

Access policy refers to those guiding principles governing access to archives. It relates to rules of access formulated as a deliberate state principle to regulate and control access to archives. As we have seen, access policy varies from one country to another. Commenting on different practices regarding public availability of archives, Lamb (1966) writes:

At present there is nothing remotely approaching uniformity in the Rules governing access to modern archives. This is well illustrated by a summary of the policies and practices of 74 countries with regard to public availability of their diplomatic archives that was compiled in 1961 by the United States Department of State. Some 29 countries either withheld records created after a fixed date or gave access only after a set term of years. One country restricted access to records later in date than 1852; in another instance the year was 1870. The most recent date was 1945. The fixed periods varied from 10 to 50 years, with a dozen countries subscribing to the latter rule.

At a point in time, Britain operated a 50-year access rule established by her Public Records Act of 1958. The closed period has, however, since been reduced first to forty years and later to thirty years by virtue of the 1967 Act. In the U.S. where there is a freedom of information law, a more relaxed access rule seems to be operated. Sweden, at a time, had the most liberal access rule. Here, there was free access to official records, no matter how recent. Even then, there was a restriction in Sweden on such records as royal documents of the King in Council. The liberal dis-

position of the Swedish access rule, however, raised the fear that ministers and civil servants might, according to Lamb, “express themselves less frankly on paper than they otherwise might have done...”

Although no date limit was stipulated in the Public Archives Ordinance of 1957, Nigeria, by virtue of its colonial experience seemed to have been influenced by the access rule in Britain. When the rule was reviewed downwards to 40 and 30 years, Nigeria followed the same pattern until 1992 when the issue was settled. A new archival legislation – the National Archives Decree – enacted in 1992 has fixed a definite date limit and relaxed the rule of access to public archives in Nigeria. Although the law stipulates a 25-year rule, it, however, allows a longer period of closure in appropriate cases, particularly in cases where a longer period of closure had been stipulated before the public archives concerned were transferred to the custody of the National Archives.

PRIVACY

The need to protect the individual's right to personal privacy is one of the major considerations governing access to public archives. The term 'privacy' has been defined as “the right to be secured from unauthorized disclosure of information contained in archives relating to personal and private matters.”

In Britain and some other countries, there is, in addition to personal privacy, the privilege of official privacy which Lamb regards as a fallout of administrative practice under which the civil service is regarded as neutral and anonymous. In Nigeria, restriction is placed on access to public archives relating to the private life of individuals. Such archives are not to be made available for the inspection of members of the public except with the written permission of the persons concerned, their heirs or executors, if known.

The issue of privacy is a sore area particularly when viewed against the freedom of information and the right of citizens to know what their government and public functionaries are doing. The concept of privacy seems to negate the clamour for transparency and accountability in government. Yet, protection of privacy of individuals becomes necessary if administrators are to be encouraged to express themselves more frankly and document sensitive official matters. A delicate balancing act is, therefore, required to protect privacy on the one hand and to guarantee the citizen's right to information, particularly in the public domain. Mnjama (2000) subscribes to the need to maintain the right balance by asserting that:

“Every citizen has the right to know what kind of information his government has which is likely to affect his well being, but, at the

same time, the government has a moral obligation to protect its citizens from unnecessary disclosure of information which might affect their individual private rights.”

NATIONAL SECURITY

Public archives, no doubt play a crucial role in the affairs of any nation. They constitute the memory of the nation and no doubt come handy in the conduct of public affairs. They serve the cause of historical research and are veritable tools for enforcing individual rights and obligations. Yet access to public archives can be restricted in the interest of national security.

Security, according to Lamb (1966), “is the most difficult to define. It can relate to military affairs, to diplomatic questions, to domestic problems – to almost any matter, in fact, that a government considers is not in the national interest to make public.” In Nigeria, the system of document classification in the public sector is a way of controlling access to records whose informational contents are so sensitive that unauthorized disclosure will be prejudicial to national interest and security. For instance, the Official Secrets Act Cap. 335, Laws of the Federation of Nigeria 1990 prohibits and makes it an offence to transmit any classified matter to any person without authorization. The period of closure may well continue in the custody of the archival institution unless, by effluxion of time, the records become less sensitive and are, therefore, de-classified.

PHYSICAL CONDITION OF ARCHIVES

One other consideration governing access to public archives relates to the need to give physical protection to the materials. To this extent, archives whose physical integrity cannot be guaranteed are made inaccessible to users. This stand stems from the assumption that the archivist’s duty can be categorized into primary and secondary. The primary duty – the custodial role – is to ensure that the materials in his custody are, as much as possible, preserved and protected from disintegration. The secondary duty is to provide access to the materials. Where there is a conflict, the primary duty prevails because the essence of the custodial role is to ensure that archives are available for as long as possible to meet the needs of the users.

In Nigeria, the National Archives Decree gives the Director of National Archives the discretion to deny access to archives that are in fragile conditions or that have not been processed, repaired or given any other necessary treatment. The physical condition of archival materials may, therefore, constitute a major obstacle to accessibility.

DEPOSITOR-IMPOSED RESTRICTION

Since archives come into public archival institutions from various sources including voluntary deposit from private bodies and individuals, conditions of access are sometimes stipulated by the depositors. Access to archives may therefore be regulated by the conditions, which an archival institution is bound to respect.

Depositor's imposed conditions are of different kinds. It may be that there is a close period during which the materials concerned should not be made accessible. Sometimes, access may be based upon certain consideration, a kind of condition precedent which users must meet before the materials can be made accessible. An example of such condition is a written permission of the depositor or his heirs or executors or the successors-in-title or assigns, if a body corporate.

SEARCH REGULATIONS

It is a standard archival practice worldwide to design and stipulate regulations governing the provision of reference services by an archival institution. These regulations define the code of conduct on the part of archives' users. They expressly stipulate the conditions of search and the extent of freedom allowed the users of archives in the course of reference work.

In addition, search regulations may give expression to the need to protect personal privacy, safeguard national interest and ensure the physical well being of the materials. Regulation 7 of the Provisional Search Regulations of the National Archives of Nigeria, for instance, stipulates that "any records may be made available to a research worker if the permission of the depositor has previously been obtained provided other necessary conditions are also satisfied i.e. the revelation of the contents of the documents in question will not embarrass the depositor, endanger state security or injure the interest of third parties, and that the records are in a fit condition for use."

CONCLUSION

Access to public archives is a fundamental issue that has evolved through the ages. At a point in time, public archives were kept in utmost secrecy and meant solely for the administration of the state. Then came the French Revolution, which brought about the modern concept of archives by which the right of access was guaranteed. There has, since, been gradual liberalization of access. In some countries, there are freedom of information laws which guarantee the citizen's right to know and have access, particularly to information in the public domain. Despite assurances, regulation of access is inevitable if private and national interests are to be protected and safeguarded. In the words of Mwangi (1992), "(if) the purpose of forming government is to organize the affairs of a society, the archives created in that process

should be accessible to the public at large. At the same time, because governments act to protect many interests in the society, they must regulate access to records, for any society must decide what information will be made accessible to people, under what conditions and when." The need to regulate access, therefore, makes access to public archives a privilege rather than a right.

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