

IFLA-ICA Statement on Privacy Legislation and Archiving

There has been growing interest in and support for legislation and jurisprudence aimed at supporting the protection of personal data in recent years. This responds to awareness of the invasive nature of new ways of collecting and using personal data.

This progress is broadly welcome, but does raise concerns about whether and how they impact archival operations and the integrity of institutional holdings (i.e. records, data, etc). Given the desire of those involved in managing archival materials to respect the law, a lack of clarity can lead to the imposition of overly restrictive codes of practice; which can in turn affect the acquisition and preservation of archives and, ultimately, impact access to information.

This statement aims to set out core principles for advocacy around data protection laws by libraries, archives and their associations.

The Nature of Archival Materials

Archival materials, as defined by the International Council on Archives, are ‘the documentary by-product of human activity retained for their long-term value. They are contemporary records created by individuals and organisations as they go about their business and therefore provide a direct window on past events’¹.

These materials provide an essential basis for understanding our past, be it for the purposes of research, transparency and accountability, or simply ensuring as complete a historical record as possible. As such, they help build stronger societies and democracies.

They can exist in different settings, including libraries, archives and museums. By selecting, preserving, and giving access, the institutions that hold archival materials play an important role in achieving societal and civic goals.

Archival Materials and Personal Data

Archives inevitably contain personally identifiable information. This can be defined as any information which can be associated with a known individual, and which reveals something about their personality, circumstances and activities. However, no access regime can exist without information management and preservation functions, thus there need to be equally robust records management and archives programmes.

The treatment of such information poses key questions. Article 12 of the Universal Declaration of Human Rights grants the right to freedom from arbitrary interference with privacy, family, home or correspondence.

Article 29 nonetheless underlines that ‘everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society’.

Achieving the right balance between these articles implies careful professional judgement, based on ethical principles. Those working in libraries and archives adhere to codes which support decision-making on the way they take responsibility for, acquire, manage and allow access to such materials.

¹ International Council on Archives, Website: *What are Archives*: <https://www.ica.org/en/what-archive>

In cases where there are substantial quantities of personal data, it is often the archivist's role to preserve the record securely until the point where access can be given because the sensitivities have expired and/or the individual is deceased.

Existing Practices on Preservation and Making Accessible Archival Materials

IFLA's Code of Ethics², as well as its Statement on Access to Personally Identifiable Information in Historical Records³, and the ICA's Code of Ethics⁴ all set down standards, supported by ongoing work by relevant expert committees at the global and national levels.

These take the approach of promoting access to archival materials by default, with restrictions to be applied strictly based on the spirit and letter of any relevant law, including privacy legislation, interpreted according to professional understanding and judgement. Such restrictions clearly include situations where the information could facilitate identity theft, or where it is unfair, irrelevant, or causes unreasonable harm (for example in the context of 'right to be forgotten' legislation).

While these documents do allow that access may be restricted in certain circumstances, they are clear in their opposition to the permanent destruction or deletion of information contained in archival collections. Such acts prejudice the ability of the managers of archival collections to take their own decisions about access, based on their own judgements.

Recommendations for Personal Data Protection Legislation

Where new rules allow the right for individuals to access, correct and demand the alteration or deletion of information concerning them in institutions holding archival materials, this risks removing the possibilities for researchers and others, today and in future, to access reliable records in complete collections, as well as reducing transparency and accountability of those in power.

We therefore make the following recommendations to governments and other decision-makers:

- We welcome laws which provide individuals with greater rights and possibilities to influence the way in which information about them is collected and managed.
- Such rules should, nonetheless, ensure exceptions are provided to enable the acquisition and preservation of materials containing personally identifiable information by professional institutions such as libraries and archives.
- While rules around access to archival materials should promote access by default, they should allow for exceptions to be applied when necessary in order to protect personal privacy, confidentiality, cultural sensitivities or cater to legitimate security concerns.
- Under no circumstances should laws allow for, or mandate, the destruction or removal of archival materials held in documentary heritage or cultural heritage organisations, where that material has been selected for preservation and is being kept because of its enduring cultural significance
- There should be support to libraries, archives and others holding archival materials in developing and applying rigorous and effective codes of ethics in their management of, and decisions about access to, materials containing personally identifiable information.
- Libraries and archives holding archival materials should benefit from a limitation on liability when acting in good faith.

Agreed 26 February 2020

² IFLA (2012), Code of Ethics, <https://www.ifla.org/publications/node/11092>

³ IFLA (2008), Statement on Access to Personally Identifiable Information in Historical Records, <https://www.ifla.org/publications/ifla-statement-on-access-to-personally-identifiable-information-in-historical-records>

⁴ ICA (1996), Code of Ethics, <https://www.ica.org/en/ica-code-ethics>