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
Codes of ethics for archivists, the protection of personal data and the implications for archival knowledge organization

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Introduction

- Connected society
- Dual ethical commitment/dilemma in archives:
 - To facilitate the **access** to information
 - To **protect the privacy** of those who create and access the information

Introduction

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- Documents and information often include **personal data** produced by and about a singular, natural, and identifiable person that can be **sensitive** when reflecting aspects such as religious or political convictions, sexual life, biometry, genetics, health, racial origin, ethnicity, among others (Canada 2000, World Economic Forum 2011).

Introduction

- Here the responsibility of archives is big, as the Personal Information Protection and Electronic Documents Act/Loi sur la protection des renseignements personnels et les documents électroniques (Canada 2000) states that:

(3) Pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation ne peut **communiquer de renseignement personnel** à l'insu de l'intéressé et sans son consentement que dans les cas suivants :

[...]

g) elle est faite à **une institution dont les attributions comprennent** la conservation de documents ayant **une importance historique ou archivistique**, en vue d'une telle conservation

Introduction

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- ➔ • **Regulation 679/2016** from the European Parliament on the **protection** of natural persons regarding to the **processing of personal data**.

RÈGLEMENT (UE) 2016/679 DU PARLEMENT EUROPÉEN ET DU CONSEIL du 27 avril 2016 relatif à la protection des personnes physiques à l'égard du **traitement des données à caractère personnel** et à la libre circulation de ces données, et abrogeant la directive 95/46/CE (règlement général sur la protection des données)

Introduction

- Article 9 **Traitement** portant sur des catégories particulières **de données à caractère personnel**
 - 1. Le traitement des données à caractère personnel qui révèle l'origine raciale ou ethnique, les opinions politiques, les convictions religieuses ou philosophiques ou l'appartenance syndicale, ainsi que le traitement des données génétiques, des données biométriques aux fins d'identifier une personne physique de manière unique, des données concernant la santé ou des données concernant la vie sexuelle ou l'orientation sexuelle d'une personne physique sont **interdits**.
 - 2. Le paragraphe 1 **ne s'applique pas** si l'une des conditions suivantes est remplie:
[...]
 - j) **le traitement est nécessaire à des fins archivistiques** dans l'intérêt public, à des fins de recherche scientifique ou historique ou à des fins statistiques, conformément à l'article 89, paragraphe 1, sur la base du droit de l'Union ou du droit d'un État membre qui doit être proportionné à l'objectif poursuivi, respecter l'essence du droit à la protection des données et prévoir des mesures appropriées et spécifiques pour la sauvegarde des droits fondamentaux et des intérêts de la personne concernée.

Introduction

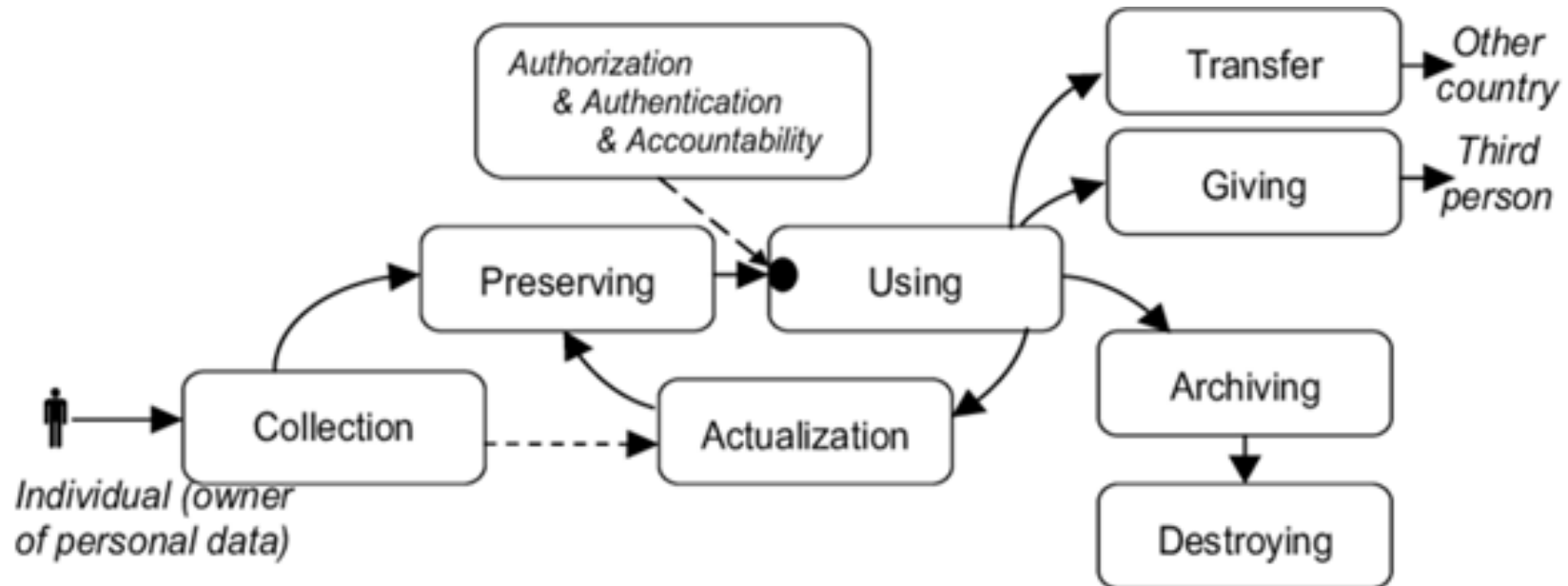
- Documents and information often include personal data produced by and about a singular, natural, and identifiable person that can be sensitive when reflecting aspects such as religious or political convictions, sexual life, biometry, genetics, health, racial origin, ethnicity, among others (Canada 2000, World Economic Forum 2011).
- Regulation 679/2016 from the European Parliament on the protection of natural persons regarding to the processing of personal data.
- ➔ • **Ethical implications** for knowledge organization and more specifically **archival description.**

Research questions

- How are **codes of ethics for archivists** dealing with the **protection of personal information**?
- Are the **standards and guidelines** reflecting and addressing the **new challenges** related to **privacy issues** in the new digital contexts ruled by expert systems?
- What are the **conflicts** that are found in these standards that affect the **archival knowledge organization activities** (the processing of the data)?

Knowledge organization in digital environments

- It is important for archives to adopt a **culture of protection of the privacy of the producer**, although **without disregarding the rights of the user**, in relation to personal data



Life Cycle of Personal Data (Romansky 2015)

Personal data protection: ethical challenges

- **Traditional** imperatives in archival ethics
 - the protection of the **integrity** of the archival material
 - **access** to the archive

Personal data protection: ethical challenges

- Traditional imperatives in archival ethics
 - the protection of the integrity of the archival material
 - access to the archive
- **Today's** main ethical challenge for archivists:
 - between the **openness of information** (mission of archives)
 - and the **protection of personal data** (mandated by new regulations)

Codes of Ethics and privacy

- The International Council of Archive (ICA)/Conseil International des Archives **Code of Ethics** (1996) (<https://www.archivistes.org/Code-de-deontologie>):
 - Le Code de déontologie énonce dans les principes 6 et 7:
 - Principe 6. Les archivistes **facilitent l'accès aux archives** du plus grand nombre possible d'utilisateurs et offrent leurs services avec impartialité à tous les usagers.
 - Principe 7. Les archivistes visent à trouver le **juste équilibre**, dans le cadre de la législation en vigueur, **entre le droit au savoir et le respect de la vie privée.**

Codes of Ethics and privacy

- Principe 7 (continuation).

Les archivistes veillent à ce que **la vie des personnes morales et des individus, ainsi que la sécurité nationale soient protégées** sans qu'il soit besoin de détruire des informations, **surtout dans le cas des archives informatiques** où l'effacement des données et la réinscription sont pratique courante. Les archivistes veillent au respect de la vie privée des personnes qui sont à l'origine ou qui sont le sujet des documents, surtout pour celles qui n'ont pas été consultées pour l'usage ou le sort des documents.

Codes of Ethics and privacy

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Note the mention in 1996 to the dangers of archives in electronic environments

Codes of Ethics and privacy

- Questionnaire on the ICA Code of Ethics: Results and Recommendations (June 2008)
(<https://www.ica.org/en/questionnaire-ica-code-ethics-results-and-recommendations-1>)
- **Ethical dilemmas** faced:
- The **major issue faced** by the respondents was over access: this covered equal access; refusal of access; journalistic pressure to allow access to closed or restricted material; depositor wishing to restrict access to named individuals; **access vs privacy**

Codes of Ethics and privacy

- **ICA Principles of Access to Archives (2012)**
- **Respect de la vie privée:** droit garantissant les individus contre la divulgation des informations d'ordre personnel ou privé les concernant contenues dans les archives.

Codes of Ethics and privacy

- **ICA Principles of Access to Archives** (cont.)
- 4. Les services d'archives veillent à ce que les clauses de non-communicabilité soient claires et **d'une durée établie**, à ce qu'elles soient fondées sur une législation appropriée, à ce qu'elles reconnaissent **le droit à la protection de la vie privée**, et à ce qu'elles respectent **les droits des propriétaires d'archives privées**.

Les archivistes fournissent l'accès le plus large possible aux documents, mais ils reconnaissent et acceptent **la nécessité d'établir certaines restrictions d'accès**. Celles-ci sont **imposées par la loi** ou par la **politique institutionnelle**, soit celle du service d'archives, soit celle de son institution de tutelle, ou celle d'un **donateur**. Les archivistes veillent à ce que les politiques et règles d'accès applicables aux archives de leur institution soient publiées de sorte que les **clauses de non-communicabilité et leurs motifs soient clairs pour le public**.

Codes of Ethics and privacy

Les archivistes cherchent à limiter les restrictions d'accès à celles imposées par la loi, ou à identifier **les cas où un préjudice particulier porté à un intérêt privé ou public légitime l'emporte provisoirement sur le bénéfice qu'il y a à ouvrir les archives** à ce moment-là. Les clauses de non-communicabilité sont imposées pour un temps limité, qu'il s'agisse d'une période spécifique de quelques années, ou jusqu'à ce qu'un événement particulier, comme le décès d'une personne, se produise.

Des clauses générales de non-communicabilité s'appliquent à tous les fonds d'archives; en fonction de la nature de l'institution, elles couvrent la protection de la vie et des données privées, la sécurité, les informations en matière d'enquête ou d'application de la loi, les secrets commerciaux, et la sécurité nationale. Leur portée et leur durée d'application doivent être claires et rendues publiques.

Codes of Ethics and privacy

Les clauses particulières de non-communicabilité s'appliquent uniquement à des ensembles spécifiques de documents institutionnels; elles s'appliquent pour une durée limitée. **Un énoncé clair de la clause spécifique de non-communicabilité est inclus dans la description archivistique publique des documents concernés.**

La communication d'archives et de papiers personnels ayant fait l'objet d'un don est limitée par les conditions établies dans le document d'acquisition, tel qu'un acte de donation, un testament ou un échange de lettres. **Les archivistes négocient et acceptent les clauses de non-communicabilité imposées par les donateurs si** celles-ci sont claires, d'une durée limitée, et peuvent être appliquées selon de justes modalités.

Codes of Ethics and privacy

- DÉCLARATION IFLA-ICA RELATIVE À LA LÉGISLATION SUR LA VIE PRIVÉE ET L'ARCHIVAGE (2020)

L'intérêt et le soutien manifestés en faveur d'une **législation et d'une jurisprudence destinées à assurer la protection des données personnelles** n'ont cessé de croître au cours des dernières années. Ce phénomène s'explique par une prise de conscience grandissante de la nature potentiellement intrusive de certains nouveaux procédés de collecte et d'exploitation des données personnelles.

Si les techniques mises en œuvre représentent un progrès globalement positif, elles suscitent aussi des **préoccupations** quant à la portée de leur éventuel **impact sur l'archivage et sur l'intégrité des fonds institutionnels (archives, dossiers, données, etc.)**. Les gestionnaires du patrimoine archivistique souhaitant demeurer dans la légalité, le manque de transparence autour de ces techniques peut aboutir à **l'application de principes excessivement contraignants**, avec des **conséquences parfois néfastes** pour ce qui concerne **l'acquisition et la conservation** des archives et, en fin de compte, **l'accès** aux informations.

L'objet de cette déclaration est de fixer des principes de base pour toutes les actions de sensibilisation à la législation sur la protection des données que pourraient mener les bibliothèques, les archives et les associations professionnelles correspondantes

Codes of Ethics and privacy

- Archives et données personnelles

Les archives contiennent, par la force des choses, des données à caractère personnel. Toute information relative à une personne physique identifiée et révélant des traits de sa personnalité, sa situation ou ses activités est une donnée à caractère personnel. Toute fois, les systèmes permettant l'accès à des informations sont tributaires de certaines fonctions visant à en assurer la gestion et la préservation. D'où la nécessité de mettre en place des systèmes de gestion documentaire et archivistique tout aussi fiables

Le traitement des données personnelles soulève plusieurs questions fondamentales. Selon l'article 12 de la Déclaration universelle des droits de l'homme, nul ne peut faire l'objet d'immixtions arbitraires dans sa vie privée, sa famille, son domicile ou sa correspondance.

Codes of Ethics and privacy

L'article 29, quant à lui, insiste sur le fait que «chacun n'est soumis qu'aux limitations établies par la loi exclusivement en vue d'assurer la reconnaissance et le respect des droits et libertés d'autrui et afin de satisfaire aux justes exigences de la morale, de l'ordre public et du bien-être général dans une société démocratique».

Pour **concilier au mieux ces deux articles**, il y a lieu de faire preuve de discernement professionnel en s'appuyant sur des principes déontologiques. Les personnes exerçant au sein des bibliothèques et des archives adhèrent à des **codes de conduite** qui façonnent toutes leurs décisions quant à la manière d'acquiescer, de gérer et de rendre accessibles les documents d'archives.

Lorsqu'il s'agit de documents contenant une part importante de données personnelles, **il revient souvent à l'archiviste** d'en assurer la conservation en toute sécurité jusqu'au moment où leur accès devient possible, c'est-à-dire lorsque les informations en question ont perdu leur caractère sensible et/ou lorsque les personnes concernées sont décédées.

Codes of Ethics and privacy

- **Recommandations pour une législation en matière de protection des données personnelles**

Nous souhaitons donc formuler les recommandations suivantes à l'attention des chefs d'État et autres décisionnaires:

- **Nous accueillons favorablement toute loi qui accorderait aux individus des droits** et des possibilités plus étendus, leur permettant d'avoir leur mot à dire sur la manière dont les informations qui les concernent sont acquises et traitées.

Codes of Ethics and privacy

- Toutefois, il convient que de telles règles prévoient des **dérogations** pour autoriser l'**acquisition et la conservation**, par des institutions professionnelles telles que des bibliothèques et des **archives, de documents porteurs de données personnelles**.
- S'il est effectivement souhaitable que les règles régissant l'accès aux documents d'archives favorisent **l'accès par défaut**, elles devraient également prévoir des **dérogations** lorsqu'il s'agit de **protéger la vie privée**, la confidentialité, les susceptibilités culturelles ou de répondre à des préoccupations sécuritaires légitimes.

Codes of Ethics and privacy

- Il conviendrait de soutenir les bibliothèques, les archives et autres détenteurs de documents d'archives dans l'élaboration et le respect de codes de déontologie stricts et adaptés à la gestion de documents porteurs de données à caractère personnel et à la prise de décisions concernant l'accessibilité de ces documents.
- La responsabilité des bibliothèques et des archives assurant la conservation de documents d'archives devrait être limitée dans la mesure où les interventions de ces institutions seraient effectuées dans le respect des principes de bonne foi.

Codes of Ethics and privacy

- Codes of ethics ratified in some French speaking countries such as France or Switzerland were based on the 1996 code of ethics, such as the Association des Archivistes Français (AAF) Code de déontologie (1996), and the Association des Archivistes suisses (AAS) - Code of Ethics for Archivists (1998)

Codes of Ethics and privacy

- In Canada - Code of Ethics and Professional Conduct - Association of Canadian Archivists (2017)
 - **1. CONTEXT:** We gather, maintain and communicate knowledge about the context in which records are created, used, and preserved.
[...]
 - c. We draw guidance for gathering, maintaining and communicating records' context from:
 - i. established principles of archival theory, such as respect des fonds and respect for original order;
 - ii. institutional policies and guidelines governing records and our responsibilities to them;
 - iii. laws and regulations, particularly with regard to privacy and data protection**
[...]

Codes of Ethics and privacy

- **3. ACCESS:** We make records available to the widest possible audience in a manner consistent with their content, source, and the statutory obligations that govern the jurisdiction in which we work
 - a. **We respect the privacy of the individuals** who created or are the subjects of records, especially persons and communities who had no voice in the creation, transmission, disposition, or preservation of the records.
- [...]

Codes of Ethics and privacy

- Canada:

La Déclaration québécoise sur les archives - Association des archivistes du Québec (AAQ) (2006):

Et c'est pourquoi nous nous engageons

à travailler de concert, chacun selon ses compétences, afin de tout mettre en oeuvre pour que

[...]

les **archives soient rendues accessibles** à tous, **dans le respect des droits des personnes**, des créateurs, des propriétaires et des utilisateurs.

Codes of Ethics and privacy

- Society of American Archivists (SAA) - Standards for Access of Research Materials in Archival and Manuscript Repositories (1973)
 - 7. Repositories are committed to preserving manuscript and archival materials and to making them available for research as soon as possible. At the same time, **it is recognized that every public agency has certain obligations to guard against invasion of privacy and to protect confidentiality in its records** in accordance with law and that every **private donor has the right to impose reasonable restrictions** upon his papers to protect confidentiality for a reasonable **period of time**.
 - (a) It is the **responsibility of the archivist to inform researchers of the restrictions** which apply to individual collections or record groups.
 - (b) The archivist should **discourage donors from imposing unreasonable restrictions**.
 - (c) The archivist should, whenever possible, **require a specific time limit on all restrictions**.
 - (d) The **repository should periodically reevaluate restricted records** and work toward **providing access to material no longer harmful to individuals** or to national interest.

Codes of Ethics and privacy

- ALA/SAA Joint Statement on Access to Original Research Materials in Archival and Manuscript Repositories (1979)
 - 7. Repositories are committed to preserving manuscript and archival materials and to making them available for research as soon as possible. At the same time, it is recognized that **every repository has certain obligations to guard against unwarranted invasion of personal privacy and to protect confidentiality** in its holdings in accordance with law and that every private donor has the right to impose reasonable restrictions upon his papers to protect privacy or confidentiality for a reasonable period of time.
 - a. It is the responsibility of the repository to inform researchers of the restrictions which apply to individual collections or archival groups.
 - b. The repository should discourage donors from imposing unreasonable restrictions and should encourage a specific time limitation on such restrictions as are imposed.
 - c. The repository should periodically reevaluate restricted material and work toward the removal of restrictions when they are no longer required.

Codes of Ethics and privacy

- ALA-SAA Joint Statement of Access: Guidelines for Access to Original Research Materials (August 1994)
- 2. A repository is committed to preserving manuscript and archival materials and to making them available for research as soon as possible. At the same time, **it is recognized that a repository may have legal and institutional obligations to protect confidentiality** in its collections, and that private donors have the right to impose reasonable restrictions upon their papers **to protect privacy or confidentiality for a reasonable period of time.**
 - a. It is the responsibility of the repository to inform researchers of the restrictions which apply to collections.
 - b. The repository should discourage donors from imposing unreasonable restrictions and should encourage a specific time limitation on restrictions that are imposed.
 - c. The repository should periodically evaluate restricted material and work toward the removal of restrictions when they are no longer required.

Codes of Ethics and privacy

- ALA/SAA Joint Statement on Access to Research Materials in Archives and Special Collections Libraries (2009)
- 3. RESTRICTIONS. Repositories must be committed to preserving research materials and to making them available for research as quickly as practicable following their acquisition. **Nevertheless, a repository must fulfill legal and institutional obligations to protect confidentiality** and physical security of its collections. Moreover, donors may wish to impose reasonable restrictions upon their papers for a defined period of time **to protect privacy or confidentiality.**
 - Repositories must inform researchers of restrictions that apply to collections, and should be encouraged to make this information generally available.
 - Repositories should discourage donors from imposing unreasonable restrictions, encourage a specific time limitation on restrictions that are imposed, and make the duration of the restriction known to its users.
 - Repositories should periodically review and reevaluate restricted material and remove restrictions when they are no longer required.

Codes of Ethics and privacy

- There is a reference to the definition of **Access** of the Dictionary of Archives Terminology (SAA, 2005-2020)
 1. the ability to locate relevant information through the use of catalogs, indexes, finding aids, or other tools (Citations)
 2. the permission to locate and **retrieve information for use** (consultation or reference) **within legally established restrictions of privacy**, confidentiality, and security clearance (Citations)
 - (Hoff-Wilson 1983, 445) At the same time, it became more and more difficult for historians to justify privileged access because documentation about socioeconomic and political movements, often involving powerless groups, was found increasingly in public records rather than private manuscript collections requiring special permission for access. Thus, access, first to private and then to public sources of information, has been an enduring hallmark of historians over time; but **the relationship of access to privacy has become more problematic as the interests and members of the historical profession have become more heterogeneous.**
 - (Schellenberg 1994, 225) In evolving policies for the regulation of access to public records that will be found reasonable by both government officials and the public it is necessary to devise procedures for defining and enforcing restrictions on their use.
 - (Meissner 2019, 104) In some cases, access is not constrained by legal requirements, but by the physical nature of the materials themselves. Such conditions might include their location, which could delay access to the materials because of retrieval issues.
 3. Computing. the physical processes of retrieving information from storage media (Citations)

Codes of Ethics and privacy

- ACRL/RBMS-SAA Guidelines on Access to Research Materials in Archives and Special Collections Libraries (2020)
- Laws, Regulations, and Restrictions
 - Restrictions on access may be imposed to protect national security, by law, by institutional mandate, tribal laws, cultural stewardship practices, by donor agreement, or to preserve materials. If restricted due to preservation concerns, provide materials in an alternative format.
 - Fulfill legal and institutional obligations to protect privacy or confidentiality as outlined by the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), the Privacy Act, and other applicable laws or regulations.
 - Make information on restricted materials accessible.
 - Advocate for limited or no restrictions when negotiating with donors of materials.
 - Periodically review and reevaluate restricted material. Remove restrictions when they are no longer required.
 - Implement security measures to safeguard staff and collections.

Codes of Ethics and privacy

- **Core Values of Archivists**, approved by the the Society of American Archivists (SAA) Council in May 2011; revised August 2020.
 - **Access and Use**: Access to records is essential in all personal, community, academic, business, and government settings. **Archivists should promote and provide the widest possible accessibility of materials, while respecting legal and ethical access restrictions** including public statutes, cultural protections, **donor contracts**, and **privacy requirements**. While access may be justifiably limited in some instances, **archivists still seek to foster open access and unrestricted use as broadly as possible when appropriate**.

The goal of use should be considered during every phase of acquisition, description, and access. Even individuals who do not directly use archival materials still benefit indirectly from research, public programs, and other forms of archival work, including an increased awareness that records exist, are being cared for, and can be accessed when needed. **Accordingly, use of documentary records should be actively promoted and protected by archivists.**

Codes of Ethics and privacy

- **Code of Ethics**, approved by the the Society of American Archivists (SAA) Council in May 2011; revised August 2020.
 - **Access and Use**: Archivists actively promote open and equitable access to records in their care as much as possible. **They strive to minimize restrictions and maximize ease of access.** They facilitate the continuing accessibility of archival materials in all formats. Archivists formulate and disseminate access policies that encourage **ethical and responsible use.** They work with creators, donors, organizations, and communities to ensure that any restrictions applied are appropriate, well-documented, and equitably enforced. When **repositories require restrictions to protect confidential and proprietary information**, such restrictions should be applied consistently. Archivists should seek to balance the **principles of stewardship, access, and respect.**

Codes of Ethics and privacy

- **Code of Ethics**, approved by the the Society of American Archivists (SAA) Council in May 2011; revised August 2020.
 - **Privacy**: Archivists recognize that **privacy is an inherent fundamental right** and sanctioned by law. They establish procedures and policies to protect the interests of the donors, individuals, groups, and organizations whose public and private lives and activities are documented in archival holdings. As appropriate and mandated by law, archivists place **access restrictions on collections to ensure that privacy** and confidentiality are maintained, **particularly for individuals and groups who have had no voice or role in collections' creation, retention, or public use**. Archivists should maintain **transparency** when placing these restrictions, documenting why and for how long they will be enacted. Archivists promote the respectful **use of culturally sensitive materials** in their care by encouraging researchers to consult with those represented by records, recognizing that privacy has both legal and **cultural dimensions**. **Archivists respect all users' rights to privacy by maintaining the confidentiality of their research and protecting any personal information collected about the users** in accordance with their institutions' policies.

European regulations

- RÈGLEMENT (UE) 2016/679 DU PARLEMENT EUROPÉEN ET DU CONSEIL

du 27 avril 2016

relatif à la protection des personnes physiques à l'égard du traitement **des données à caractère personnel** et à la libre circulation de ces données, et abrogeant la directive 95/46/CE (règlement général sur la protection des données)

<https://eur-lex.europa.eu/legal-content/fr/TXT/HTML/?uri=CELEX:32016R0679&from=fr>

European regulations

- European Archives Group (EAG), Guidance on Data Protection for Archive Services (EAG Guidelines on the Implementation of the General Data Protection Regulation in the Archive Sector)
 - The European Archives Group has prepared **Guidelines for the implementation of the General Data Protection Regulation (GDPR) by archive services**. These guidelines provide **basic information and practical guidance to archivists regarding the specific challenges** for the application of the GDPR in the archival sector.
 - The Guidelines are addressed to public and private institutions that hold archives, i.e., records that have been selected for permanent preservation, including National and State Archives, Regional and Municipal Archives, museums, libraries, foundations and other public and private entities that preserve archives.
 - These Guidelines are intended to help archive services in Europe apply the General Data Protection Regulation. They are a work in progress, subject to improvement and enrichment. These guidelines may also be amended on the basis of future jurisprudence and of opinions and guidelines issued by the European Data Protection Board.
 - https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency/freedom-information/access-documents/information-and-document-management/archival-policy/european-archives-group/guidance-data-protection-archive-services_en

European regulations

- General principles
 - 1. General principles relating to processing of personal data (art. 5)
 - 2. Lawfulness of processing
 - 3. The GDPR protects only personal data of living persons (but national law can protect also the data of deceased persons)
- What is “archiving purposes in the public interest”?
 - 4. Different rules for different archives (“archiving purposes in the public interest” under recital 158)
 - 5. Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes (art. 89)

European regulations

- Data subjects' rights
 - 6. The heart of the matter: granting individuals control over their personal data
 - 7. Information to be provided where personal data have not been obtained from the data subject (art. 14)
 - 8. Right of access by the data subject (art. 15)
 - 9. Right to rectification (art. 16)
 - 10. Right to erasure ('right to be forgotten') (art. 17)
 - 11. Right to restriction of processing (art. 18) and right to object (art. 21)
 - 12. Notification obligation regarding rectification or erasure of personal data or restriction of processing (art. 19)
 - 13. Right to data portability (art. 20)

European regulations

- V. Processing categories of personal data that require special safeguards
 - 14. Processing of special categories of personal data
 - 15. Processing of personal data relating to criminal convictions and offences (art. 10)
- VI. Data Security
 - 16. Data protection by design and by default (art. 25): what does it mean in the archives?
 - 17. Security of personal data (art. 32-34)
 - 18. Data protection impact assessment and prior consultation (art. 35-36)
- VII. Measures for transparency and promoting compliance
 - 19. Records of processing activities (art. 30)
 - 20. Data protection officer (art. 37): do archives need to appoint one?

Personal data protection: ethical challenges for archival description

- The **concept of privacy is fluid**, varying from country to country, within cultural groups or information spaces.
 - In **libraries**, for instance, privacy policies are determined having the **privacy of the user** in mind, and do not consider the author or creator privacy when determining collection practices (Tessler 2004).
 - In **archives**, the responsibility goes beyond the users of archival materials reaching the protection of the **privacy of the creators'** collection as well.

Personal data protection: ethical challenges for archival description

- The process of archival description **privileged** the representation of **context over content**, which means that contextual information, which includes the creator information, its nature, and relationships with records is more desirable than the content of the record per se.
 - “the structure of archival description has not been seriously challenged ethically in its development over the century” (Zhang 2012, p.333)

Personal data protection: ethical challenges for archival description

- International Standard Archival Authority Record for Corporate Bodies, Persons and Families – **ISAAR (CPF)** “as a guidance for preparing archival authority records which provide descriptions of entities associated with the creation and maintenance of archives” (International Council on Archives 2004).
- **ISAD(G)**: General International Standard Archival Description (International Council on Archives 1999, 2000), which provides guidance for the inclusion of contextual information within the description of archives at any level.

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- Michael Cook (2006) sees a **parallelism between the interest** of the ICA in **codes of ethics** and **technical standards** during the 1990s: “the ICA developed its widely accepted standards for archival description over much the same period as its code of ethics. The two developments are **certainly linked**”.

Technical standards

- ISAD(G): Elements descriptifs
 - 3.1. Zone d'identification (3.1.1 Référence; 3.1.2 Intitulé / analyse; 3.1.3 Dates; 3.1.4 Niveau de description; 3.1.5 Importance matérielle et support de l'unité de description)
 - 3.2. Zone du contexte (3.2.1 Nom du producteur, 3.2.2 Histoire administrative/Notice biographique; 3.2.3 Historique de la conservation; 3.2.4 Modalités d'entrée)
 - 3.3. Zone du contenu et de la structure (3.3.1 Présentation du contenu; 3.3.2 Évaluation, tris et éliminations, sort final; 3.3.3 Accroissements; 3.3.4 Mode de classement)
 - 3.4. Zone des conditions d'accès et d'utilisation (3.4.1 Conditions d'accès; 3.4.2 Conditions de reproduction; 3.4.3 Langue et écriture des documents; 3.4.4 Caractéristiques matérielles et contraintes techniques; 3.4.5 Instruments de recherche)
 - 3.5. Zone des sources complémentaires (3.5.1 Existence et lieu de conservation des originaux; 3.5.2 Existence et lieu de conservation de copies; 3.5.3 Sources complémentaires; 3.5.4 Bibliographie)
 - 3.6. Zone des notes (3.6.1 Notes)
 - 3.7. Zone de contrôle de la description (3.7.1 Notes de l'archiviste; 3.7.2 Règles ou conventions; 3.7.3 Date(s) de la description).

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- ISAAR(CPF): Zone d'identification
 - 5.1 Zone d'identification (5.1.1 Type d'entité; 5.1.2 Forme(s) autorisée(s) du nom; 5.1.3 Formes parallèles du nom; 5.1.4 Formes du nom normalisées selon d'autres conventions; 5.1.5 Autres formes du nom; 5.1.6 Numéro d'immatriculation des collectivités)
 - 5.2. Zone de la description (5.2.1 Dates d'existence; 5.2.2 Histoire; 5.2.3 Lieux; 5.2.4 Statut juridique ; 5.2.5 Fonctions et activités; 5.2.6 Textes de référence; 5.2.7 Organisation interne/généalogie; 5.2.8 Contexte général)
 - 5.3. Zone des relations (5.3.1 Nom(s)/numéro d'immatriculation des collectivités, des personnes ou des familles associées; 5.3.2 Type de relatio; 5.3.3 Description de la relation; 5.3.4 Dates de la relation)
 - 5.4. Zone du controle (5.4.1 Code d'identification de la notice d'autorité; 5.4.2 Code(s) d'identification du ou des services; 5.4.3 Règles ou conventions; 5.4.4 Niveau d'élaboration; 5.4.5 Niveau de détail; 5.4.6 Dates de création, de révision ou de destruction; 5.4.7 Langue(s) et écriture(s); 5.4.8 Sources; 5.4.9 Notes relatives à la mise à jour de la notice)

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- In order to avoid sensitive issues related to the description of archival materials, it is **recommended** to reach the **description at the level of series, avoiding describing items** which would require a more detailed description.
 - However, this higher level of contextual information may sometimes infringe the rights of the individual's data protection as well.

Technical standards

- the **UK National Archives** have prepared a **guide to archiving national data**, “concerning records that contain or consist of personal data that has been acquired by an archive service for preservation as part of its collections or is being assessed for this purpose” (The National Archives 2018, 8).
- According to the guide, “**online catalogues and finding aids** made available to the public are **covered by the Data Protection Act 2018** if they include entries containing personal information,” and “if the information is sensitive it may not be suitable to provide public access to all metadata and finding aid content if individuals are identifiable” (The National Archives 2018, 29).
 - However, this scenario is even more complicated when it involves materials gathered by government agencies about a third party as the third party may not be willing to share the materials with the general public (Tessler 2014)

Technical standards

- **Privacy** relates to the creator of the archival material and **also with** what Gilliland called **co-creator**.
 - “the archival concept of co-creatorship has been proposed as a way to acknowledge, give voice to, and describe the roles of those who were involved with the creation of the record and its metadata as contributors, subjects, victims, or legatees rather than as the official authors” (Gilliland 2012, p. 341)

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- The description of the co-creator is **another ethical challenge** that archivists face in the moment of archival knowledge representation, as **they must consider all the people involved** in the creation of fonds, series or items – **the third party** – in order to also guarantee the protection of their personal data.

Conclusion

- Conflicts between the areas 3.2 and 3.3, Context and Contents of ISAD(G), and the articles 5, 6, 9, 12, 13, 16, 17, and 32 of the European Regulation 679/2016
 - in aspects related to adequacy, relevance, accuracy, compliance, consent, categories of personal data, transparency, access, erasure, and security of processing.

Conclusion

- Article 5, Principes relatifs au traitement des données à caractère personnel
- Article 6, Licéité du traitement
- Article 9, Traitement portant sur des catégories particulières de données à caractère personnel
- Article 12, Transparence des informations et des communications et modalités de l'exercice des droits de la personne concernée
- Article 13, Informations à fournir lorsque des données à caractère personnel sont collectées auprès de la personne concernée
- Article 16, Droit de rectification
- Article 17, Droit à l'effacement («droit à l'oubli»)
- Article 32, Sécurité du traitement

Conclusion

- In **ISAAR(CPF)** the most **vulnerable fields** are also related to the description of the context, history, and activities of the corporate body, person and family, identified as **Description area (field 5.2)** with information such as legal status, functions, occupations and activities, mandates/sources of authority, internal structure/genealogy and general context.

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 - **None of the two standards presents any mention to privacy or data protection issues.**

Conclusion

- Considering that contextual information is a vital component of archival description, as shown in the ISAD(G) and the ISAAR(CPF), the **protection of personal data**, as a way to avoid harm should also be the **object of careful attention within archival knowledge organization systems** in order to guarantee an ethical stance regarding the archival knowledge organization.

Conclusion

- In spite of the prominent role that archives play in the society promoting accountability, memory, and social justice, **archival science seems to have shown a timid performance** in the **discussions on the protection of personal data**, which has led the area to a lack of concerns and specific actions on archival ethics regarding archival knowledge organization systems.

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- In spite of the prominent role that archives play in the society promoting accountability, memory, and social justice, **archival science seems to have shown a timid performance** in the **discussions on the protection of personal data**, which has led the area to a lack of concerns and specific actions on archival ethics regarding archival knowledge organization systems.
- Consequently, the **archival knowledge organization systems** present themselves **outdated and unprepared** to deal with new regulations and laws on **personal data protection**.



Merci!