Handle with Care: Post-Secrecy Archival Records as Cultural Heritage

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Introduction

This chapter problematizes the ongoing digitization of the public sectors archives in Sweden from the perspective of personal integrity. The analysis of this chapter discusses which archival records were seen as integrity sensitive from 1927 until 2010. The conclusion is that what information that was viewed as private was depending on the zeitgeist at the time of its creation and that the archivist should be aware of this when digitizing the material as a way to protect to the right to privacy.

Archives as a Problematic Cultural Heritage

In the Swedish archival law from 1990 it is stated that the archives of public authorities, regardless of the uniqueness or importance of the records, are part of the national cultural heritage.[1] In recent years this has meant that these archives have become the subject of a discourse about how increased public access to the cultural heritage is to be achieved by online publication of archival records.[2] In terms of general archival theory, this development is complicated since public archives are not neutral bearers of knowledge but rather contain the views of social elites,[3] or they were created when citizens needed to share information in order to gain support from the general welfare state. Thereby the archives can portray people in ways they would not consent to or leak private information when accessed by the public. This is further complicated by the changing nature

[1] SFS 1990:82. *Arkivlag* 3§.

[2] Malin Thor Tureby & Kristin Wagrell, "Crisis Documentation and Oral History: Problematizing Collecting and Preserving Practices in a Digital World", *The Oral History Review* 49:2 (2022) p. 347.

[3] Tim Berndtsson, Otto Fischer, Annie Mattson & Annie Öhrberg. "From Dust to Dawn – Archival Studies after the Archival Turn", in Tim Berndtsson, Otto Fischer, Annie Mattson & Annie Öhrberg (eds.), *From Dust to Dawn – Archival Studies after the Archival Turn* (Uppsala 2022) p. 39.

of social norms, which makes it hard to determine which information has been offensive or private in the past.[4]

With regard to the theme of this book this means that there is a tension between the role of the archives as cultural heritage, where the records are seen as part of a *collective* memory, and the ethical standards of the archival sector which aims to protect the *individual's* right to privacy.[5] In this chapter I therefore want to discuss how certain records at the time of their creation were viewed as potentially problematic regarding the right to privacy. By doing this I hope to demonstrate how some archival records can challenge the idea of digitization as a form of democratization since this digitization also comes at the cost of certain individuals' right to privacy.[6] This is done by the following set of questions:

- Which of the public archives' records were regarded as invasive of privacy?
- What reasons were stated for these views and what can the reasons say about the decision makers' views of privacy?
- How can the answers to the first two questions be utilized in further discussions about digital cultural heritage?

By examining this set of questions, I hope to shed light on what the archivist Paul Dalgleish calls the thorniest area of digitization, namely, records that violate privacy but yet meet the legal criteria for being accessible to the public.[7] This is an area that archival science has paid little attention too while it has become of increasing importance in our contemporary discourse about increased access as part of a democratization process.[8]

What is Privacy?

In the previous section the word privacy was used. This concept goes back to ancient Greece, where the philosopher Aristotle divided society into two separate

[4] David Mindel, "Ethics and Digital Collections: A Selective Overview of Evolving Complexities", *Journal of Documentation* 78:3 (2022) p. 552.

[5] Björn Lindh, "Ny internationell etikkod för arkivarier", *Arkiv samhälle och forskning,* 1:1 (1998) p. 59.

[6] In archival tradition archives have been seen as neutral portrayers of the past. This has however been challenged in recent years; for further reading see Ciaran B. Trace, "What is Recorded is Never Simply 'What Happened': Record Keeping in Modern Organizational Culture", *Archival Science* 2 (2002) pp. 137–159.

[7] Paul Daeglesh, "The Thorniest Area: Making Collections Accessible Online while Respecting Individual and Community Sensitivities", *Archives and Manuscripts*, 39:1 (2011) pp. 71–73.

[8] It should be noted that Daeglesh's article is from 2011 and that since then there have been a few publications about privacy in the archives. Yet the ethical dimension of this is a small part of the larger debate surrounding digitized archival material.

spheres: the private and the public. However, Aristotle did not view privacy as the right to have a separate area where people could do as they pleased, but rather as a place where one could develop the virtues that were necessary in the political public sphere.[9] In contemporary society, research about privacy has advanced quite a different understanding of privacy, where one of the best-known philosophers is the legal scholar Alan Westin, whose theory of privacy has affected the current data regulations of many countries. The key part of Westin's philosophy is that privacy can be understood as "the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others".[10] In Westin's philosophy several modes of privacy are noted, but for the purpose of this chapter the three most important ones are *solitude, emotional release* and *reservation*. In this case solitude means the freedom from being observed by others. Emotional release means the ability to let go of social norms and be able to be oneself, while reservation means limiting what is disclosed to others.[11] In this chapter Westin's understanding of privacy will be operationalized as the definition of privacy, while the three modes mentioned will be utilized to create an understanding of which part of the private sphere the government wanted to protect.

Material and Method – Studying Archives as Socially Constructed Cultural Heritage

The archival law from the 1990s it is stated that public records are part of the national heritage meant a change in what is viewed as cultural heritage, were heritage goes beyond cultural goods such as museum artefacts or building.[12] Cultural heritage can thereby be seen as the result of a social construction where certain traditions and artefacts are given this label,[13] a view that is the basis for this chapter. This socially constructed nature of cultural heritage becomes clear

[9] Examples often mentioned with an interconnection between the two spheres are, for instance, caring for a family which was a virtue that could develop how to care for society at large. For further reading see Judith A. Swanson, *The Public and the Private in Aristotle's Political Philosophy* (Ithaca & London:, 1992) pp. 202–208.

[10] Luisa Rollenhagen, "Alan Westin is the Father of Modern Data Privacy Law", *Osano* November 8, 2020. Available at <https://www.osano.com/articles/alan-westin>.

[11] Stephen Margulis, "Three Theories of Privacy: An Overview", in S. Treptke & L. Reinecke (eds.). *Privacy Online* (Berlin 2011) p. 11.

[12] Hugh Taylor, "The Collective Memory: Archives and Libraries As Heritage", *Archivaria* 15 (1982) pp. 118–119.

[13] Samuel Edquist, "Archival Divides: Archives as Contested Realities and Metaphors", in Tim Berndtsson, Otto Fischer, Annie Mattson & Annie Öhrberg (eds.), *From Dust to Dawn: Archival Studies after the Archival Turn* (Uppsala, 2017) pp. 33–34.

with the case of public authorities' archives since they are governed through legislation, a field sometimes referred to as archival politics.[14] In Sweden archival politics often have the principle of public access to official documents as a basic premise which has been in effect since 1766. This principle, however, was challenged in the early twentieth century with the emergence of the welfare state, when public archives became flooded with records containing detailed information about the citizens' private sphere. As a result, Swedish public officials started to discuss how some records could be kept out of the public eye without being destroyed, which led to the development of secrecy laws.[15]

In the Swedish legal system, however, such legislation needs to be examined by a committee before being presented to parliament. These committees contain both experts and politicians, who set up public inquiries into propositions for new laws.[16] It is these public inquiries that preceded secrecy legislation between 1926 and 2010 that constitute the empirical material for this chapter, since they provide insight into which documents the committees viewed as potentially harmful.

Another important aspect regarding these inquiries is that once a law is passed by parliament, the inquiries function as a source of law.[17] The inquiries are thereby central to interpreting the law since they express the reasoning behind the legislation.[18] The inquiries therefore play a part in constructing the public authorities' archives as cultural heritage since they control which records are accessible to the public. It should also be stated that the maximum time that a record can be put under secrecy is 70 years from its creation, but many records are subject to shorter periods such as five or twenty years.[19] From this perspective some of the records mentioned in this chapter do not yet meet the legal criteria for publication online, while others do.

Some final remarks may also be appropriate regarding the timespan of the investigation and the method operationalized. The reason for choosing the time

[14] Agnes Gheezy, "Filing the World: Archives as Cultural Heritage and the Power of Remembering", *ICON* 19:5 (2021) pp. 1738–39; Edquist (2019) pp. 44–45, Edquist (2019) p. 44.
[15] Statens offentliga utredningar, *Offentlighet och sekretess: Offentlighetskommitténs betänkande lagförslag med motiv*, 1966:60, pp. 64–67.
[16] Lars Trägårdh, "Democratic Governance and the Creation of Social Capital in Sweden: The Discreet Charm of Governmental Commissions", in Lars Trägårdh (ed), *State and Civil Society in Northern Europe: The Swedish Model Reconsidered* (New York, 2007) p. 237.
[17] Presentation of the Swedish legislation process at Hauser Global Law School Programme < https://wsww.nyulawglobal.org/globalex/Sweden1.html#_Preparatory_Legislative_Materials > (October 11, 2022).
[18] Presentation of the Swedish legislation process <https://lagen.nu/om/rattskallor> (November 22, 2022).
[19] SFS 2009:400. *Offentlighets- och sekretesslag*. 15 kap. 1§, 19 kap. 1–3§.

period 1927–2010 is that 1927 was the first time secrecy was addressed in a Swedish public inquiry, while the last revision was made in 2010. It should be noted that not all secrecy legislation has been subject to a public inquiry since it is only major revisions that have created a need for this type of investigations. However, the aim of this chapter is not to present every record that was viewed as potentially harmful, but rather to provide a few examples of such records. Lastly, the method applied in this chapter has primarily been thematic readings of the inquiries with special attention to phrases such as "shielding the right to privacy" in order to locate which records have been viewed as potentially harmful for the individual.[20] It should also be noted that I do not discuss the archival laws which have existed since 1906. This is because this legislation, according to the historian Anna Rosengren, did not deal explicitly with ethical dimensions before 1987. This lack of awareness is linked by Rosengren to a specific Swedish discourse where democracy and the "public good" outweigh individual interests.[21]

The Right to Privacy in Public Authorities' Archives

In previous sections I have discussed how certain public records have been perceived as potentially harmful. The political discussion about this have previously been studied by the historian Samuel Edquist who shows in an article from 2017 that a debate arose in the 1970s about the preservation of social services records. In this debate it was stated that the records should be subject to "ethical destruction" when no longer relevant for the social services since they contained data that violated the individual's privacy. This idea was challenged by proponents of preservation, who stated that preservation was necessary in order to hold social services decision makers accountable. Furthermore, it was argued that the records were part of the nation's cultural heritage and that destroying them would make future research impossible. In the end a practice of ethical destruction was established except that records were to be kept for research purposes for persons born on the 5th, 15th or 25th of a month. The fact that society favoured ethical destruction was, according to Edquist, the result of a stance where the individual is granted privacy from the state which is a position

[20] This chapter is a reworking of my M.A. thesis in archival science in which I operationalized Laclau & Mouffe's discourse analysis. In this chapter I have re-used the source material but put more emphasis on cultural heritage.

[21] Anna Rosengren, *Openness, Privacy and the Archive: Arguments on Openness and Privacy in Swedish Archival Regulation 1987–2004* (Stockholm, 2016) pp. 36–38.

with a nearly hegemonical stance in Sweden.[22] In a later article Edquist discusses how archives can be viewed as both emancipatory and repressive. From an emancipatory standpoint, archives can be regarded as showing how people in power historically viewed marginalized persons, which can be used as evidence of maltreatment. On the other hand, archives can also give information about people that can be potentially dangerous if it comes into the wrong hands. According to Edquist, this illustrates the question of whether or not a person should have the right to be forgotten.[23]

Another text by Edquist is *To Preserve or Not Preserve*, which investigates archival policies regarding destruction of records as well as other themes such as who was thought to be the archive user and the transformation of the archives into cultural heritage in politics.[24] According to Edquist, the labelling of archives as cultural heritage was the result of a changed discourse about archives. Whereas archives during the 1960s and 1970s had been viewed as an arena where marginalized voices were silenced, in the 1980s this view changed and archives came to be viewed as a cultural heritage that could provide a sense of national identity and belonging. However, the archival practice remained unchanged since the term "cultural heritage" was mostly used in the sense that a record was "important". Another aspect during this period was that the future need for archival material did not relate to cultural heritage but rather to academic researchers. Lastly, Edquist suggests that it was unlikely that the archival sector would destroy any records with regard to personal integrity but instead used secrecy in order to keep the documents away from public view.[25] An interesting aspect is that neither Rosengren's nor Edquist's paper mentions any idea that the archives' role as cultural heritage could be unethical if accessibility increased.

Ethical Problems with Digitalized Archival Cultural Heritage

The tension between the discourse of digitization and the right to privacy has previously been discussed by the folklorist Fredrik Skott. Skott's text is based on his work at a semi-public folklore archive where parts of the material were collected under the promise of secrecy in order to encourage people to participate

[22] Samuel Edquist, "Ethical Destruction? Privacy Concerns regarding Swedish Social Services Records", in *The Right to Access of Information and the Right to Privacy – A Democratic Balancing Act* (Huddinge 2017) pp. 11–18, 26, 30.
[23] Edquist (2017) p. 39.
[24] This is my own translation of Edquist's title, which in Swedish reads "Att spara eller inte spara".
[25] Edquist (2019) pp. 133, 152.

in the collection, which means that the archive cannot publish the records online. This is problematized by Skott, since much of the information in the records – such as a person's belief in hobgoblins in the nineteenth century – today can be viewed as harmless even though it was potentially harmful to the informant at the time of collection. Meanwhile, other information such as substance abuse by priests could still be damaging for the informant's descendants. However, there is also a danger in *not* making such records publicly accessible since they tell us about the darker sides of society. Thus, by not making this material accessible there is a risk that the archives will produce a picture of a harmonious past that never existed.[26]

Another problem with the digitization of cultural heritage is, according to the legal scholar Lucas Lixinski, the lack of legislation regarding the practice of digitization, which leaves the cultural heritage institutions with little guidance in how to handle sensitive material.[27] This is also problematized by the communication scholar Zinaida Manžuch, who claims that even though some legislation exists, such as GDPR, there still are ethical dilemmas associated with digitization. One example is the question of digital access to materials such as medical records, newspaper articles and ethnographic material produced before the Internet, meaning that persons in the records could not grasp how their information would be used in the future. Furthermore, the digitization of cultural heritage also causes a problem since it is the owner of the website and not the people in the material that provide the means of interpreting the records.[28]

Another aspect of accessibility regarding digitization is the fact that digitization has changed the informal access criteria. Previously researchers had to physically visit an archive and request to see a specific record. This meant that even though the records were accessible to the public, the main audience for the archives was not the general public but rather researchers or journalists. With digitization this has changed, which also affects the ethics of public access, since there is a difference, for instance, between one researcher reading a private letter and millions of people accessing it online.[29] Furthermore, archival records can be

[26] Fredrik Skott, "Finns den på nätet? Nätpublicering som kulturarvsproduktion", *Tidskrift for kulturforskning* 13:3 (2014) pp. 51–61.
[27] Lucas Lixinski, "Digital Heritage Surrogates, Decolonization, and International Law: Restitution, Control, and the Creation of Value as Reparations and Emancipation", *Santander Art and Culture Law Review* 2:6 (2022) pp. 66–67.
[28] Zinaida Manžuch, "Ethical Issues in Digitization of Cultural Heritage" *Journal of Contemporary Archival Studies* 4:2 (2017) pp. 7–12.
[29] Daeglesh (2011) pp. 69–71.

combined with each other to gain a deep insight into an individual's private sphere. One example of such combinations has been discussed by the historian Jenny Bangham who describes a medical archive that contained biological and qualitative data that were not sensitive to integrity when they occurred separately. When combined, however, these records could reveal the blood group of an entire human pedigree, which was viewed as an invasion of privacy by the archive.[30] In this perspective the digitization and web publication of archival records could lead to unexpected but dire consequences for the individual.

The purpose of this section has been twofold. First and foremost I have aimed to highlight the complexity of Sweden's tradition of openness and the right to privacy within archival policy. From this perspective the labelling of archives as cultural heritage furthers this challenge since it comes with a discourse about increased access and digitization. In the following section I will therefore present some examples of records that has been viewed within the field of archival politics as potentially harmful, a perspective that is currently lacking in archival research. The point here is not to develop an "ethical standard" regarding these records but rather to open up for discussion about how these records were viewed and potential dangers in increasing accessibility to them, thus contributing to the theme of (un)contested heritage.

Early Secrecy Legislation – from Drunkards to Mental Health Issues

As mentioned in previous sections, the content of archives – and thus what they contribute to the cultural heritage – is governed by legislation, part of which concerns secrecy. The first public inquiry regarding secrecy was published in 1927, which means that none of the records described in the inquiry are subject any longer to secrecy since the maximum amount of time that records can be kept under secrecy is 70 years. Therefore the records mentioned in this inquiry, as well as the inquiry of 1935 that is discussed later in this section, are not limited by legislation as is common with cultural heritage material.[31]

The inquiry of 1927 did not contain many explicit discussions of privacy; instead it mostly dealt with protecting some records in the public administration of the state. In one case, however, privacy is explicitly mentioned and that is

[30] Jenny Bangham, "New Meanings in the Archive: Privacy, Technological Change and the Status of Sources", *Berichte zur Wissenschaftsgeschichte* 45:3 (2022) pp. 500–501.
[31] Lixinsky (2020) pp. 66–67.

regarding the treatment of alcoholics at the state rehabilitation institutions. Here the lawmakers wanted to make medical records of the treatment subject to secrecy for up to 50 years after the patient's death:

> [The records] touch upon the individuals' most intimate relationships, their health status, lifestyles, family relationships, economic conditions etc. If made public these records could bring great harm and discomfort for the nearly 150 individuals affected. But not only these but also other persons mentioned in the documents, such as next of kin, persons who have provided information, etc., would be at risk of exposure to severe discomfort.[32]

This quotation illustrates that in the first inquiry there was already a notion of privacy, and data stated as belonging to this sphere concerned health and economic conditions. It should be noted, however, that the lawmakers later on also mentioned that, apart from protecting the private sphere, the need for secrecy also existed in order to re-assimilate the individual to the labour market and to protect a person reporting information from potential revenge. An important aspect is however that the lawmakers wanted the list of patients at rehab institutions to remain public.[33] This is interesting since the 1920s was a period when alcoholism was broadly debated in Swedish society.[34] Furthermore, it seems that it is not primarily that a person has *been subject* to treatment that is the focal point but rather *what* the person could report about their circumstances during the treatment that is the subject of legislation. This can also be seen in relation to Westin's idea of emotional release, where the knowledge that your information will be protected is necessary to create a situation where an individual can feel safe from society's judgement. It would be fair here to argue that such a notion would be important in order to ensure efficient treatment.

In 1935 a new inquiry about secrecy laws took shape. This inquiry had an explicit connection to the right to privacy since one of the committee's objectives, was to ascertain how the state could shield the right to privacy, an objective justified by "the state's growing concern about social issues". As a result of this

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[32] Statens offentliga utredningar, *Utredning med förslag till ändrade bestämmelser rörande allmänna handlingars offentlighet*, Stockholm, 1927:2, p. 149.

[33] SOU 1927:2, pp. 149–151.

[34] In 1922 Sweden had a referendum regarding the prohibition of alcohol where a slim majority (51 per cent) voted against the prohibition (result retrieved from Henrik Oscarsson & Sören Holmberg, *Ett klart NEJ till EURON: Redogörelse för 2003 års folkomröstning genomförd i samarbete mellan statistiska centralbyrån och Statsvetenskapliga institutionen* (Stockholm 2004) p. 73.

justification the investigators looked closely at the two main places where sensitive private information could exist, namely, in church records (back then the church was the authority responsible for population registration) and the social services boards. In the case of church records, it concerned "records that could be viewed as derogatory" for a person, and the church explicitly mentions four different areas in which a person had a right to privacy: mental health issues, paternity investigations, criminality and the curation of the soul. From the social services board the dimension of privacy is furthermore expanded into notifications to the social board as well as restrictions on the right to buy alcohol. Furthermore it is also stated that records about sexually transmitted diseases and the social services should be protected and that especially when the matter concerned paternity or childcare. In the inquiry it is also mentioned that in the case of records containing private information it is just not data on the informant himself that should be protected but also third parties mentioned in the records. This is expressed through a statement in which it is not only the individual that must consent to the release of the record but also any third parties mentioned in it. [35]

In the inquiry of 1935, there is also an obvious tension between privacy and the need for transparency. This is revealed explicitly by the fact that some experts – such as the Uppsala division of the national archives – wrote to the committee requesting secrecy for an infinite period in order to protect "the memory of the deceased". The committee found this request worthy of serious consideration but also stated that this was not possible since it would endanger the possibility of future research in the archives. Instead, the committee stated that the period of secrecy regarding the most intimate details of a person is sixty years, after which the subject of the record and their next of kin would no longer be alive.[36] An interesting aspect here is that both Edquist and Rosengren identify different conclusions in the same line of thought. This is because the need for privacy seems self-evident and worth shielding even beyond the death of an individual, but also that this is challenged by the aspect of public access to official records and hence the "common good" outweighs the need for the individual.

With regards to privacy it is clear that the early secrecy commissions can be understood as viewing privacy as related to what Westin would call *emotional*

[35] Statens offentliga utredningar, *Förslag till ändrade bestämmelser rörande allmänna handlingars offentlighet*, 1935:15, pp. 13–14, 25, 57–65, 61–63.
[36] SOU 1935:5, p. 30.

release and *reservation*. The first is noteworthy as regard to the treatment of alcoholics, where it was argued that they needed to be protected by secrecy during the treatment in order to create a zone where the patient could let go of their fear of being judged and monitored by others. It is also clear, however, that many of the subjects mentioned in the commission of 1935 were based on ideas of reservation. In this case a person should be given the right to limit who has access to knowledge about their physical and psychological health since this could lead to a person being stigmatized. The ethical handling of such records has previously been briefly mentioned by Manžuch as problematic when it comes to digitization since they were created at a time when people were not aware of the risk of them becoming available online.[37] From this perspective it would be unethical to publish, while on the other hand not publishing them creates a risk of silencing the darker parts of the cultural heritage regarding psychological trauma.

Secrecy During the Second Half of the Nineteenth Century

The next large revision of the secrecy legislation came in 1966 when a public inquiry into secrecy was presented to the Swedish parliament. The introduction to the inquiry mentions that Sweden has a long tradition of public access to official records and that public access will still be the main rule and secrecy the exception. However, the committee also wrote that during recent years a need had arisen for the state to be discreet in certain areas, one of which is identified as *a person's private circumstances*. The information sorted under this category was, according to the committee, information that could damage the individual if it got out:

> The committee would recommend that "violence" be equated with other harmful measures. This refers to such matters as dismissal from employment, exclusion from a trade union, or blockade of a business by customers. The term "disrespect" in the 1964 memorandum referred to such attacks on a person's honour as can lead to exclusion from groups of various kinds.[38]

This quotation shows that there are some forms of information that could lead to social sanctions if made public. This is furthermore discussed in separate parts of the investigation, where one of the main issues is secrecy surrounding criminal

[37] Manžuch (2017) pp. 7–12.
[38] Statens offentliga utredningar, *Offentlighet och sekretess: Offentlighetskommitténs betänkande: lagförslag med motiv,* 1966:60, p. 164.

cases brought to court. Here it is stated that the information that someone has been convicted of crime or been involved in a police investigation could lead to social sanctions. However, the investigators also declared that it is a key part of democracy that the public can gain access to court rulings as well as their basis and hence it was decided that court rulings would not be subject to secrecy.

In the case above the committee reasoned in line with Rosenquist's study, which shows that the idea of "the common good" could outweigh the need for privacy. One interesting aspect is however that sometimes it seems that "the common good" could also be the same as the best interest of the state. One example of this is the records from the psychological evaluation before enrolment in military service. Here it is stated these records needed to be put under lock and key because if they were made public they could affect the recruit's answers to the psychologist. Secrecy can thus be seen here as a way to create what Westin calls an *emotional release* in order to elicit adequate responses from the recruit. From this perspective the aim in labelling some things as secret is not explicitly to protect the private sphere of a person but is rather a means to serve the defence forces' own interests. This aspect becomes even clearer later on in the inquiry when we see that lists of persons who had received social welfare were not subject to secrecy, nor were the names of people forbidden to buy alcohol.[39]

From Westin's perspective privacy is a personal or organizational right. In the case of SOU 1966:60, however, it is clear that this personal right clashed with the rule of law according to which transparency is seen as a way to safeguard the authorities' power over the individual. It is furthermore advocated that the rule of law would be more efficient if not only the parties concerned but also the general public gained knowledge of which information the state based its decisions on.[40] This might have a connection to the spirit of the time since the 1960s was a period in Swedish history when several miscarriages of justice were perpetrated by the Swedish courts. In many of these cases, such as the so called Haijby affair, the Swedish state had used closed institutions such as mental asylums in order to purge people deemed as "enemies of the state" or the church.[41] In this case the increasing transparency within the Swedish state might not have

[39] SOU 1966:60, p. 160.
[40] SOU 1966:60, p. 58.
[41] The 1940s and 1950s as the heyday of miscarriages of justice is referred to, for instance, in Rolf Nygren, "Tvångsvård och rättsröta eller historien om riksdagens anstaltsombudsman", *Process och exekution*, Skrifter från Juridiska fakulteten i Uppsala (Uppsala, 1990) p. 317.

its roots in sudden changes in attitude concerning which information should be kept private, but rather is rooted in a fear of the increasingly powerful state itself.

In relation to cultural heritage, it is rather clear that the archives mentioned in this discussion were not primarily viewed as sources of history, which according to Edquist was the case throughout the state in the 1960s and 1970s. An important aspect is however that archival policy, according to Edquist, at that time viewed the public as potentially the third group (with the authority itself and possibly historians constituting groups one and two) that would be interested in the archives in the long run. In the case of SOU 1966:60, however, this was not the case since the aim of the archival sector was to provide transparency to the citizens.[42] From this perspective the records mentioned could be seen as problematic if they re-occurred around 60 years after their creation, since the main justification for keeping them was the contemporary needs of the public.

The conclusions of SOU 1966:60 were met with criticism and many debaters argued that it gave the public too much insight into the personal sphere. This was one of the reasons why the Swedish parliament in April 1969 summoned a new committee to review the question of secrecy, and in 1975 a new inquiry, SOU 1975:22, saw the light of day. In this inquiry fifteen paragraphs were presented as relating to the individual's interests in terms of protecting private economy and "shielding the right to privacy". One of the main themes in this case was the question of criminal records, which were sorted under the right to privacy, and not even the person that the records concerned should have the right to access them. This was justified by a growing tendency of employers to request job seekers to attach a transcript of their criminal record to their application, a practice which the committee was critical of:[43]

> It is far too easy, it has been believed, to draw the wrong conclusions from a transcript that contains a couple of notes that are close to the time limit when they would have been removed and therefore are out of date. […] The secrecy has been justified by the right to privacy and this justification should – albeit with some hesitation – be applicable.[44]

[42] Edquist (2019) pp. 123–125.
[43] Statens offentliga utredningar, *Lag om allmänna handlingar: Betänkande* 1975:22, pp. 64, 246–247.
[44] SOU 1966:60, p. 247.

From this perspective, criminal records needed to be put under secrecy to avoid misuse by future employers. One interesting thing in relation to crime is that the question of police investigations was once again brought up for discussion. Here the committee stated that preliminary investigations still should be kept public and that if the investigations contained information clearing an individual of criminal charges it was also in the "individual's best interest" to keep them public.[45] With regard to Westin's concepts of privacy, it is rather clear here that the commission wanted to ensure a situation where an individual's past would not be subject to observation by others, thus limiting the risk of social stigma.

As in previous years, the committee worked from the premise that records created as part of a treatment in the correction system or forced rehabilitation centres should be kept secret, even though they could be accessible to the public if an institution found it in the best interest of the individual incarcerated. In the discussion, however, there was a tension between keeping the institutionalization of an individual secret and cases where individual freedoms (such as buying alcohol) were restricted by the state. In this discussion the committee stated that it was necessary for legal security to keep the first kind of government decisions public and the second kind secret. It should also be stated that this rule was also to be applicable to social services, where decisions to put children under the custody of the state should be made public while supporting measurements such as parental training could be kept under secrecy.[46]

In many cases SOU 1975:22 highlights that secrecy primarily should be used if it is in the best interest of the individual and in cases where the state for some reason had to intervene in citizens' lives. The inquiry asserted that when new documents were put under secrecy it was primarily in order to guarantee that the citizens could be reincorporated into mainstream society after the intervention. This is an idea that already existed in the legislation from 1927 but that made its final breakthrough in 1975, a development which can be understood from the contemporary discourse that has previously been discussed by the historian Roddy Nilsson. According to Nilsson the social democratic values during the twentieth century revolved around rehabilitation rather than punishment in the penal system. This was an idea that had its roots in the early years of the welfare

[45] SOU 1975:22, p. 253.
[46] SOU 1975:22, p. 262–263.

state but reached its peak in the 1970s.[47] With regard to Westin, it could be stated here that the concept of privacy to a large extent was based on the notion that a person should not be kept under observation from society after completing rehabilitation. Thereby the modes of privacy were not the main reasons for the secrecy legislation but rather were aligned to the welfare state's goals of rehabilitation. It should also be noted that this tendency to protect the individual from social stigma was somewhat subordinated to the need for transparency in order to protect the public interest. One interesting aspect of this is that the openness of these records was not part of a discussion about making research possible, but rather to give the public transparency and ensure legal security. From this perspective, records constitute an interesting ethical challenge since they were produced under circumstances similar to those mentioned by Manžuch, where the intent was never to make them broadly available.[48] Yet many public archives today have worked with mass digitization of such material without highlighting this difficulty. Hence there is an ethical problem with regard to the records mentioned, since increased accessibility to this part of the cultural heritage goes against the aims of the legislation in making them open.

Modern-Day Secrecy

Four years after the publication of SOU 1975:22 parliament passed a secrecy law that would apply until 2010. The legislation of 2010 was the result of a public inquiry that commenced in 1998 when parliament saw the need for legislation. This public inquiry went under the name The Public and Secrecy Committee, which released a series of reports, of which *The Rule of Public Access to Official Documents and the New Technology* (SOU 2001:3) and *New Secrecy Law* (SOU 2003:3) are of concern to this chapter.[49] The records mentioned in both these inquiries may seem odd from a perspective of cultural heritage, since the inquiries are rather contemporary. One important aspect is however that in the USA in recent years there has been debate about the publication of material produced between 1984 and 2004 on the websites of cultural heritage archives.[50] From this this perspective, and given the definition that all records within the authorities'

[47] Roddy Nilsson, "The Swedish Prison System in a Historical Perspective: A Story of Successful Failure", *Journal of Scandinavian Studies of Criminology and Crime Prevention* 4:1 (2003), pp. 3–4.
[48] Manžuch (2017) pp. 7–11.
[49] Regeringens Proposition, *Offentlighets- och sekretesslag*, 2008/09:150, p. 271.
[50] Manžuch (2017) pp. 8–9.

archives are part of the cultural heritage, a discussion of these inquiries is warranted in this essay.[51] With regard to the inquiries themselves, it should also be stated that the committee no longer spoke about the need to "shield the right to privacy" but rather about the protection of an individual's integrity.

In SOU 2001:3 the concept of integrity seems to change from the individual record to the fact that records now could be digitally combined to create new records. According to the inquiry, this had led to a development whereby information could be retrieved from non-integrity-sensitive records and be combined into an integrity-sensitive register. This development had increasingly become a problem since the authorities also had an obligation to create such registers if requested by a member of the public. The inquiry does not clearly mention which kind of documents could be accessed in this process, apart from medical records, but it seems that the main problem is that the individual lacked control over how their information would be handled in the future. According to the inquiry this problem could not be rectified by decreasing the right of the public to access the data collected. However, the inquiry presented an alternative in which the collection of personal data by the authorities would be seriously limited in terms of the information they gathered.[52] This discussion can be connected to Westin's concept of reservation, which states that one of the key parts of privacy is to be able to control which information is shared with others. From this perspective the new digital records created a challenge since they could be combined in ways that could not be foreseen, thus making reservation impossible.

The discussion of how information could be reused is also interesting in regard to previous research as well as how later legislation tackled the problem. Firstly, the limitation of which information the authorities would be allowed to collect can be seen as an alternative to the ethical destruction of records that has previously been discussed by Edquist. The arguments put forward are quite similar since the need to carry out tasks within the welfare system created records that are integrity-sensitive and thus challenged the individual's right to privacy. Here, however, the lawmakers did not discuss the consequences for the cultural heritage or future research at all, but rather put the individual's interest first by not collecting the data at all. This is a procedure that was later suggested by

[51] Edquist (2019) pp. 134–137.
[52] Statens offentliga utredningar, *Offentlighetsprincipen och den nya tekniken,* 2001:3, pp. 136–145.

Hentonnen, who argued that one of the best ways to protect sensitive personal records is by not creating them in the first place. In the development of recent European legislation such as the *General Data Protection Regulation* (GDPR) this has also been put forward as one of the main strategies. An important difference between the later debate about GDPR in relation to SOU 2001:3 is however that the European legislation allows some collection of personal data with regard to the needs of future research and the cultural heritage.[53]

In the second report, SOU 2003:99, several different aspects of secrecy legislation are discussed. The report says that the legislation from 1975 had been amended by parliament several times in order to protect the individual's privacy, a development which had been criticized by the journalists' association for limiting the freedom of the press. The committee acknowledged that this might be the case but also asserted that the legislation had been somewhat liberalized in recent years in order to grant individuals more transparency in records concerning themselves in order to protect them, for instance, from legal abuse by the state. The inquiry also declared that there was a major problem with secrecy in that some information would be classified in one government context (for instance social work) but unprotected in another (such as court rulings etc.). Thus, it was a problem that a record created with the promise of secrecy could potentially lose its classified secrecy if it was transferred from one authority to another.[54] It can be stated here that this discussion yet again relates to Westin's discussion of reservation, since some of the data could have been created in order to provide a sphere of emotional release but later on be reused in ways that violated the notion of reservation.

According to the committee, it was very hard to create legislation which could close the gap without risking the legal definition becoming too wide and thus catch more information than necessary, which would violate the law of public access to official documents. However, the committee also stated that they could create a legal framework where certain types of information could be put under

[53] Edquist (2017) pp. 26–30; Pekka Hentonnen, "Privacy as an Archival Problem and Solution", *Archival Science* 17:3 (2017) pp. 286–288; Description of the Swedish data regulation on the Swedish Board of Integrity Protection < https://www.imy.se/verksamhet/dataskydd/det-har-galler-enligt-gdpr/introduktion-till-gdpr/dataskyddsforordningen-i-fulltext/beaktandesatser/ > (July 13, 2022).

[54] Statens offentliga utredningar, *Ny sekretesslag*, 2003:99, pp. 163–165.

secrecy regardless of which authority it ended up in.[55] This is discussed in the following quotation:

> The term personal circumstances is very far-reaching and includes records that in our opinion should fall outside regulation, such as certain information about the individual's economic situation, work circumstances and family relationships. The examples we have listed previously that have not been protected by secrecy have primarily concerned the individual's health and sex life [….] Certain forms of substance abuse should also be included in information concerning the individual's health. Also, information about hereditary diseases should be regarded as concerning health. A record about a person having undergone a sex change should also be sorted under health or sexual life. In our opinion, a record that a person has been a victim of sexual abuse should also be considered part of that person's sexual life.[56]

All in all, when it came to privacy SOU 2003:99 only discusses diseases, sex changes or matters related to sexual health. One key aspect here is that questions regarding sexuality to a larger degree became protected by secrecy, which can be understood in the context of the changes in sexual politics that took place in the previous decades, for instance that LBTQIA rights have become an increasingly important issue in Swedish society. As examples of "progressive" politics the declassification of homosexuality as a mental illness in 1979 could be mentioned as well as the increased rights concerning LBTQIA legal partnerships in the 1990s and increased rights to adoption and protection from persecution.[57]

Conclusions – Records to Handle with Care

In this concluding section two issues will be discussed. The first is the reasons why some records in the past have been viewed as needing secrecy legislation. Secondly, I discuss how such records can be handled in today's landscape of increased digitization.

When it comes to secrecy an overall conclusion is that secrecy legislation was often inspired by the morals of the time in which the inquiries were created. This is highlighted by the fact that the inquiries from 1927 and 1935 discussed records

[55] SOU 2003:99, p. 165.
[56] SOU 2003:99, p. 168.
[57] For a description of important years in Swedish sexual politics at the National Association for Sexual Education, see <https://www.rfsu.se/om-rfsu/om-oss/rfsus-historia/viktiga-artal-och-reformer/> (August 10, 2022).

containing substance abuse and children born out of wedlock, which at the time were viewed as serious social transgressions. In the period between 1966–1975 there is an emphasis on privacy as a possible way to achieve the goal of the rehabilitation ideology, where persons should not be judged for past transgressions such as criminality, substance abuse or mental illness. From this perspective privacy did not constitute an ethical standard but rather filled an instrumental role in achieving larger political goals. In the early 2000s, however, the right to privacy is justified by a moral standpoint were persons had a right to determine how their information could be handled in the future rather than that certain records are problematic, a notion that was challenged by the rise of new technologies.

From the section above it is clear that the committees worked from an understanding of privacy similar to that of Westin, where the individuals in the records for different reasons did not want their information to become public. This however created a tension between the need for transparency and the right to privacy, and thus the records were put under secrecy but not destroyed. Hence one can ask how these records should be handled in today's digital society, where digital access to cultural heritage somewhat collides with the circumstances in which the records were produced, when the individual was promised to not be put under scrutiny by society.

From previous research used in this chapter it can be argued that integrity-sensitive records still need to be used in online collections since there are risks (such as silencing the voices of marginalized groups) in not including them. This practice, however, risks colliding with the right to privacy and one question is thus how handle this tension. Drawing inspiration from Westin's view of privacy, one possible solution to this problem is contextualization. Since Westin proposes that one of the main functions of privacy is to shield persons from the judgement of others, contextualization of the nature of the records (such as that they were created with the promise of secrecy) as well as the time spirit (such as the outlook on substance abuse) could provide some shelter from the ethical issues surrounding online publications. This is a tendency that has previously been discussed by the historians Malin Thor Thureby and Kristin Wagrell, who point out that online collections come with the possibility of presenting records in ways that allow certain interpretations.[58] This requires close collaboration with

[58] Thor Thureby & Wagrell (2022) pp. 362–363.

archivists, who are specialists in record keeping, and historians, who can provide important context to the records, but it might also be the only way to handle what otherwise would be a contestable form of cultural heritage.

Acknowledgement

I would like to thank the seminar at the ALM programme of 2018 at Lund University as well as my supervisor for the original thesis, Associate Professor Charlotte Hagström. Lastly I'd like to thank the editors of this volume and especially Professor Malin Thor Tureby for giving valuable feedback on this article.