SUBMISSION FROM LOCAL AUTHORITY ARCHIVISTS' GROUP

DATA PROTECTION (ARCHIVES AND HISTORICAL RESEARCH) REGULATIONS, 2008

Definition of Archives

The Local Authority Archivists' Group (LAAG) are very concerned at the definition of "archives" used in the draft regulations:

"archives" means archives or departmental records within the meaning of the National Archives Act, 1986

This definition of archives completely ignores local archives and all archives from sources other than government departments. All organisations, public and private are subject to the requirements of Data Protection and, as such, the definition of archives needs to refer to archives for all the organisations subject to the Data Protection Act. In the case of local authorities, local archives have been defined in both the Local Government Act, 1994 Section 65 and the Local Government Act, 2001 Section 80. The following is the relevant section from the currently enacted and in force local government legislation, the Local Government Act, 2001:

80.—(1) In this section—

"local archives" includes—

(a) such records and documents (including copies) as are, at the commencement of this section, held by any local archives service operated by any local authority (whether alone or in co-operation with another person or body),

(b) archival material acquired by a local authority under subsection (3), and

(c) other local records which are more than 30 years old, except such records as are certified, in accordance with directions under subsection (4), to be unsuitable for classification as local archives;

"local records" includes books, maps, plans, drawings, papers, files, photographs, films, micro-films and other micrographic records, sound recordings, pictorial records, magnetic tapes, magnetic discs, optical or video discs, other machine-readable records, other documentary or processed material made or received, and held in the course of its business or as successor to any other body by a local authority and includes copies of any such records duly made, but does not include—

(a) grants, deeds or other documents of title relating to property for the time being vested in the local authority, and

(b) any part of the permanent collection of a library, museum or gallery.
(2) Subject to the other provisions of this section, it is a function of a local authority to make arrangements for the proper management, custody, care and conservation of local records and local archives and for inspection by the public of local archives.

Section 13 of the National Archives Act, 1986 was rescinded under the Local Government Act, 2001 and as such local archives are not subject to the National Archives Act, 1986.

Section 1 (3) of the Draft regulations also state that the regulations apply to "archives or departmental records within the meaning of the National Archives Act..." and again we would request that the regulations apply to archives as historical records and not limit the application of the regulations to departmental records.

Designating Records as Archives

Local Authority records have an agreed national retention schedule (CD enclosed for your information) the National Retention Policy for Local Authority Records in Ireland. This retention policy identifies local authority records that will be retained as archives. This followed an appraisal made by Local Authority Archivists that these record series contained information that would be of historical interest. The National Retention Policy (NRP) will be revised periodically and new records series added as new functions are taken on by local authorities. The National Retention Policy for Local Authority Records in Ireland was produced under the auspices of the Local Government Management Services Board. The Local Authority Archivists' Group would like to submit that records designated as archives in the NRP would, therefore, be considered as "data kept solely for the purpose of historical research" where such records include personal data. The draft of the National Retention Policy for Local Authority Records in Ireland was sent to the Data Protection Commissioner for comment before it was finalised and we are happy to send any revisions of the National Retention Policy to the Data Protection Commissioner for comment so that the views of the Commissioner and the staff of the Data Protection Office can be taken into consideration regarding the retention of records containing personal information as archives.

Personal data in records designated as archives by the National Retention Policy are closed for 100 years to ensure that the public to do not access personal records of those still living.

The Need to Retain Personal Information as Archives

The Local Authority Archivists' Group would like to state that it is vital to retain some records containing personal data in order to ensure that there are useful historical records in the future. Researchers do need to access personal information in order to have a full and accurate record of the past and of what life was like for people. Without access to records containing personal information people in the future will no longer be able to trace their family history and find out in greater detail about the lives of their ancestors. It is often the archives containing personal information that provide the most affecting records of our past. Records from the Workhouses, the Hospitals, the Lunatic Asylums; these are all highly sensitive personal records and it is because of the extremely personal and individual nature of these records that they
can be so powerful both for their descendants and for researchers looking into the past. As a society we learn from our archives and historians need to be able to learn from our records in the future in all their aspects both public and private. Archives services are very conscious of the power and importance of these records and are very careful to ensure that they are not made available until after a suitable period of closure.

**Accessing Personal Data in an Archives Service**

The Background Paper issued by the Department states that:

*The Organisation holding such records – for example, the National Archives – would have access to them, as would the individual concerned while s/he was still alive. Others (for example, researchers operating under the aegis of the organisation) would not have access to the records other than in accordance with the safeguards contained in the Data Protection Acts. For the sake of clarity, the data controller may allow access to departmental records or archives where it requires the third party person or entity seeking to access the records to enter into an appropriate contract imposing an obligation of confidentiality relating to the access to the data in question.*

*Information in the records could not be disclosed (other than in an anonymised form) without the consent of the person concerned or unless otherwise permitted under the Data Protection Acts.*

*The records would have to be kept securely, in accordance with the provisions of the Data Protection Acts.*

The Local Authority Archivists’ Group are wholly in agreement with the measures for controlling access to records designated as archives until they are 100 years old and are currently applying access to records with personal data in this manner.

Records containing personal information are not made available to the public until they are 100 years old. There is no access to the public to Archive Storage areas and access is only available by requesting records from the Archive staff. However, during this period of closure access to the records is available to:

- The individual “data subject” or a person acting on their behalf
- The Archivist and authorised archive staff preserving the papers and preparing Descriptive Lists or anonymised information for researchers
- authorised persons as set out under the Data Protection Act
- researchers who sign a confidentiality agreement

**Personal Data in Non-Government Records**

Local Authority Archives Services preserve and make available the archives of the local authority areas that they serve. This includes the archives of local businesses, landed estates, societies and clubs and local families or individuals. If all the records from these sources containing personal information are destroyed this would be an
enormous loss to the social, economic and cultural history of the country. For example, many people carrying out family history research rely on records such as employee records, which give them access to information about their ancestor that they cannot get from other sources. It is important to ensure that these records created today survive to become the historical sources of our future. Archives services carry out appraisals of collections and determine the historical value of the records in the collection when they are deposited. No public access is allowed until a Descriptive List is produced for collections and during the creation of a Descriptive List records containing personal data are identified and subject to closure of 100 years.

Conclusion

The Local Authority Archivists’ Group are very pleased that the Data Protection Office has drawn up Regulations regarding Archives and Historical Research. We hope that the Regulations address archives of all bodies subject to Data Protection and do not limit themselves to the archives of government departments. To do so would result in a lack of historical records for society as a whole, leaving a much poorer and less complete record of our present to future generations. We respect the need to protect the individual’s personal data but believe strongly that this must be balanced by the right of the individual and society as a whole to have a history and to leave a legacy of records to future generations.

We are firmly committed to preserving not just the records but also the security of personal data until it is beyond the required 100 years closure and can be released to the public.