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Archival discretion: a survey on the theory and practice of archival restrictions

Abstract: In 2019, the Society of American Archivists' Privacy and Confidentiality Steering Committee surveyed SAA members with the goal of identifying current practices and concerns across the field regarding archival access restrictions. Survey results yielded rich and sometimes contradicting information about how archivists approach access restrictions in theory and practice. The authors explore the survey methodology and results. Key observations include the ubiquity of restricted collections across archival repositories; the influence of donors on repositories' restriction decisions; and variances in approaches to administering, tracking, and lifting expired restrictions.

Not having a comprehensive codified professional standard for privacy and restrictions is entirely understandable, since access restrictions often are deeply dependent on individual circumstances, legal gray areas, state-specific mandates, and emotional quagmires. Individual archivists confronted with privacy and confidentiality issues must draw upon a patchwork of archival guidelines and published resources, legal precedents, case studies, institutional counsel, and informal peer advice to make their best informed choices, with ramifications that could include jeopardy of their own employment. The weight of these decisions is evident in survey results. The authors recommend the development of more robust profession-wide guidance and decision-making tools around this topic to help archivists more confidently navigate these difficult decisions.

Keywords: Archives, Privacy, Donor Relations, Access, Restrictions, Policy

Overview

The Privacy and Confidentiality (P & C) Section of the Society of American Archivists (SAA) is dedicated to creating opportunities for archivists to learn about and discuss privacy and confidentiality issues within the archival profession. Among those perennial issues are managing and implementing access restrictions on collection materials. Existing scholarship on the topic is often in the form of case studies, or focused on particular record types, rather than presenting a holistic view of practices across the profession. Confronted with privacy and confidentiality issues in their repository, individual archivists must delve into legal precedents, case studies, internal institutional counsel, and informal peer advice to make their best informed choices—a framework for judgment one survey respondent deemed “archival discretion.” Not having a codified standard is entirely understandable, since access restrictions often are deeply dependent on individual circumstances, potentially including legal gray areas and emotional quagmires. Likely the most holistic set of directives on implementing archival restrictions, the International Council on Archives' 2014 “Principles of Access to Archives: Technical Guidance on Managing

Archives with Restrictions,” notes at the outset that its guidance is “necessarily general.”¹ The ACRL-RBMS/SAA Guidelines on Access to Research Materials in Archives and Special Collections Libraries’ “Laws, Regulations, and Restrictions” section is similarly broad.²

In 2019, the P & C Steering Committee³ developed a survey with the goal of identifying current practices and concerns across the field regarding access restrictions, as well identifying common issues and concerns that the Section might be able to develop resources to address. Our survey results yielded rich and sometimes contradictory information about how archivists think about and manage access restrictions. The authors explore the survey methodology and results. Key observations include the ubiquity of restricted collections across archival repositories; the influence of donors on repositories’ restriction decisions; and variances in approaches to administering, tracking, and lifting expired restrictions. The authors further recommend the development of more robust profession-wide guidance and decision-making tools around this topic to help archivists more confidently navigate these difficult decisions.

Methodology

To delve into this issue, the P & C Steering Committee developed an online survey. Google Forms was selected as a platform because it was a free and familiar tool. The survey consisted of 27 questions on topics ranging from repository demographics to local practices relating to the administration of restrictions. Questions were a mix of multiple-choice, multiple-select, and free-text response questions. For most questions, an “other” option for free-text response was provided to account for unanticipated responses. The full survey is available in the appendix.

The survey was open from May to mid-July 2019. It was distributed throughout SAA Connect, SAA’s communication platform,, including Announcements and the message boards of several sections including the P & C Section; Research Libraries Section; Reference, Access, and Outreach Section; Archives Management Section; and Manuscript Repositories Section.

Survey Results

Repository Profiles

In the first two survey questions, we gathered data on the repository types that our respondents represented. Out of 142 responses, 59.2% of respondents (84 individuals) identified as working in academic archives/libraries. 8.5% of respondents (12 individuals) identified as working in government archives. 4.9% of respondents (7 individuals) identified as working in historical

¹ International Council on Archives Committee on Best Practices and Standards Working Group on Access. “Principles of Access to Archives: Technical Guidance on Managing Archives with Restrictions.” 5 Feb. 2014. https://www.ica.org/sites/default/files/2014-02_standards_tech-guidelines-draft_EN.pdf page 2

² “ACRL-RBMS/SAA Guidelines on Access to Research Materials in Archives and Special Collections Libraries”, American Library Association, September 6, 2006. Revised January 24, 2020. <http://www.ala.org/acrl/standards/jointstatement>

³ In addition to the article authors, Steering Committee members involved in creating and implementing the survey included Rachel Gattermeyer, DiAnna Hemsath, and Daniel McCormack.

societies. Other free-text responses included museum archives, religious archives, and K-12 school archives.⁴ Out of 145 total responses, 44.8% (65) identified as private and 55.2% (80) identified as public entities. Repository type and alignment may substantially impact approaches toward restrictions and access, and several free-text responses to other questions in the survey cited repository type as integral for their decision-making process. Divergences in access approaches based on institution type and mission—for instance, more restrictive policies for external users by corporate or tribal archives—are also well-documented in the literature.⁵

Restriction Implementation

The vast majority of survey respondents—96.5%—indicated that they have restricted materials within their repositories; other respondents indicated that they handle restricted materials, but transfer them to other repositories for long-term stewardship. Another respondent, an archival educator not working at an archival repository, answered “N/A.” Only one respondent answered “no,” but did respond to other survey questions in a manner that indicated they did, in fact, have restricted materials, so this anomalous response may have been an error. These responses demonstrate that restrictions are a nearly universal issue for archival repositories.

Restriction implementation often involves negotiation among multiple parties, so we asked respondents what parties and influences can be involved in imposing restrictions on collections. 81.9% of institutions with restricted collections allow donor-imposed restrictions; 75% have collections involving restrictions required (or at least believed by the archivist to be required) by law (such as FERPA or HIPAA); 55.2% have collections restricted due to institutional policy; and 25.5% have collections with restrictions applied at the discretion of the Unit Head. Other responses include typical parties and factors such as archival processors, industry regulations, source communities, and attorney-client privilege, but one intriguing free-text response to this question noted “Building owner/security personnel” as a party involved in imposing collection restrictions. The most common results, which mirror common academic archival policies, likely reflect the demographics of our survey respondents. Many manuscript collections accepted by academic archival repositories and historical societies are accepted after negotiations with donors, while collections in government institutions are generally controlled or kept according to

⁴ For comparison, demographics from the 2004 A*Census Survey, which aimed to present a comprehensive snapshot of the American archival profession, indicated that 36% of respondents worked at academic institutions, while 31.6% worked at government institutions, 23.1% at non-profits, and 5.4% at for-profit institutions; for SAA members responding to the survey, 43% worked at academic institutions, 21.5% at government institutions, 25.4% at non-profits, and 6.1% at for-profit institutions (Walch, Victoria Irons. “Part 3. A*CENSUS: A Closer Look.” 2006 <https://www2.archivists.org/sites/all/files/ACensus-Part3%20Closer%20Look%20-%20Expanded.pdf>). If current professional demographics remain similar, our survey over-sampled academic archivists. At the time of press, results from the 2021 A*Census were not yet available.

⁵ Cigna corporate archivist Sarah A. Polirer, for instance, has earlier written that “[f]or corporate and business archivists, the challenge is to leverage a due diligence process that vets the potential researcher to determine the exact nature of the research intended and then to determine the relative nature of proprietary information that may or may not be involved in the research”; Cigna’s vetting process included an interview by the archivist with a prospective researcher, a written application by the researcher, and the review of the application and archivist’s recommendation by internal legal counsel (Sarah A. Polirer, “The Proprietary Nature of Private Enterprise,” in “Session 602: Exploring the Evolution of Access: Classified, Privacy, and Proprietary Restrictions.” *American Archivist 74 Supplement* (2011): 11-18. doi: <https://doi.org/10.17723/aarc.74.suppl-1.p61prj6p86851153>, 602:16).

laws or regulations.

Survey responses were fairly split about whether repositories, as a matter of policy, provide access to unprocessed collections. When asked if unprocessed collections are restricted, 39.7% of respondents (56 respondents) indicated “no,” 32% (44 respondents) indicated “yes,” and the remaining 41 responses were primarily variations upon “sometimes” (depending on considerations like the degree of collection organization or donor preference) and “on a case-by-case basis,” with several others noting that staff review and mediation were required before providing access to unprocessed collections. Some archivists reported that if they suspect or know that a collection might have personally identifiable information (PII), they typically restrict it while unprocessed; similarly, some respondents wrote that if a researcher requests an unprocessed collection, archival staff will do a quick visual inspection to see if there is any PII or other sensitive information before releasing the boxes to the researcher. Two respondents specifically mentioned the potential presence of sensitive or embarrassing materials in the unprocessed collections as reasons to restrict the materials. Institutional risk-tolerance may be a key factor in determining whether an institution ultimately leans toward access or restriction; this area merits further exploration and research.

Archivists determining the necessary level of restrictions may seek legal advice; the frequency with which they do so may depend on both institutional risk tolerance and the availability of in-house counsel. For the majority (80.7%) of respondents with access to legal counsel, that legal assistance comes from in-house legal counsel, a resource that may not be available to archivists at smaller nonprofit organizations, who were underrepresented in our survey respondents. Resources can limit access; one respondent with nominal access to in-house legal counsel described their legal counsel situation as “[t]echnically in house, technically access, but it's a charge-back situation and we don't have a budget for it.”

Restriction Management

Managing restrictions, like all collections management activities, is a long-term commitment. Several questions in our survey were intended to determine how repositories track (and hopefully ultimately lift) restrictions, how they communicate restrictions to researchers, and how access to restricted materials is mediated.

The most common method of documenting access restriction agreements with donors was in collection deeds of gift and donation instruments (an approach utilized by 81.1% of respondents), with donor-repository correspondence coming a close second (28% of respondents). The vast majority of respondents use a combination of approaches to track their repository's collection restrictions, including collection management tools such as ArchivesSpace; spreadsheets; physically marking boxes and folders; and notating the restrictions in descriptive records such as finding aid and catalog records. One respondent described their tracking approach as “[a] mix of institutional memory, spreadsheets, and finding aid notes. It's a mess, and we need to do better.” Several others also mentioned that they had no standardized approach yet.

Typically, restricted materials are flagged physically and/or digitally to alert staff before materials are served to patrons. When asked how restricted materials are identified for internal operations, 75% reported physically marking boxes and folders, while 45% segregate restricted material either within the collection (e.g. sealed or put in a special envelope) or by physical removal from the collection. Others mentioned special stickers (one specially using a “mini stop sign” sticker), often color-coded, while one respondent indicated a practice of tying a red ribbon around restricted folders. Commonly documented approaches for restricted digital records include restricting access to an on-site workstation only, granting levels of access according to credentials or rank, and password-protecting the file portal. Making the restriction visibly obvious (such as marking boxes/folders) cuts down on chances that the restricted materials will inadvertently be served to researchers. Consistently and uniformly documenting and implementing access restrictions cannot easily be automated, and these functions are thus vulnerable to human error. As one respondent described: “[The] [i]ntention is to track this information in collections management software; sometimes, however, this information gets lost in the cracks (i.e. if processing staff don't see the deed of gift where restrictions are listed).”

Professional best practices prescribe that accession restrictions, when they exist, should be time-bound; however, lifting those restrictions once they expire also typically requires manual intervention by archival staff. When respondents were asked how often they revisit restricted materials in order to identify those that can be lifted, a bit more than half commented that they rarely have time to devote specifically to assessing restriction lifts. One solution to this challenge is to check on an ad-hoc basis when opportunities occur (such as when researchers request the materials). Slightly less than half of respondents said that they lift restrictions based solely when the time-limit has expired. Two respondents said that they have no official policy regarding review of restrictions. One respondent in particular acknowledged the challenges of bureaucratic inertia as an impediment to policy change, describing an unsuccessful campaign to lobby the Connecticut state government to shorten the blanket restriction of state records: “In the last five years we have tried with no success to pass legislation to open records in the state archives fifty and/or seventy five years after creation or the death of an individual. The most recent attempt the legislation did not make it out of committee.”⁶

We offered two survey answer options (renegotiated a restriction, lifted a restriction), and a third option for a free-text “other” response for respondents to indicate what approaches they had taken to open restricted materials. The majority of respondents selected at least one of the pre-formatted options, with 82.9% having lifted expired restrictions and 46.8% having renegotiated restrictions. Two of the free-text responses referenced multiple attempts at renegotiating restrictions on a single collection. Another two mentioned that restrictions are typically lifted because a researcher notifies them that restrictions have expired. Two respondents mentioned that they do an annual review of restrictions at the beginning of every January. While annual reviews of restrictions are not unheard of, our survey feedback implied that most lifting of access

⁶ *Concerning Raised H.B. 7211 An Act Concerning the Preservation of Historical Records and Access to Restricted Records in the State Archives, Before the Government Administration and Elections Committee* (2019) (testimony of Kendall F. Wiggin, State Librarian, Connecticut State Library). <https://www.cga.ct.gov/2019/GAEdat/Tmy/2019HB-07211-R000227-Wiggin,%20Kendall,%20State%20Librarian-Connecticut%20State%20Library-TMY.PDF>

restrictions is a reactive and ad hoc process instead of a routine collection maintenance procedure.

Communicating Restrictions Information to Researchers

When asked how they communicate collection restrictions to researchers, almost 84% of respondents indicate that they do so within the finding aid, and 44% do so within the collection catalog record. Other communication methods included messages on repository websites, conversations with researchers, and broader institutional access policies. While communicating this information at multiple access points or points during the research process may help to ensure that all researchers encounter key restriction information, one respondent noted that the “many methods of communicating restrictions get confusing for staff and researchers.” Another respondent referenced current efforts to standardize their restriction statements and streamline communication between their archival systems, so that restrictions could be flagged through their circulation management system.

Researcher Access to Restricted Materials

Researchers hoping to gain permission to access restricted materials will almost certainly face barriers, but those vary depending on the repository and the collection. 67.4% of survey respondents require researchers to contact the repository (a surprisingly low number, which may reflect a misunderstanding of the survey’s option to choose all responses that applied; only 97 of 144 responses selected multiple options); 43.1% of respondents noted that their repository would require that the donor or donor’s heir be contacted. 13.9% of respondents work at an institution requiring researchers to fill out an application requesting access to restricted materials. For some curious researchers, pursuing access to restricted materials would be a dead end--one respondent noted that all of their restricted materials are restricted without exception; another noted that the only pathway for access to restricted materials is through a subpoena. However, several respondents indicated their policies regarding access to restricted materials are currently under review, and these revisions may result in more flexible policies. One particularly notable response lamented, “We want to provide access, so we do a lot of screening; it’s a pain in the ass. A web of university policies, laws, and donor idiosyncrasies make trying to sort out restricted materials difficult. I wish we had more time, or more comfort with risk.”

The institutional approval chain for access to restricted collections also varied widely; in many cases, multiple institutional officials could provide access. Out of 142 respondents, 60 percent stated that the unit head could give approval, while 50 percent could receive approvals from the donor or heir. In other cases, 32 percent stated a curator (one not also the unit head) had the ability to grant access, while a further 30 percent also said legal counsel could approve access.

Our survey also asked respondents about their retention policy for requests to access unprocessed collections; we did not, however, ask how these requests were being used (for instance, as an audit trail for security purposes, or as a way to track interest in collections for processing prioritization purposes). 37.1% of respondents did not know their institution’s retention policy; the second highest response (26.4%) was that such requests were retained “indefinitely.”

Evolving Access Restriction Practices and Policies

As attitudes toward access have changed across the profession, many institutions have revised their approach toward access restrictions. When asked if access restrictions had evolved at an institution they worked at, the majority (56.9%) said yes; in expanding on their responses, several respondents referred to currently evolving policies.

Some respondents noted the workload burden of these evolving policy changes, with one noting,

It's brutal. We used to apply more randomly (restrict something with naughty words, neglect to restrict records with SSNs all over the place), and we're now trying to be very clear and consistent. But the records keep getting messier, bigger, and newer. Ten year old records with frank discussion of university donor giving potential? Frequent discussion of faculty performance in the context of deciding how a department or program will focus scholarly efforts? It's tricky. We re-assess our written policies and practice semi-regularly, and have to keep checking with ourselves to make sure we're not being overly cautious.

Another respondent noted a need for constant monitoring for evolving exemptions to state FOIA laws: "Any time a new exemption to the state FOIA is passed into law we must review the records held by the state archives, determine if the new exemption applies to any records, and close records that were open but due to the new exemption have to be restricted and no longer available to researchers." As many of these regulations are state or industry-specific, it may also be challenging for archivists to find professional development and informational resources specific to their location.

Archivists' Perceptions on Access Restrictions

When asked how they felt about the level of restrictions imposed by their repositories, 71.4% of survey respondents deemed them adequate; 12.9% felt there were too many restrictions; and 2.1% felt there were not enough restrictions. Many of the free-text responses were further variations on describing their collections as over-restricted or under-restricted. A number of commenters expressed a desire to make collections more available, but also articulated a fear of potential legal consequences. Several mentioned ethical considerations, with one specifically noting the *Protocols for Native American Materials*⁷ as a standards document that might call for additional restrictions on certain materials.

When asked how they believed a researcher challenging any of their repository's access restrictions in a court of law would fare, responses ranged from "Not well..." to "Unless egregious, our repository would probably win out," to "It depends on the type of record." Most respondents felt their institution is on solid ground as to a defensible set of access restrictions. In clarifying their responses, respondents brought up qualifying and contextual issues, such as perpetual restrictions, the possibility of a challenge on the grounds of public records access, and

⁷ Kathryn Beaulieu, et al. "Protocols for Native American Archival Materials." *Protocols for Native American Archival Materials*, 2007, <https://repository.si.edu/handle/10088/21928>.

the impact of federal laws such as HIPAA and FERPA. While archivists' convictions about the legality of their collection restrictions have rarely been tested in court, there have been cases that provided limited, state- and case-specific precedent, such as at the State Historical Society of Wisconsin's Braden Papers,⁸ Boston College's Belfast Project oral histories,⁹ and, more recently, the University of Michigan's Tanton Papers case.¹⁰

We asked for example local policies and procedures for handling restricted material, and common responses included adhering to HIPAA, FERPA, GDPR, and other national and international laws and regulations and to the SAA Code of Ethics, National Archives' Security Classification/Legislative, as well as to other professional standards. Another response succinctly encapsulated themes mentioned in many responses: "Restriction must have a stated compelling, legal or ethical reason. Sunset date must be provided." A number of responses referenced established timeframes for certain records types to be closed (for example, 25 years from the date of creation, or 75 years from the subject individual's date of death).

Several responses mentioned the impact of restrictions on collection development decisions, and the importance of discussing potential restrictions with donors early on. Several emphasized that intensive access restrictions are a valid justification for declining to accept a collection. As one respondent described, "we have recently refused collections with too many restrictive demands, we tell them if they're not ready to let people look at it they're not in a place to transfer it to us, and to pay for Iron Mountain." Another noted that they "would, generally speaking at least, not accept donations with restrictions on them currently."

Some respondents pointed to the subjective nature of imposing restrictions, as well as raised considerations of empathy. As one respondent shared, "I follow FERPA and HIPAA, of course, and I also use my best judgment about personal information that could be hurtful or embarrassing during the lifetime of the person in question. It's always a tug, though, isn't it, about allowing access and respecting privacy. I often ask, 'How would I feel about this, if it were me?'" Survey responses such as this one reflect the unfortunate fact that even in responding to the exact same law or statute, approaches may necessarily differ. Ohio State University Health Sciences Library Assistant Director Judith A. Wiener, for instance, has previously written that archivists caring for collections with medical records have found ways to balance access, ethical, and legal imperatives, but that, far from being standardized, these "solutions differ from institution to institution and depend on a variety of contextual factors, such as whether the institution is a covered or non covered entity under HIPAA, the risk-aversion level of the parent

⁸ H. Laurence Miller, "Will Access Restrictions Hold Up in Court? The FBI'S Attempt to Use the Braden Papers at the State Historical Society of Wisconsin," *American Archivist* 52 (1989): 180-190.

⁹ James King, "'Say nothing': silenced records and the Boston College subpoenas." *Archives and Records* 35 (2014): 28 – 42; Christine George, "Archives Beyond the Pale: Negotiating Legal and Ethical Entanglements after the Belfast Project," *American Archivist* 76, no. 1 (2013): 47–67. doi: <https://doi.org/10.17723/aarc.76.1.x34p8k7848512274>.

¹⁰ *Ahmad v. University of Michigan*, No. 341299, unpublished (Mich. Ct. App. 2019); affirmed *Ahmad v. Univ. of Mich.*, SC: 160012 (Mich. Apr. 9, 2021; Aprille McKay, "The Key Question: Are Papers Closed Under a Donor Agreement Subject to FOIA?" *Archival Outlook* (March/April 2021): 10, <https://mydigitalpublication.com/publication/?i=699509>; Eira Tansey, "Do Private Interests Override Public Obligations?" *Archival Outlook* (March/April 2021): 11, <https://mydigitalpublication.com/publication/?i=699509>.

institution, and the nature of the records.”¹¹

Often restriction decisions involve navigating sensitive topics with potential repercussions. In one response, the respondent shared that while processing collections not subject to donor restrictions, they might still find something they felt should be restricted, such as “offensive Black Americana”; in engaging with these kinds of restriction situations, archivists grapple with not obscuring painful historic records while also limiting additional harm. The need for an approach that is simultaneously trauma-informed, culturally sensitive, and ethically and legally sound was echoed by another response indicating that “anything deemed too private (including 'confidential' materials under the law) are withheld. Informants providing information to academics regarding their social, cultural, political institutions etc., may be long dead but their relatives are still around. Releasing certain types of information may create problems within the tribe or compromise individuals or elders of the tribe with the public.”

Another respondent noted the challenge of balancing online access for convenience and discovery with the heightened risk of unintended breach of privacy:

Digitally, we are trying to balance access for our community members and alumnae with privacy expectations. We do not feel our archival materials should be publicly available (it is a private school). Community members prior to the Internet could not have anticipated vast dissemination of their image and name in our materials. But we want our past and present community members to be able to enjoy the archives from wherever they may be.¹²

Confirming the Section Steering Committee’s rationale for creating the survey, many respondents expressed a desire for more formal guidance and example policies to help archivists make consistent and professionally-aligned decisions about restricting collections. Internal consistency within a repository may be a more immediately accessible goal than consistency across the profession, particularly given the range of institutional missions and mandates. Guidance targeted toward specific subsets of archival institutions may be useful in this regard; for example, corporate archivist Sarah A. Polirer has proposed a rubric for information handling for corporate archives, based on institutional risk management factors.¹³ As early as 1986, archivist Roland M. Baumann called for standardized approaches and model legislation

¹¹ Judith A. Wiener, “HIPAA and Beyond: Privacy and Confidentiality Legislative and Ethical Issues within Health Sciences Special Collections,” in “Session 602: Exploring the Evolution of Access: Classified, Privacy, and Proprietary Restrictions.” *American Archivist 74 Supplement* (2011): 18-23. doi: <https://doi.org/10.17723/aarc.74.suppl-1.p61prj6p86851153>, 602:23.

¹² This conundrum regarding the ethics of digitization projects has been explored in publications such as April K. Anderson-Zorn and Dallas Long, "Digitize Your Yearbooks: Creating Digital Access While Considering Student Privacy and Other Legal Issues," *Journal of Contemporary Archival Studies*, 8 (2021), Article 14, <https://elischolar.library.yale.edu/jcas/vol8/iss1/14>. Tara Robertson, “digitization: just because you can, doesn’t mean you should,” *Tara Robertson Consulting*, March 20, 2016, <https://tararobertson.ca/2016/oob/>, and Zinaida Manžuch, "Ethical Issues In Digitization Of Cultural Heritage," *Journal of Contemporary Archival Studies* 4(2017), Article 4, <https://elischolar.library.yale.edu/jcas/vol4/iss2/4>.

¹³ Sarah A. Polirer, “The Proprietary Nature of Private Enterprise,” in “Session 602: Exploring the Evolution of Access: Classified, Privacy, and Proprietary Restrictions,” *American Archivist 74 Supplement* (2011): 11-18. doi: <https://doi.org/10.17723/aarc.74.suppl-1.p61prj6p86851153>.

regarding the restriction of materials in state archives.¹⁴ In 2020, the Council of State Archivists and the National Association of Secretaries of State released the general informational bulletin “Public Records, Open Records, and Restricted Records.”¹⁵ Information-sharing efforts like the Best Practices Exchange and shared documentation portals hosted by SAA Sections (including the P&C Section), can provide useful information and benchmarking, but they may also, without diligent maintenance, quickly devolve into clearinghouses of outdated policies and broken links. The benefit of official standards, such as EAD and DACS, is enhanced by their mechanisms for maintenance and revision cycles; more informal crowdsourced efforts may be able to leverage Wiki-like platforms to similar effect.

Lessons learned and future directions

Approaches to managing access restrictions are far from standardized across the profession, not only because of agreements that archivists have inherited from their predecessors, but also because of different current institutional philosophies and audiences. Our survey reveals trends in approaches to restrictions implementation and management at American archival repositories. Most repositories (82.1%) implement donor-imposed restrictions; most (81.1%) document restrictions in donation agreements; most (80.7%) have access to legal counsel when needed; most (84%) note the presence of access restrictions within finding aids. However, when considering long-term management of restrictions, responses became more scattered, with timelines for revisiting restrictions, workflows for approving access to restricted materials, and retention policies for such requests showing no clear trends.

The survey design and scope, both intentionally and unintentionally, means follow-up surveys would be beneficial. A follow-up survey would benefit from a different platform and (ironically) more consideration toward participant privacy concerns. Because one of our survey questions enabled users to upload documentation, it required users to sign into their Google account (if they had one), which - unfortunately - made the intended-to-be-anonymous survey *not* anonymous for respondents uploading documentation. In addition, the survey distribution strategy, which was limited to the membership messaging platform SAA Connect, meant that the survey collected insight from SAA members, but is not necessarily representative of archival practitioners broadly. Like SAA itself, our survey disproportionately represented perspectives from academic archival repositories. This lack of understanding of non-academic archival repositories was strongly shared with us in survey feedback:

You are making assumptions that some of the material in my collection is open, and that all archives need to impose restrictions as opposed to having most collections be open/available. That is not the case for MANY archives repositories. Unfortunately I found your survey to be biased towards a certain subset of archives (academic, historical

¹⁴ Roland M. Baumann, “The Administration of Access to Confidential Records in State Archives: Common Practices and the Need for a Model Law.” *American Archivist* 49, no. 4 (1986): 349–69. <http://www.jstor.org/stable/40293052>.

¹⁵ Council of State Archivists and National Association of Secretaries of State, “Public Records, Open Records, and Restricted Records.” Feb. 2020. <https://cosa.connectedcommunity.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8f0b744f-2236-85ac-a246-4a751fe2a7ff&forceDialog=0>.

society) and I found it difficult to answer your questions. Please consider that not all archives are created with the same purpose, and with the same mission statement. The mission of my archives is to make information useful and accessible to *my institution* and the people who work within my institution. I am part of a corporate asset. There is no expectation that any material should or could be available to the public. I enjoy those times when I can make certain assets public, but that is the exception and not the rule.

Opportunities of continued exploration of access restrictions are vast, and might include exploring how archivists acquire and seek training and professional development related to access restrictions, as well as delving further into restriction negotiation practices. Other possible ideas include developing a repository of standardized restriction statements, similar to the Creative Commons¹⁶, Rights Statements¹⁷, and Traditional Knowledge (TK) Labels,¹⁸ that can provide examples of restriction language as well as serve as interoperable, machine-actionable statements supporting Linked Data usage. Expanding nuanced approaches to mediating sensitive content—such as opt-in consent mechanisms (i.e. reading a disclaimer or warning before accessing content), content and trigger warnings in archival description, and other possible practices may allow for “soft restriction” approaches that help balance access needs and sensitivity concerns.

Perhaps most significantly, there is a need for an assessment of the impact of access restrictions on researchers and their research outcomes.¹⁹ Archival restrictions can be a practical internal conundrum for archivists, but the overall potential impact on researchers, and thus the interpretation and dissemination of the historical narrative is profound. Just as a lack of needed restrictions may harm creators and third-parties, unnecessary restrictions can inhibit research, suppress marginalized narratives, and harm archival reputation. These deep implications underscore the necessity of having robust resources and training for archivists as they continue to navigate this complex aspect of our profession.

¹⁶ Creative Commons, <https://creativecommons.org/>.

¹⁷ Rights Statements, <https://rightsstatements.org/page/1.0/?language=en>.

¹⁸ “Traditional Knowledge Labels FAQ,” Mukurtu, last modified Feb. 19, 2020. <https://mukurtu.org/support/traditional-knowledge-labels-faq/>

¹⁹ Existing explorations on this topic include Kacie Lucchini Butcher’s “More questions than answers: Interrogating restricted access in the archives” (*Journal of the History of the Behavioral Sciences*, 2022 Jan 18. <https://doi.org/10.1002/jhbs.22179>), Ruth Panofsky and Michael Moir’s “Halted by the archive: the impact of excessive archival restrictions on scholars” (*Journal of Scholarly Publishing* 37, no. 1 (2005): 19-32), Frank J. Tough’s “‘The X-Files’: The Truth Is in the Archives, but Access Is Restricted” (in *Minds Alive: Libraries and Archives Now*, edited by Patricia Demers and Toni Samek, 185–230. University of Toronto Press, 2020. <http://www.jstor.org/stable/10.3138/j.ctvsf1nv3.20>), and Caitlin Burns, Amy E. Dayton, and Jennie L. Vaughn’s “Ethics and Access in Mental Health Archives” (in *Ethics and Representation in Feminist Rhetorical Inquiry*, 108–25. University of Pittsburgh Press, 2021. <https://doi.org/10.2307/j.ctv1w0xckn.10>).

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Appendix: Survey instrument

Access Restrictions Survey

We would like to invite you to participate in a research study on archival access restrictions. The archival profession has evolved dramatically when addressing access restrictions for archival materials. Historically, collections may be restricted for any number of reasons, including donor request and evolving interpretations of privacy. In the last few decades, lawsuits have challenged the notion of "archival privilege" and the practice of restricting material, beyond specific privacy laws, is being examined. This survey seeks to gather information on how access restrictions are created, administered, and lifted in archives.

The results of the survey will be synthesized into a summary publication and be presented at the section's annual meeting by members of the Privacy and Confidentiality Steering Committee.

The survey is confidential, with the option of providing contact information for follow up questions. The survey consists of 27 questions and may take around 10 minutes to complete.

You must be 18 years or older to participate in this survey and may opt-out of this research at any time. By submitting your responses, you agree to participate in this research and consent to your answers being possibly used for a future publication. For any questions or feedback on the survey, please contact Privacy and Confidentiality Section vice-chair [NAME].

1. What type of institution do you work at? (*Select one*)
 - Academic archives/library
 - Corporate archives
 - Government archives
 - Local Government archives
 - Historical Society
 - Other (*free text*)
2. Public or private institution? (*Select one*)
 - Public
 - Private
3. Do you have restricted material in your archival collections? (*Select one*)
 - Yes
 - No
 - Other (*free text*)
4. Who imposes restrictions on the collections? (*Check all that apply*)

- Donor
 - Laws (FERPA, HIPPA, etc.)
 - Institutional policy
 - Unit Head
 - Archival Staff (individual staff applying their professional judgement for applying restrictions beyond the previous options)
 - Industry regulations
 - Other (*free text*)
5. Are unprocessed collections restricted? (*Select one*)
- Yes
 - No
 - Other (*free text*)
6. Additional comments on whether unprocessed collections are restricted (*Free text*)
7. Where are access restriction agreements for archival collections documented? (*Check all that apply*)
- Deed of Gift/Gift-in-Kind form
 - Addendum to Deed of Gift/GIK
 - Donor-Archives correspondence (no formal document)
 - Other (*free text*)
8. When agreeing to accept a collection with restrictions, do you have access to legal counsel? (*Select one*)
- Yes
 - No
9. Who? (*Check all that apply*)
- In-house legal counsel for institution
 - External legal authorities
 - Other (*free text*)
10. How do you keep track of restrictions within collections? (What is restricted, what terms, what duration? With a collection management software, spreadsheet, etc?) (*Free text*)
11. How do you let researchers know about restrictions within collections? (*Check all that apply*)
- Catalog record
 - Finding Aid
 - Website
 - Don't describe/acknowledge restricted materials at all
 - Other (*free text*)
12. Any additional comments about describing restricted materials internally and externally? (*Free text*)
13. What is the process of a researcher getting access to restricted materials? (*Check all that apply*)
- Contact repository
 - Contact donor/heir
 - Complete application
 - Provide letters of introduction/recommendation
 - Provide credentials/affiliation
 - Meet specific academic qualifications
 - Non-Disclosure Agreements

- Sign waivers/disclaimers
 - Don't know
 - Other (*free text*)
14. Any additional comments relating to researchers gaining access to restricted materials? (*Free text*)
15. In your opinion, if a researcher challenges any of your repository's access restrictions in a court of law, how would they fare? (*Free text*)
16. What is your retention policy for petitions to access restricted material? How long are researcher access documents retained? (*Select one*)
- 1 year
 - Indefinitely
 - Never
 - Don't know
 - Other (*free text*)
17. Who approves researcher access to restricted material? (*Check all that apply*)
- Donor/heir
 - Unit Head
 - Designated Curator/Staff (not the Unit Head)
 - Legal Counsel
 - Don't know
 - Other (*free text*)
18. How does your archives designate restricted material for internal operations and providing access? (Physically segregated, marking boxes/folders, etc) (*Free text*)
19. Have you observed the application of access restrictions evolve at any repository you have worked at? (*Select one*)
- Yes
 - No
20. Comments about evolving practices of applying access restrictions: (*Free text*)
21. How often do you revisit restricted material to potentially lift restrictions? (*Select one*)
- Up to 1 year
 - Between 1-5 years
 - More than 5 years
 - Never
 - Other (*free text*)
22. Has your institution... (*Check all that apply*)
- Renegotiated a restriction on a collection
 - Lifted restrictions that have expired time limits
 - Other (*free text*)
23. Any additional comments on the process of lifting restrictions? (*Free text*)
24. How do you feel about the levels of restrictions imposed within your archives?
- Too restricted
 - Adequately restricted
 - Needs more restrictions
 - Other (*free text*)

25. Optional question: Could you share some policies and procedures relating to the administration of restricted materials? (Guidelines for imposing restrictions, processing, providing access, etc) (*Free text*)

26. If applicable, please feel free to upload documentation (*File upload*)

27. Additional comments (including name and contact information, if you wish to be contacted for follow up questions or have any quotes attributed to you): (*Free text*)