



Archives Privacy and Access Policy

Type of Policy: Archives

SUBJECT: Archives Privacy and Access Policy				
NEW	APPROVED	EFFECTIVE DATE	REVISED	POLICY NUMBER
July 2020	Sept. 16, 2020	Immediate	March 6, 2024	14

Policy

The *Freedom of Information and Protection of Privacy Act (FIPPA)*, applies to provincial ministries and agencies, colleges and universities and municipalities and local boards. Under this legislation, access is not permitted to personal records on behalf of a third party unless consent is given by the person, but the laws permit access 30 years after the death of the person. However, records that are privately donated are excluded and access is governed by a deed of gift. The *Personal Health Information Protection Act (PHIPA)*, applies to personal health records under the control of a health information custodian (not an archives). Personal health information is protected until the expiration of the earlier of 120 years after the record was created or 50 years after the death of the individual. For these types of records held in an archives, PHIPA applies. The *Personal Information Protection and Electronic Documents Act (PIPEDA)*, applies to private sector commercial activities in Ontario. It does not apply to non-profit or charity groups unless they are conducting commercial activities, and then only in that context. It protects personal information for 100 years after the information was collected or 20 years after the death of the person. In Ontario, FIPPA as well as federal legislation (PIPEDA and the Privacy Act) do not apply to religious archives.

The Archives will strive to follow best practices set forth under provincial and federal privacy legislation even when not governed by this legislation. The Archives will also follow the International Council on Archives' *Principles of Access to Archives*.

There are records in the Archives which contain personal or sensitive information. These records include deceased Sisters' records, withdrawn Sisters' records, staff and student records of

educational institutions, staff and patient records of health care institutions, and orphanage records. Sometimes, the information contained in these records is particularly useful for genealogists and serious researchers. Therefore, a balance must be struck which follows the spirit of the law.

For this reason, the Archives has developed a privacy protocol. In general, each request for access must be made in writing, using *Research Agreement* and *Request for Reproduction* forms. Each request is then evaluated based on the purpose of the request, who is making the request, and using this *Privacy and Access Policy* as a guide.

The Archives will put restrictions on records for specified time periods, should records contain sensitive information, or should such restrictions be required following best practices under privacy legislation. These restrictions may be put in place for specific periods of time, or applied only to members of the public, but will be applied equally in all cases, without discrimination based on race, gender, religion, belief, or social status of the patron.

All records transferred or donated to the Archives are subject to this *Privacy and Access Policy*.

The Congregational Archivist must be knowledgeable in privacy and copyright law. Archives staff may have access to restricted records to carry out their work but must keep confidential any knowledge they acquire in the course of their duties.

General restrictions

1. Records containing information, the disclosure of which would violate the personal privacy of a living person, will only be released to the named individual to whom they relate or her/his authorized representative, or with the written permission of the named individual, and that permission will be kept on file. These records are open to the Congregational Leader or her designate.

2. Academic records will only be released to the named individual to whom they relate, or her/his authorized representative, or with the written permission of the named individual, and that permission will be kept on file. These records are open to the Congregational Leader or her designate.

3. Information from orphanage records will only be released directly to the person to whom the records relate, or to his/her authorized representative, or with the written permission of the named individual. If that person is not living, information can be released to their next of kin. However, Ontario law prevents the release of any identifying information about birth parents. Records which are 100 years old or more are open to the public.

4. Identifying information concerning recipients of donations, bursaries, or other charitable works will not be released except to the Congregational Leader or her designate.

5. Consent is required of living persons depicted in photographs, videotapes, or sound recordings and their captions and related transcripts to publish or display. Materials will not be published or displayed if they depict children or people in trouble. A *Release Form* must be signed by the living person.

6. For both living and deceased persons, subject to the discretion and best judgement of archives staff, materials will not be published or displayed if they depict children or people in trouble.
7. Deceased Sisters' personal files are restricted for two years after death and are open only to the Congregational Leader or her designate. After this period has expired, access is restricted to the Congregational Leader or her designate, and to family members of the deceased Sister.
8. All personal health information of any individual is restricted for 50 years after death.
9. The names of withdrawn Sisters will never be released except to the Congregational Leader or her designate.
10. Materials which contain confidential business and financial information is open only to the Congregational Leader or her designate, until the passage of time is such that the release of the information would not result in harm or prejudice to the parties identified in the materials.
11. Materials containing information about confidential decision making will only be disclosed if the decision has been made public and the nature of the determinations leading to the final decision is known, or the passage of time is such that the release of the information would not impede current decision making, or the public interest in disclosure outweighs the continued need for privacy. These materials are open to the Congregational Leader or her designate.
12. Materials restricted by statute or court order may be disclosed only in accordance with the provisions of the statute or court order.

13. The Archives may collect personal information related to donors, patrons, and volunteers, but this personal information will be kept confidential.

14. No access will be provided to unprocessed collections because this material may not have been reviewed for potential restrictions due to sensitivity or privacy.

Specific restrictions

1. Records donated to the Archives may be restricted for a specific period as agreed to in a *Deed of Gift*.

2. Restrictions on the records of deceased Sisters which are not their personal files may be put in place for a period of 30 years after death if the material is deemed sensitive.

3. Other access restrictions may be placed on records by the Congregational Archivist if the records are deemed for congregational use only, or as requested by the Congregational Leader or her designate. These access restrictions must specify who is allowed access, and the time period of the restriction.

Definitions

Open: There are no restrictions on open records.

Restriction: A restriction is a limitation on the access to archival records by a patron. Such a restriction may involve a period for which access is limited, or it may involve not allowing access to certain individuals. Such restrictions are put in place to protect personal privacy or meet requirements under the law.

Procedure

Decisions on restrictions will be noted in the accession record as specified in the *Deed of Gift* or *Records Transfer to Archives* form or via the electronic records submission system.

Restricted records will be noted in finding aids.

Because the Archives does not have space to store restricted records separately, these records shall remain in the fonds and series in which they are arranged. Each file in a series containing restricted records should contain a *Withdrawal Sheet* listing the restricted items.

Electronic records which are restricted may be stored in a separate space on the computer drive and the metadata will clearly indicate the conditions of the access restrictions.

If part of an item can be made available, Archives staff can make a copy of the original and redact the restricted information from the copy by blacking it out, and then providing the patron with a use copy of the redacted copy and placing the redacted copy back in the file with the *Withdrawal Sheet*.

Periodic reviews of specific restrictions should take place to determine whether the restrictions can be removed. When restrictions are removed, the *Withdrawal Sheet* and redacted copies should be removed from any file in which these were placed, and the finding aid should be updated. The accession record should also be updated.

Review

This policy will be reviewed every three years.

Benchmarks:

This policy is effective if archival records are open to access but records that contain sensitive or private information are restricted to access, thus protecting the congregation from liability risk.

Responsibility

This policy is owned and supported by the Congregational Leadership Circle. The Congregational Archivist is responsible for the management and support of this policy. Archives staff are responsible for ensuring access restrictions are enforced.

Documentation

Personal Health Information Protection Act, 2004, SO 2004, c 3, Sch A, Release Form
International Council on Archives. (2013). Principles of Access to Archives,
<https://www.ica.org/en/principles-access-archives>

Withdrawal Sheet

Research Agreement

Request for Reproduction

Records Transfer to Archives

Deed of Gift

References

International Council On Archives, Committee On Best Practices And Standards, Working Group On Access. (2014). *Principles of Access to Archives. Technical Guidance on Managing Archives with Restrictions.*

Pearce-Moses, R. (2005). *A Glossary of Archival and Records Terminology.* Chicago: Society of American Archivists.