

Accountability, Human Rights and Social Justice: Developing an Ethical Framework for Enhancing Irish Public Sector Recordkeeping

Mark Farrell, MA

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Dublin City University
School of Theology, Philosophy and Music

Supervisors

Prof. Bert Gordijn

Dr. Alan Kearns

Dr. Mark Philbin

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Declaration

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of Doctor of Philosophy is entirely my own work, and that I have exercised reasonable care to ensure that the work is original, and does not to the best of my knowledge breach any law of copyright, and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

Signed: Mark Farrell

ID No.: 11103353

Date: 6 January 2025

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Table of Contents

Declaration.....	i
Acknowledgements.....	ii
Table of Contents.....	iii
List of Abbreviations	vii
List of Figures and Tables	viii
Abstract.....	ix
Chapter 1.....	1
1.1 Research Question.....	1
1.2 Methodology	2
1.3 Positionality	4
1.4 Relevance	4
1.5 Structure	7
Chapter 2.....	9
2.1 Introduction.....	9
2.2 Historical Summary 1922 – 1986	10
2.3 The National Archives Act, 1986	11
2.3.1 Thirty-Year Rule.....	11
2.3.2 Withholding of Records.....	12
2.3.3 Autonomy of the Director.....	13
2.3.4 Other Issues	15
2.4 Implementation Since 1986	17
2.4.1 Allocating Resources: ‘Perpetuating an Absurdity’	17
2.4.2 Records Management	19
2.4.3 Limited Remit of the Legislation	20
2.4.4 National Archives Advisory Council (NAAC).....	22
2.4.5 Access to Information.....	23
2.5 National Archives (Amendment) Act 2018.....	25
2.5.1 Following the UK Lead.....	25
2.5.2 Politicising Access.....	27
2.6 Recordkeeping Practice.....	29
2.6.1 Barron Report	30
2.6.2 Retirement of Garda Commissioner.....	33
2.6.3 Residential Institutions and Adoptions	34
2.6.4 Refugee Rights	36
2.7 Conclusion	37
Chapter 3.....	40
3.1 Introduction.....	40
3.2 Methodology	41
3.2.1 Databases and Keywords.....	41
3.2.2 Researcher Positionality	43
3.3 Results.....	43
3.3.1 Accountability	43
3.3.2 Human Rights.....	48
3.3.3 Social Justice	54
3.4 Discussion	58
3.4.1 Actual Accountability	59
3.4.2 A Limited Economic Interpretation of Accountability	60

3.4.3 Economic Impact on Records and Rights	60
3.4.4 Archival Activism	61
3.4.5 Social Justice Debate	62
3.4.6 Postmodernism, Participation and Empathy.....	64
3.4.7 One Truth or Many?	65
3.4.8 Access as a Human Right	67
3.4.9 The Challenge – Theory and Practice.....	67
3.4.10 Conclusion.....	69
Chapter 4.....	71
4.1 Purpose of the Interviews.....	71
4.2 Interview Methodology	72
4.2.1 Identifying and Recruiting Participants.....	72
4.2.2 Reflexive Thematic Analysis.....	76
4.2.3 Familiarisation, Coding and Developing Themes	77
4.3 Themes and Findings	81
4.3.1 ‘The (Restricted) View from Without’	82
4.3.2 ‘The (Conflicted) View from Within’	91
4.3.3 ‘The (Limited) View of the Future’	102
4.4 Reflections.....	108
4.4.1 The RTA Process.....	108
4.4.2 Concluding Reflections	110
Chapter 5.....	113
5.1 Introduction	113
5.2 Bovens’ Dual Concepts of Accountability	113
5.3 Accountability as a Mechanism	115
5.3.1 Accountability as a Mechanism in Irish Public Sector Recordkeeping.....	117
5.3.2 Gaps in the Mechanism	122
5.3.3 Summary: Accountability as a Mechanism	129
5.4 Accountability as a Virtue	129
5.4.1 Accountability as a Virtue in Irish Public Sector Recordkeeping	132
5.4.2 Gaps in Virtue	134
5.4.3 Summary: Accountability as a Virtue.....	144
5.5 Conclusion.....	145
Chapter 6.....	147
6.1 Introduction	147
6.2 The Right to Information as a Human Right.....	148
6.2.1 Human Rights and Recordkeeping Literature	148
6.2.2 The Right to Information as an Ancillary Right.....	149
6.2.3 The Right to Information as an Intrinsic Right.....	150
6.2.4 The Right to Information as a Welfare Right	153
6.2.5 Summary.....	155
6.3 Obligations Arising from the Right to Information.....	155
6.3.1 Public Ownership of Public Information.....	156
6.3.2 Quality Information	158
6.3.3 Accessibility	160
6.3.4 Summary.....	164
6.4 The Right to Information and Irish Public Sector Recordkeeping.....	164
6.4.1 Public Ownership and an Assumed Right of Access.....	164
6.4.2 Quality Information	173
6.4.3 Accessibility	175

6.5 Conclusion	178
Chapter 7.....	180
7.1 Introduction.....	180
7.2 Claassen’s Agency-Based Theory of Social Justice.....	180
7.2.1 Claassen’s Alternative to Sen and Nussbaum.....	180
7.2.2 Social Practices and Capabilities.....	182
7.2.3 Navigational Agency	183
7.2.4 Mandatory and Optional Social Practices	185
7.3 Capabilities and Recordkeeping.....	186
7.3.1 Information and Capabilities	187
7.3.2 Recordkeeping as a Mandatory Social Practice	188
7.4 Social Justice in Public Sector Recordkeeping in Ireland.....	191
7.4.1 Facilitating Navigational Capabilities	191
7.4.2 Irish Public Sector Recordkeeping as a Social Practice	197
7.5 Conclusion	207
Chapter 8.....	209
8.1 Introduction.....	209
8.2 Shortcomings	210
8.2.1 Shortcomings with Regard to Accountability.....	210
8.2.2 Shortcomings with Regard to Human Rights.....	210
8.2.3 Shortcomings with Regard to Social Justice	211
8.3 Recommendations.....	211
8.3.1 Recordkeeping Legislation.....	212
8.3.2 Recordkeeping Practice	225
8.4 Conclusion	233
Chapter 9.....	236
9.1 Summary.....	236
9.1.1 Current Legislation and Practice	236
9.1.2 Current Recordkeeping Scholarship Regarding Accountability, Human Rights and Social Justice	237
9.1.3 Stakeholder Experiences and Perceptions.....	238
9.1.4 Models to Provide a Basis for Fulfilling Recordkeeping’s Role.....	238
9.1.5 Recommendations to Bridge the Gap.....	239
9.2 Researcher Reflections and Positionality.....	241
9.3 Limitations	242
9.4 Further Research	243
Bibliography	245
Appendix A: Interview and Research Ethics Documentation	1
A1: Plain Language Statement.....	1
A2: Informed Consent Form	3
A3: Research Ethics Committee Approval	5
A4: Interview Guide.....	6
A5: Sample List of Codes Generated in Nvivo.....	7
Appendix B: FOI Request to Government Departments , seeking copies of Records Management Policies	15
Appendix C: FOI Request to the DTCAGSM, seeking copies of National Archives Appraisal Reports	16
C1: FOI Request.....	16

C2: Decision Letter	17
C3: Request for Internal Review	19
C4: Documents referenced in paragraph 4 of Appendix C.3 (Request for Internal Review)	21
C5: Internal Review Decision	74
Appendix D: FOI Request to for certificates seeking permission to withhold records .	78
D1: FOI Request	78
D2: Records Released in Response to the FOI Request	79
D3: Decision Letter from Department of TCAGSM	86
D4: Request for Internal Review.....	90
D5: Internal Review Decision.....	92

List of Abbreviations

ARA	Archives and Records Association
ARAI	Archives and Records Association Ireland Region
DPER	Department of Public Expenditure and Reform
DRI	Digital Repository of Ireland
DTCAGSM	Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media
FOI	Freedom of Information
GAF	Global Accountability Framework
HSE	Health Service Executive
ICAN	Irish Community Archive Network
ICCPR	International Covenant on Civil and Political Rights
IRMS	Information and Records Management Society
NAI	National Archives
NA Act	National Archives Act, 1986
NAAC	National Archives Advisory Council
PER	Public Expenditure and Reform
PRO	Public Record Office
RTA	Reflexive Thematic Analysis
UN	United Nations
UDHR	Universal Declaration on Human Rights

List of Figures and Tables

Figures

Figure 3.1: Research Flowchart.....	42

Tables

Table 4.1: Relevance of potential participants, and means of recruitment.....	73
Table 4.2: Breakdown of interview participants.....	75
Table 4.3: List of pseudonyms and brief description of participant background.....	81
Table 5.1: NAI as a forum and as an actor.....	123
Table 5.2: Sample of public bodies falling outside the remit of the NAI.....	127
Table 6.1: Access and limits to access, National Archives Acts and Freedom of Information Act.....	169
Table 7.1: An autonomous and free agent.....	183
Table 8.1: Shortcomings with regard to accountability, and relevant recommendations.....	210
Table 8.2: Shortcomings with regard to human rights, and relevant recommendations.....	211
Table 8.3: Shortcomings with regard to social justice, and relevant recommendations.....	211
Table 8.4: Summary of Recommendations.....	234

Abstract

Mark Farrell

Accountability, Human Rights and Social Justice: Developing an Ethical Framework for Enhancing Irish Public Sector Recordkeeping

This thesis examines to what extent Irish public sector recordkeeping legislation and practice are aligned with contemporary scholarship regarding the role of recordkeeping in relation to accountability, human rights and social justice. The following sub-questions are examined: What are the principal features of current Irish public sector recordkeeping legislation and practice, and what shortcomings can be identified with regard to accountability, human rights and social justice? What is the current state of recordkeeping scholarship about the issues of accountability, human rights and social justice? How do stakeholders think about and experience issues of accountability, human rights and social justice in an Irish recordkeeping context? What models can be used to provide a basis for fulfilling recordkeeping's role with regard to accountability, human rights and social justice, and what does a normative analysis based on these models say about the state of Irish recordkeeping legislation and practice? What recommendations should be made to ensure that Irish legislation and practice can bridge the gap between the current situation and contemporary recordkeeping scholarship relating to accountability, human rights and social justice?

A multi-pronged approach is taken to addressing these questions, beginning with an examination of the current nature of recordkeeping legislation and practice in Ireland. A literature review assesses contemporary recordkeeping scholarship relating to accountability, human rights and social justice. This is followed by an analysis of a set of interviews with recordkeeping stakeholders about how they perceive and experience these issues in an Irish context. Subsequent chapters provide normative analyses of accountability, human rights and social justice and identify models against which Irish recordkeeping legislation and practice can be measured. Finally, a set of actionable recommendations is presented. Proposed legislative changes relate to the core value of records, the concept of public ownership of public records, and the importance of access, while also addressing reporting structures and relationships designed to improve accountability. Recommendations also relate to improvements to recordkeeping culture and practice, which are seen as an essential complement to proposed legislative changes in successfully addressing issues of accountability, human rights and social justice.

Chapter 1

Introduction

1.1 Research Question

The UNESCO *Universal Declaration on Archives* identifies a key role for archives in ensuring accountability and transparency, and maintains that access to archives promotes democracy, protects rights and enhances quality of life.¹ It also states that responsibility for managing archives lies with all members of society, including citizens, public administrators and decision-makers, owners or holders of archives, and archivists.

This thesis examines certain ethical aspects of Irish public sector recordkeeping² in light of these, and similar, statements regarding the central role of records and archives in the lives of citizens and their relationship with the State. The core research question asks: to what extent is Irish public sector recordkeeping legislation and practice aligned with contemporary scholarship regarding the role of recordkeeping in relation to accountability, human rights and social justice?

The following sub-questions are examined:

1. What are the principal features of current Irish public sector recordkeeping legislation and practice, and what shortcomings can be identified with regard to accountability, human rights and social justice?
2. What is the current state of recordkeeping scholarship about the issues of accountability, human rights and social justice?
3. How do stakeholders think about and experience issues of accountability, human rights and social justice in an Irish recordkeeping context?

¹ United Nations Educational, Scientific and Cultural Organization, *Universal Declaration on Archives*, endorsed by the 36th Session of the General Conference of UNESCO, Paris, 10 November 2011.

Available at <<https://www.ica.org/resource/universal-declaration-on-archives-uda/>> [Accessed 8 April 2024].

² ‘Recordkeepers’ and ‘recordkeeping’ are used throughout this thesis as shorthand for ‘archivists and records managers’ and ‘archives and records management’. Depending on the context, individual terms such as ‘archives’ ‘archivists’ or ‘records’ may be used.

4. What models can be used to provide a basis for fulfilling recordkeeping's role with regard to accountability, human rights and social justice, and what does a normative analysis based on these models say about the state of Irish recordkeeping legislation and practice?
5. What recommendations should be made to ensure that Irish legislation and practice can bridge the gap between the current situation and contemporary recordkeeping scholarship relating to accountability, human rights and social justice?

1.2 Methodology

The research questions are addressed through a multi-pronged methodology, consisting of: 1) an assessment of the existing features of recordkeeping legislation and practice in Ireland, 2) a literature review which examines the various facets of the ethical issues of accountability, human rights and social justice, as reflected in the recordkeeping literature in the twenty-first century, 3) a series of interviews with recordkeeping stakeholders in an Irish context, to elicit their lived experiences of the issues under discussion, 4) normative analyses in relation to accountability, human rights and social justice, and 5) a set of recommendations for changes to Irish recordkeeping legislation and practice.

Question 1, which examines the principal features of current Irish public sector recordkeeping, is addressed through an assessment of existing legislation, regulations, annual reports and other relevant publications. Case studies are used to provide practical examples of how legislation is currently implemented and how shortcomings in recordkeeping practice can impact directly on the citizen-State relationship in terms of accountability, human rights and social justice.

Question 2, which examines the current state of recordkeeping scholarship about the issues of accountability, human rights and social justice, is answered via a literature review. Full details of the methodology followed for the literature review are set out in Chapter 3.

Following this, Question 3, regarding perceptions and experiences of stakeholders in an Irish context, is addressed through a series of interviews which consider the lived experiences of recordkeepers and other stakeholders relating to the ethical issues of

accountability, human rights and social justice identified in the literature review. Interviews are analysed using Braun and Clarke's methodology of Reflexive Thematic Analysis.³ This method enables the views of the interviewees to be assessed and understood in conjunction with, and complemented by, the personal and professional knowledge and experience of the researcher. As a result, the lived experiences of interviewees and the researcher supplement and provide a specific Irish focus for the issues identified in the literature review, and allow for those issues to be discussed and understood on the basis of real-life experiences and circumstances.

Question 4, which examines what models can be used to provide a basis for fulfilling recordkeeping's role in relation to accountability, human rights and social justice, is addressed through separate analyses and assessments. Although dominant in the literature, accountability, human rights and social justice are frequently poorly defined and understood. For this reason, Chapters 5–7 provide normative analyses and identify models which can act as a basis for a consistent interpretation of accountability, human rights and social justice, and how they relate to recordkeeping.

Having provided greater lucidity for the theoretical underpinnings of the major ethical issues facing recordkeeping, the normative assessments are then used to address Question 5 – what recommendations should be made to ensure that Irish legislation and practice can bridge the gap between the current situation and contemporary recordkeeping scholarship relating to accountability, human rights and social justice? Chapter 8 provides a set of distinct and actionable recommendations for the Irish context, designed to address the various shortcomings that have been identified regarding existing legislation and practice. Recommendations are derived from a comprehensive assessment of all preceding chapters, including the examination of existing legislation and practice (Chapter 2), the nature of contemporary recordkeeping scholarship (Chapter 3) and the perceptions and lived experiences of relevant stakeholders (Chapter 4). Interpretation and specification of the normative principles identified in Chapters 5–7 facilitate greater clarity for the role of recordkeeping with regard to accountability, human rights and social

³ Virginia Braun and Victoria Clarke, *Thematic Analysis: A Practical Guide* (London: Sage Publications, 2022).

justice, while providing for their understanding and application in a localised Irish context.

The overall methodology, which seeks ways to actualise contemporary recordkeeping theories in a localised Irish environment, has been chosen to match the research with the traditionally strong practical focus of the recordkeeping profession. Several writers note the profession's focus on the 'how' rather than the 'why', i.e. on day-to-day mechanics rather than on wider ethical issues. The methodology adopted here has the advantage of bringing greater clarity to the 'why' of recordkeeping while maintaining a strong practical link to the 'how' via specific and actionable recommendations, which can be applied in a particular context.

1.3 Positionality

This thesis is written from a perspective of limited realism. The author is an archivist and records manager with over 35 years' experience as a practitioner. Most of this has been spent as a private sector consultant, working with, but not as a member of, public sector organisations. This experience has facilitated a detailed first-hand knowledge of the issues addressed in this thesis.

Over the last fifteen years, the author has accumulated experience as a teacher and trainer, familiar with contemporary recordkeeping theory. This experience and knowledge, in supplementing his role as a practitioner, led to an increasing focus on the 'why' rather than 'how' of recordkeeping, including a consideration of ethical aspects of records and archives and how they influence the lives and wellbeing of individuals.

While postmodern perspectives have been influential in recordkeeping theory, the author takes a limited realist perspective, believing that some basic truth does exist, but is open to multiple interpretations and understandings. Recordkeeping can accommodate multiple and divergent voices and opinions in facilitating an understanding of the truth.

1.4 Relevance

While the National Archives Act (NA Act) of 1986 represented a significant advance on the situation in existence up to that point, it has been shown to have a number of deficiencies, which are discussed and analysed throughout this thesis, in particular in

Chapter 2. The need for revised legislation is pressing and has been identified by the National Archives (NAI) as a priority requiring immediate attention. The Director of the NAI states in her Annual Report for 2022 that the legislation ‘requires urgent review to take account of developments in recordkeeping practices since 1986’.⁴ The NAI’s Strategic Plan for 2021-25 includes a commitment to revised legislation which will address the shortcomings which have arisen due to such developments.⁵

The 1986 legislation was introduced at a time when archival practice was heavily influenced by the needs of historians, with a focus on traditional sources of information and influence. These considerations are still important, and records and archives provide a rich source of information for our understanding of the past in a variety of contexts. As detailed in the literature review in Chapter 3, the recordkeeping profession has, in recent decades, extended its focus, to develop a more activist and interventionist interpretation of its function. The dominant twentieth century view of archivists as inheritors of a fixed set of records, which represent truth and objectivity, has given way to a more nuanced view of archivists as actors in a complex set of relationships. With an involvement in decisions about how to acquire, arrange, catalogue, and provide access to records, and about the retention and disposal of records, archivists have a potentially influential role when it comes to individuals’ understanding of society and their place in it. Records themselves are increasingly seen as subjective, created in a particular context for a particular purpose and providing an account from a particular perspective.

Recordkeeping has developed a focus on how records impact on the lives of individuals and communities, and how traditional recordkeeping models have tended to favour official State-centric perspectives to the detriment of more diverse voices and experiences. Questions of the individual’s relationship with the State have become central concerns of the recordkeeping literature. Accountability, human rights and social justice are inextricably linked as major ethical issues in the twenty-first century literature, with an increasing focus on how marginalised communities can be better represented in

⁴ Report of the Director of the National Archives, 2022, p. 34. Available at <<https://www.nationalarchives.ie/wp-content/uploads/2023/11/Directors-Report-2022-including-accessions-report.pdf>> [accessed 20 June 2024].

⁵ National Archives, *Shaping Our Future in the Information Age: The National Archives 2021–2025 Strategic Plan* (Dublin: The National Archives, 2020), pp. 14–15.

archives and how recordkeeping can play a role in ensuring balance in the relationship between individuals, communities and governing authorities.

Writing in 2006, Ailsa C. Holland noted that the NAI had never transformed in response to contemporary recordkeeping theories of the kind described above, and that it was focused on ‘dutifully executing the narrow responsibilities assigned to it’ under the NA Act.⁶ She claimed that the recordkeeping profession in Ireland had failed to respond to modern approaches by challenging traditional positivist views, and identified a need for archivists to be ‘less complacent and more confrontational with the archival values they have inherited’.⁷

Already preoccupied by practical issues, struggling with backlogs and under-resourcing, and coping with a lack of profile and prestige, the recordkeeping profession in Ireland, therefore, faces additional challenges in adapting to contemporary recordkeeping perspectives, which have shifted the focus to participatory and person-centred approaches. There is thus a need to consider recordkeeping’s relationship to accountability, human rights and social justice in a specifically Irish context. As the profession changes its focus from official, State-centric perspectives of recordkeeping and embraces community archives, rights, justice, and accountability, there is a need to assess the ethical components not only of Ireland’s recordkeeping legislation but also of its recordkeeping cultures and practices, and the extent to which they align with contemporary recordkeeping approaches to accountability, human rights and social justice.

In the legislative context, the focus throughout this thesis is on the National Archives Act of 1986, as the primary piece of recordkeeping legislation governing the management of public records. Reference is also made to local authority recordkeeping to provide relevant context and to illustrate that the issues identified apply on a wider basis. As recordkeeping legislation at the local authority level is limited, however, this thesis maintains a primary focus on recordkeeping at the national level.

⁶ Ailsa C. Holland, ‘From Louisburgh to Ladismith: Archives in Ireland and South Africa in a Century of Conflict and Change’ in *Archives and Archivists*, ed. by Ailsa C. Holland and Kate Manning (Dublin: Four Courts Press, 2006), pp. 127–46 (p. 140).

⁷ Holland, p. 146.

Other legislation is also referenced from time to time, in particular Freedom of Information. As this research is not concerned with specific record types, however, detailed consideration of issues such as data protection or copyright is not within the remit of the research.

This thesis develops a range of specific and realistic recommendations which can bridge the gap between theory and practice in an Irish context and facilitate a greater level of engagement with the ethical issues which are predominant in modern interpretations of recordkeeping.

1.5 Structure

Following on from this introductory chapter, Chapter 2 examines current Irish recordkeeping legislation and practice, and uses a number of case studies, reports and related publications to assess a number of recurring shortcomings and difficulties.

Chapter 3 presents a comprehensive literature review which analyses how recordkeeping has addressed accountability, human rights and social justice during the twenty-first century. Chapter 4 then uses a series of interviews with relevant stakeholders to assess how such issues are viewed and experienced in an Irish context, and the extent to which existing Irish legislation and practice are perceived to align with the approaches identified in the literature review.

Chapters 5–7 address the lack of clarity and consistency identified in the literature review by providing normative assessments of accountability, human rights and social justice. Chapter 5 explores a model suggested by Mark Bovens, which views accountability as both a mechanism and a virtue,⁸ and emphasises how quality recordkeeping can contribute towards both, with a particular focus on facilitating open and trustworthy behaviours and working cultures. Chapter 6 examines how access to information is increasingly viewed as a human right and explores a model which identifies public ownership of public records, quality of information and accessibility as essential elements of the right to information, allowing individuals to gain knowledge of their rights, their situation in society and potential infringements of their rights or freedoms. Chapter 7

⁸ Mark Bovens, 'Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism', *West European Politics*, 33.5 (2010), 946–67.

utilises a model of social justice developed by Rutger Claassen⁹ which can be used to underline recordkeeping's core role in issues of navigational agency and capabilities, and to bring clarity to the role of recordkeeping with regard to social justice.

Chapter 8 develops a set of actionable recommendations, based on the normative assessments in the preceding chapters, which are designed to bridge the gap between existing Irish legislation and practice and contemporary recordkeeping scholarship on accountability, human rights and social justice.

Finally, Chapter 9 provides a concluding summary of the principal findings and recommendations of this thesis, while identifying limitations and suggesting areas which may warrant further research.

⁹ Rutger Claassen, *Capabilities in a Just Society: A Theory of Navigational Agency* (Cambridge: Cambridge University Press, 2018).

Chapter 2

Public Sector Recordkeeping in Ireland: Existing Legislation and Practice

2.1 Introduction

This chapter will establish the principal features of current public sector recordkeeping legislation and practice in Ireland, and will identify some of the shortcomings with regard to accountability, human rights and social justice. While the focus of this research is on the National Archives Act (NA Act), other legislation has a relevance to some of the matters addressed in this chapter, in particular Freedom of Information (FOI) legislation and the manner in which it has affected expectations surrounding access to public records.

A brief historical assessment will describe the recordkeeping context which prevailed prior to 1986. This will be followed by an assessment of relevant elements of the 1986 NA Act and the manner of its implementation. There will also be a discussion of amending legislation introduced in 2018 and the changes stemming from that.

In assessing both the 1986 Act and the 2018 Amendment, the debates in the Houses of the Oireachtas (national parliament) are examined in order to identify the principal issues identified and discussed during the passage of the legislation. This facilitates an assessment of whether legislators were influenced by issues such as accountability and the rights of individuals or whether the focus was on other more practical considerations.

Having assessed the legislation itself, there will follow an examination of the manner in which the legislation has been observed and implemented. This is achieved through an assessment of annual reports of the Director of the NAI and the National Archives Advisory Council (NAAC). Selected case studies and practical examples are used to highlight issues with regard to recordkeeping practices in the Irish public service and the extent to which these may have impacted on the rights of individuals and on issues of accountability. The reports of a number of tribunals and commissions of investigation are considered, with regard to the recordkeeping issues highlighted therein.

This chapter provides the background and context necessary to understand the content of existing recordkeeping legislation and how it relates to the ethical questions which will be addressed in this thesis. It also uses practical examples and case studies to illustrate

the manner in which a poor recordkeeping culture and shortcomings in practice can impact directly on the well-being of individuals and the ability of society as a whole to scrutinise and hold public bodies accountable.

2.2 Historical Summary 1922 – 1986

The destruction of the Public Record Office (PRO) in Dublin at the outset of the Irish Civil War in 1922 was considered a cataclysmic event for the study of Irish history.¹⁰ If that once-off event can legitimately be described as disastrous, the neglect of the PRO in the following decades also had a hugely negative, if more gradual, impact.

Gerard O'Brien has examined in detail the policy of Irish governments regarding public records in the years after independence. He writes of:

a wilful neglect, over many decades, of the physical care and maintenance of the archives, the premises in which they were housed, and even of the staff who took care of them; a persistent refusal to update Victorian legislation; and a failure to make proper provision for the care and preservation of government records generated after 1922.¹¹

O'Brien's comprehensive analysis of government recordkeeping policy up to 1980s does not need to be revisited here. Suffice to say that during this time, access to public records had to be earned or justified, rather than being treated as a right or entitlement, and there was no concept of a general right to access or of facilitating public scrutiny or accountability through access to information.¹²

In the United Kingdom, a thirty-year rule was introduced with effect from 1st January 1968,¹³ meaning that records became available for public viewing when they were thirty years old. Progress in Ireland was much slower. Resources did improve in the 1970s, but

¹⁰ Many articles have been written on the destruction of the PRO. A useful summary is provided by Peter Crooks and Ciaran Wallace, *Construction/Destruction: The Public Record Office of Ireland (1867-1922)*, <<https://virtualtreasury.ie/archive-fever/construction-destruction>> [accessed 5 March 2024].

¹¹ Gerard O'Brien, *Irish Governments and the Guardianship of Historical Records, 1922–72*, (Dublin: Four Courts Press, 2004), p. 11.

¹² O'Brien, especially pp. 76–90.

¹³ The UK's Public Records Act 1967 introduced the thirty-year rule, reducing it from the fifty-year rule that had been introduced in the Public Records Act 1958. See <<http://www.legislation.gov.uk/ukpga/1967/44>> [accessed 14 May 2024].

it was 1986 before the independent Irish State formally legislated for access to public records.

2.3 The National Archives Act, 1986

The National Archives Act, 1986¹⁴ was the first piece of archives-related legislation introduced in the Republic of Ireland since independence and it came one hundred and nineteen years after the Public Records (Ireland) Act of 1867. It amalgamated the PRO and the State Paper Office into a single institution and created a new role of Director of the National Archives. It defined departmental records and stipulated that such records would be transferred to the NAI and made available for public inspection when they were thirty years old. In certain circumstances, records could be withheld from public inspection for longer than thirty years. No departmental records could be disposed of at any stage without the permission of the Director of the NAI. The Act also created a National Archives Advisory Council (NAAC), to advise the Taoiseach (Prime Minister) in the exercise of his powers under the Act.¹⁵ The Schedule to the Act lists the bodies that are subject to the provisions of the legislation.

In examining the debates that took place in Dáil Éireann and Seanad Éireann (the lower and upper houses respectively of the Oireachtas) we can assess the issues that were identified by legislators as being of prime importance at that time. There were significant and substantive contributions by a number of Senators and TDs (members of Dáil Éireann) on issues such as the thirty-year rule, the role of the Director, and the potential for Ministers or civil servants to hinder public access to records, even after thirty years.

2.3.1 Thirty-Year Rule

The Minister of State at the Department of the Taoiseach stated in the Seanad that, with the thirty-year rule already well-established in the UK, the lack of formal access to Irish records created an ‘anomalous situation’ with an ‘incongruous and unsatisfactory

¹⁴ National Archives Act, 1986. See <<http://www.irishstatutebook.ie/eli/1986/act/11/enacted/en/html>> [accessed 14 May 2024].

¹⁵ The Act placed the NAI under the auspices of the Department of the Taoiseach. Most of the Taoiseach’s responsibilities under the Act were transferred to the newly-established Department of Arts, Culture & the Gaeltacht in 1994; that Department has gone through several re-structuring processes since 1994 and is currently known as the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DTCAGSM).

result’.¹⁶ This consideration – of access to Irish records lagging behind access to UK records – would surface again over thirty years later as the primary rationale behind the National Archives Amendment Act of 2018. We can thus identify a pattern of Irish recordkeeping legislation reacting to UK developments and introducing measures, at least in part, in an attempt to balance the record in relation to Anglo-Irish relations, rather than on the basis of wider ethical considerations relating to access to information or the rights of citizens to access public records.

Most contributors to the parliamentary debates saw the thirty-year rule as a major advance on the level of access existing up to that point, although Senator Brendan Ryan sought much earlier access, stating that thirty years is ‘a good, cautious, conservative figure’ and ‘is about 29 years too long’.¹⁷ In refuting arguments for earlier release of records, the Government contended that thirty years was standard international practice and that, in any case, ‘if civil servants were expected to give their views freely to Ministers they will certainly be inhibited from doing so if they feel that those views could be published in a relatively short time’.¹⁸

2.3.2 Withholding of Records

Section 8 (4) of the 1986 Act stipulates the circumstances in which certain records may continue to be withheld from public access, even after they are thirty years old, and it lays out the procedure to be followed in such cases.¹⁹ Much of the Oireachtas debates in relation to the legislation centred on this provision and the extent to which the process could remain free of political influence.

Ryan was concerned about withholding records on the grounds that releasing them would be contrary to the public interest. In particular, he saw a danger that leaving such

¹⁶ Seanad Éireann Debate, 13 March 1985. See

<<https://www.oireachtas.ie/en/debates/debate/seanad/1985-03-13/6/>> [accessed 14 May 2024].

¹⁷ Seanad Éireann Debate, 29 May 1985. See <<https://www.oireachtas.ie/en/debates/debate/seanad/1985-05-29/3/>> [accessed 14 May 2024].

¹⁸ This is a quote from the contribution of An Taoiseach, Garret Fitzgerald; see Seanad Éireann, 29 May 1985.

¹⁹ Thirty-year-old records can be withheld if an officer of the Department in question certifies, and an officer of the Department of the Taoiseach agrees, that making them available for public inspection would be (a) contrary to the public interest, (b) would or might constitute a breach of statutory duty, or a breach of good faith on the ground that they contain information supplied in confidence, or (c) would or might cause distress or danger to living persons on the ground that they contain information about individuals, or would or might be likely to lead to an action for damages for defamation.

assessments in the hands of civil servants would inevitably lead to unnecessary restrictions on access, thus frustrating accountability. He identified a mindset ‘that the Government, or the advisers to the Government, know better than the public what is or is not in the public interest’ and suggested that:

in the interests of what is broadly described as the public interest, we have been guilty at the very least of protecting inefficiency in many cases and at the worst of cover-ups in some cases about the way Government Departments are handling their affairs.²⁰

Ryan suggested that the grounds for withholding records on the basis that release would be ‘contrary to the public interest’ should be strengthened by altering the wording to ‘would seriously threaten the public interest’.²¹ This was rejected by the Government during the Seanad debate.

Also of concern to senators was the provision of Section 8(2) of the legislation, which provides that thirty-year-old records could be withheld from transfer to the NAI if it was certified by the relevant Department that the records in question ‘are in regular use in that Department [...] and that their transfer to the National Archives would seriously interfere with the administration of that Department’.²²

The Government agreed that if records were being withheld on the basis that they were still required within the Department, then this must be done ‘for stated reasons’, a requirement which had not been included in earlier versions of the legislation.

2.3.3 Autonomy of the Director

The debate over potential obstacles to the release of information, even after thirty years, reflected a wider concern expressed by many Senators and TDs about the independence of the whole process from potential political interference and the extent to which the Director of the NAI would rely on the goodwill and co-operation of both Government and civil servants.

²⁰ Seanad Éireann, 13 March 1985.

²¹ Seanad Éireann Debate, 3 July 1985. See <<https://www.oireachtas.ie/en/debates/debate/seanad/1985-07-03/7/>> [accessed 14 May 2024].

²² NA Act, Section 8(2).

Section 4 of the Act sets out the functions of the Director; initially, the role reported to the Taoiseach, but following government re-organisation in the early 1990s, the parent department is now the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media (DTCAGSM). There was a particular focus in the Oireachtas debates on the section relating to ‘the inspection and examination of arrangements for the preservation of Departmental records and, with the consent or at the request of the appropriate member of the Government, the examination of Departmental records’.²³

Many contributors were concerned that the words ‘with the consent or at the request of the appropriate member of the Government’, left the Director at the mercy of individual Ministers. The Taoiseach, Garret Fitzgerald, was at pains to emphasise that the Director would have full autonomy to examine the ‘arrangements for the preservation’ of records, i.e. storage arrangements, physical conditions, etc. and that this power was not reliant on the consent of a Minister.

Fitzgerald insisted that giving the Director the power to examine individual records without any invitation from the relevant Minister would be inappropriate due to the potentially sensitive nature of some records. He stated that ‘the Director will have the support of the Taoiseach in any reasonable request to inspect records in departments’.²⁴ Many Senators had complimented Fitzgerald on his personal commitment to facilitating archival research, but his assumption that all future heads of government would be as favourably disposed as he appears to display a certain degree of naivety. His approach appeared to place a heavy reliance on the willingness of future administrations to voluntarily maximise access.

Many contributors to the debates did not share the Taoiseach’s optimism in this regard. Senator Mary Robinson stated that the role of the Director needed to be ‘stronger and clearer [...] not to have it at the behest of or dependent upon a request from a Department in that regard’,²⁵ while Shane Ross suggested that ‘there is an implication [...] that the Director in some way is not trustworthy, that he cannot look at Departmental records

²³ NA Act, Section 4(1)(d).

²⁴ Seanad Éireann, 3 July 1985.

²⁵ Seanad Éireann, 29 May 1985.

without being vetted in some way by a Minister'.²⁶ The Government rejected all attempts to amend this aspect of the legislation, in both the Seanad and the Dáil.

The Government did attempt to address some of these concerns by introducing an element that had not been included in earlier drafts of the legislation. A new section 11 was introduced, giving the Taoiseach the power to direct that certain records be made available for public inspection, even where an application had been made by the relevant Department to withhold them. Fitzgerald stated, in introducing this amendment, that:

we have built in as many checks and balances of a progressive nature as we can, designed to guard against over-caution in publication and to ensure that there is not the least possible chance that anything will be withheld [...] without very strong reason.²⁷

In fact, all of the checks and balances referred to were within the executive branch of government and it is thus arguable that they are not genuine checks and balances at all. As will be seen in later chapters of this thesis, concerns regarding the voluntary nature of much of the provisions of the Act appear to have been well placed, given the lack of formal reporting and accountability mechanisms in the legislation.

2.3.4 Other Issues

A number of other issues were raised during the Oireachtas debates, especially in the Seanad, albeit in a briefer manner and with less detailed assessment and discussion. In terms of remit, it was noted that the legislation did not make provision for local authority archives.²⁸ It was also suggested that the Office of the Ombudsman and the Adoption Board should be added to the list of bodies to which the legislation would apply.²⁹ Ryan favoured a much more comprehensive expansion of the list of bodies to be covered: 'I do not understand why there has to be a distinction between the bodies listed in the schedule and public organisations generally'.³⁰ Separately, a number of contributors briefly queried the role proposed for the NAAC.

²⁶ Seanad Éireann Debate, 25 September 1985. See <https://www.oireachtas.ie/en/debates/debate/seanad/1985-09-25/7/> [accessed 14 May 2024].

²⁷ Seanad Éireann, 25 September 1985.

²⁸ Seanad Éireann, 3 July 1985.

²⁹ Seanad Éireann, 3 July 1985.

³⁰ Seanad Éireann, 29 May 1985.

Whatever about the specifics of the particular issues raised, it is fair to say that a number of Senators and TDs were exploring in a substantive manner the question of whether the legislation facilitated access to archives without inappropriate interference or excessive caution on the part of the civil service and political actors. Many contributions foreshadowed concerns which would increase in subsequent years, when the limited remit of the legislation would highlight gaps in accountability and shortcomings in facilitating a right of access to information.

Ryan took a consistently strong approach in arguing for the greatest level of access possible, minimising the role of politicians and civil servants and maximising the autonomy of the NAI. He stated in one of his contributions that:

A proper democracy is one not just where the citizens have the right to elect a government, which is a very fundamental right, but have the right to the maximum possible information in order to make their decision about the choice of government and decisions about issues as they are presented to them.³¹

While the Taoiseach of the day was undoubtedly committed to addressing the issues which had negatively impacted on Irish recordkeeping for so long, some of his contributions tended to assume that his personal goodwill and commitment would be replicated in future administrations. In this respect, Senator Robinson noted that much of the 1986 legislation:

seems to rest upon a framework of what I would call voluntarism [...] a willingness on everyone's part to be very archive-oriented [...] a total dependence on the voluntary disposal of others and the voluntary willingness of others to cooperate.³²

Such concerns, as expressed by several Oireachtas members, raise questions regarding the extent to which the new legislation could or would actually be implemented, and the

³¹ Seanad Éireann, 29 May 1985.

³² Seanad Éireann, 29 May 1985.

commitment of the State to developing a recordkeeping culture and set of practices which would allow for realisation of the improvements envisaged by the Act.

2.4 Implementation Since 1986

2.4.1 Allocating Resources: ‘Perpetuating an Absurdity’

During the Oireachtas debates in 1985 and 1986, virtually every contributor drew attention to the lack of staff and the lack of physical storage accommodation that had been available to the PRO and SPO, and emphasised that the new legislation could not be effectively implemented if these issues were not adequately addressed in the immediate term.

Ryan commented that failing to allocate adequate resources would defeat the purpose of the legislation and would be equivalent to saying ‘you can have access to the records in principle but in practice either we do not know where they are or we cannot let you get at them because they are so inaccessible, or we have not got them collated, catalogued or filed because we have no resources’.³³

The legislation was passing through the Oireachtas at a time of severe economic difficulty for Ireland, with public spending cutbacks in place and a freeze on recruitment to the public service. While acknowledging these restrictions, the Taoiseach nevertheless agreed that it would be pointless to introduce the new legislation without devoting sufficient resources to its successful implementation:

I have to say that for us to pass this Bill, establish a national archive and require that within two years all these records be handed over to it and not give it additional staff would be to perpetuate an absurdity. It is obvious that steps have to be taken here.³⁴

The 1986 Act requires the Director to submit an annual report on the work of the NAI.³⁵ The first such annual report relates to the year 1997, nine years after the NAI became

³³ Seanad Éireann, 29 May 1985.

³⁴ Seanad Éireann, 29 May 1985.

³⁵ NA Act, 1986, Section 21.

operational, and it was submitted in June of 1999, eleven years into operations. The report notes that at the end of 1997, despite several requests for increases, the number of staff in the NAI was 35, which was the same ‘level of staffing achieved by the predecessor offices of the National Archives in the mid-1970s’.³⁶

The Report goes on to note that ‘due to lack of storage space, the National Archives has never in fact been able to accept the full range of Departmental records due for transfer’.³⁷ While some Departments had been slow to address their obligations in relation to the Act, the report states that the main reason for failure to transfer was the lack of storage space in the NAI. Furthermore, this lack of space resulted in severe restrictions on the release of records for public inspection: ‘Because of our shortage of storage space, the release of records for the year 1967 was confined to records of the Department of the Taoiseach, the Department of Foreign Affairs and the Office of the Secretary to the President.’³⁸

This illustrates in stark terms that the failure of government to allocate adequate resources to the NAI was obstructing one of the central provisions of the legislation, i.e. the transfer of thirty-year old records and the provision of access to those records. This is separate altogether from questions of how other aspects of the Act were operating, i.e. those relating to possible withholding of records and the potential for an over-zealous approach to be adopted in placing restrictions on access.

One other aspect of the Director’s report for 1997 worth noting is the section dealing with electronic records. Noting the new demands being placed on archive services by the spread of computer technology, the report stated that ‘there is reason to fear that such records will not survive in a form that will allow them to be accessed by later generations of researchers’.³⁹ The report stated that the NAI lacked a unit dedicated to addressing such issues, a warning that would be repeated with increasing urgency in future annual reports.

³⁶ *Report of the Director of the National Archives for 1997*, pp. 10–11. Available at <https://opac.oireachtas.ie/AWData/Library3/Library2/DL024433.pdf> [Accessed 28 May 2024].

³⁷ *Report of the Director for 1997*, p. 23.

³⁸ *Report of the Director for 1997*, p. 24.

³⁹ *Report of the Director for 1997*, p. 29.

Indeed, this first annual report provides a grim template for all subsequent annual reports of the Director. The constant theme running through all reports is the lack of staff, lack of resources and general lack of support from government, with severe implications for the ability of the NAI to fulfil its basic legislative duties. Such is the persistence of these problems that, in many cases, the Director could simply copy and paste the same paragraphs time and time again in a series of annual reports to describe the lack of resources, unsuitability of the storage accommodation and limitations on transfer of records.

The persistent failure to allocate adequate resources reflects an ongoing culture within Irish public life, described by O'Brien in his assessment of recordkeeping after 1922 and reflected in many reports, some of which are considered later in this chapter. This culture attaches little importance to the management of public records and fails to connect recordkeeping with matters which are core to a fully functioning democracy, i.e. the need for accountability and recognition of the central role which recordkeeping has in terms of the rights of individuals and their relationship with the State.

2.4.2 Records Management

Section 19 of the NA Act allows the Minister for Public Expenditure and Reform (PER), after consultation with the Director of the NAI, to 'make regulations for the proper management and preservation of Departmental records in the custody or care of a Department of State'.⁴⁰

The FOI Act, 2014 permits the same Minister, after consultation with the Director of the NAI and the Information Commissioner, to issue regulations relating to 'the management and maintenance of records held by FOI bodies'.⁴¹

None of these provisions has ever been acted upon, and the creation, management and maintenance of records within government departments and public agencies remains

⁴⁰ NA Act, section 19(3).

⁴¹ FOI, 2014, Section 8(11). See

<http://www.irishstatutebook.ie/eli/2014/act/30/section/8/enacted/en/html?q=National+Archives&years=2014&search_type=acts> [accessed 14 May 2024].

unregulated, with no standard procedures or regulations in place. Some practical examples of the consequences of this will be examined later in this chapter.

After FOI found its way onto the statute books in 1997, the NAAC was of the view that this should prompt government to address this issue, expressing the opinion that successful implementation of FOI ‘is dependent on public bodies approaching the issue of records management in a coherent and integrated way’.⁴² The Central Policy Unit of the Department of Public Expenditure and Reform (DPER), responsible for co-ordinating FOI throughout the public sector, has highlighted the importance of effective records management in its *FOI Code of Practice*, noting that ‘there is a compelling need for sound record management practices and systems’.⁴³

As subsequent chapters of this thesis will demonstrate, the failure to act upon these powers results in serious ongoing shortcomings in Irish public sector recordkeeping.

2.4.3 Limited Remit of the Legislation

Several reports of the Director and of the NAAC point to one obvious problem with the NA Act of 1986, i.e. its severely limited remit in terms of what public records are subject to its provisions. The Schedule lists the bodies that are subject to the terms of the legislation, in addition to the courts and government departments. The schedule includes some high-profile and crucially important public bodies including, for example, An Garda Síochána (police), the Office of the Attorney General, the Central Statistics Office and the Revenue Commissioners. It also includes less well-known agencies such as The Levy Appeals Tribunal⁴⁴ and An Coimisiún Dumpála.⁴⁵

⁴² National Archives Advisory Council (NAAC), *Seventh Report 1998*, section 8.2. Available at <<https://www.nationalarchives.ie/wp-content/uploads/2019/03/NAAC-7th-Report-English-1998.pdf>> [accessed 14 May 2024].

⁴³ *FOI Code of Practice*, December 2014, section 5.2, <<https://foi.gov.ie/download/foi-code-of-practice/>> [accessed 14 May 2024].

⁴⁴ A body established under the Industrial Training Act, 1967, and which ceased to exist in 2000. See Irish State Administration Database, <<https://www.isad.ie/item.php?t=u&id=670>> [accessed 14 May 2024].

⁴⁵ A body established by the Imposition of Duties (Dumping and Subsidies) Act 1968, and which ceased to exist in 1985. See Irish State Administration Database, <<https://www.isad.ie/item.php?t=u&id=576>> [accessed 14 May 2024].

The Schedule omits a wide array of agencies, meaning that the records of many public bodies remain outside the scope of the NA Act. Most frequently cited in this regard in annual reports of the Director and the NAAC, are local authorities and state sponsored bodies.

The local authority situation was addressed, to a limited extent, by the Local Government Act of 1994,⁴⁶ superseded by an amended Act of 2001, which states ‘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’.⁴⁷ This function does not necessarily extend to the establishment of a fully-functioning archive service within each local authority, as evidenced by the fact that many local authorities continue to operate without such a service and without an archivist on their staff.

As for other public agencies not listed in the Schedule to the 1986 Act, there has been little change. The NAAC drew attention to the limited remit of the NA Act on numerous occasions. In its eighth report, covering 1999, the NAAC began to flag concerns regarding the potential impact of the increasing trend towards privatisation of public services, noting the potential consequences of this government policy on the records and archives of state-sponsored bodies.⁴⁸ The ninth report, covering the year 2000, states that it should be made mandatory for state-sponsored bodies to deposit their archives in the National Archives⁴⁹ and expands on the concerns expressed the previous year by calling for provision ‘in future privatisation bills for the retention, preservation and cataloguing of records, including the creation of a fund for the purpose’.⁵⁰

⁴⁶ Local Government Act, 1994, section 65,
<<http://www.irishstatutebook.ie/eli/1994/act/8/section/65/enacted/en/html#sec65>> [accessed 14 May 2024].

⁴⁷ Local Government Act, 2001, section 80,
<<http://www.irishstatutebook.ie/eli/2001/act/37/section/80/enacted/en/html#sec80>> [accessed 14 May 2024].

⁴⁸ NAAC, *8th Report* (Dublin: October 2000), section 11. Available at
<<https://www.nationalarchives.ie/wp-content/uploads/2019/03/NAAC-8th-Report-English-1999.pdf>> [accessed 14 May 2024].

⁴⁹ NAAC, *9th Report* (Dublin: April 2001), section 6.1. Available at <<https://www.nationalarchives.ie/wp-content/uploads/2019/03/NAAC-9th-Report-English-2000.pdf>> [accessed 14 May 2024].

⁵⁰ NAAC, *9th Report*, section 6.2.

The limited remit of the 1986 Act has significant consequences in terms of accountability, human rights and social justice, which are assessed in detail in subsequent chapters of this thesis. Although very limited changes have been made to the Schedule in recent years, many significant public agencies remain beyond the reach of the NA Act, and thus have no duty to members of the public when it comes to the creation, management, retention and provision of access to their records.

2.4.4 National Archives Advisory Council (NAAC)

The NA Act of 1986 established the NAAC, with the remit to advise the Taoiseach ‘in the exercise of his powers under this Act, and on all matters affecting archives and their use by the public’.⁵¹

The NAAC is required to issue annual reports, the first of which appeared in June 1990.⁵² This and subsequent reports reflect the concerns expressed in the Directors’ reports, with major recurring issues being the lack of suitable accommodation and lack of action on the part of successive governments with regard to increasing staff numbers.

The NAAC also noted the failure of several Government Departments to arrange for thirty-year old records to be transferred to the NAI. Its first report states that ‘there are some to whom the obligation to carry out this work of national importance seems to be less than clear’⁵³, while its second report refers to a ‘spectacular failure’ on the part of some Departments.⁵⁴

In subsequent years, the NAAC raised concerns over a number of other issues, including the lack of provision for the records of state-sponsored bodies, the lack of progress in addressing the management of current records in government departments, and electronic

⁵¹ NA Act, 1986, section 20(1).

⁵² NAAC, *First Report*, (June 1990). Available at <<https://www.nationalarchives.ie/wp-content/uploads/2019/03/NAAC-1st-Report-1990.pdf>> [accessed 14 May 2024].

⁵³ NAAC, *First Report*, section 7.2

⁵⁴ NAAC, *Second Report* (June 1992), p.12. Available at <<https://www.nationalarchives.ie/wp-content/uploads/2019/03/NAAC-2nd-Report-1992.pdf>> [accessed 14 May 2024].

records in particular, and the proposed merger of the NAI with the National Library of Ireland in the years following the economic crash of 2008.⁵⁵

The tone of the NAAC reports varies over time, reflecting to an extent the changing membership and the nature of the issues being dealt with. The one constant theme, expressed with varying levels of directness, is frustration at the lack of government commitment to ensuring that the 1986 legislation could be effectively implemented. The NAAC itself fell victim to this apparent lack of interest on the part of government, the report for 2011 noting that ‘the Council was inactive since 2007, no chairman having been appointed’.⁵⁶ The new Council expressed itself to be ‘perplexed at the lack of support to the National Archives as the primary repository of records of Government in Ireland’⁵⁷ and referred to the conditions for storage of records in the NAI as ‘a national disgrace’.⁵⁸

It is during this period also that issues of accountability begin to feature in the reports of the Council, with an increasing tendency to highlight the role of records and archives in ensuring access to accurate and reliable evidence of government actions and decisions and the manner in which they impact on citizens. Perceptions of the role of the NAAC, how it fulfils its mandate and the scope which might exist for it to adopt a more proactive stance in relation to successful implementation of the legislation, are addressed later in this thesis.

2.4.5 Access to Information

During the Oireachtas debates on the NA Act in 1985 and 1986, some members, Senator Ryan in particular, argued that the public needed access to public records far sooner than the thirty years allowed for in the legislation.⁵⁹ There was little support at the time for such a notion but the ground had shifted sufficiently within a decade or so for government

⁵⁵ The NAAC stated that it had not been consulted on the proposed merger, and expressed the hope that it would not result in a downgrading of the NAI. See NAAC, *Report 2011*, paragraph 3.2. Available at <<https://www.nationalarchives.ie/wp-content/uploads/2019/03/NAAC-Report-English-2011.pdf>> [accessed 5 May 2024].

⁵⁶ NAAC, *Report 2011*, paragraph 3.1.1.

⁵⁷ NAAC, *Annual Report 2012*, section 3.2. Available at <<https://www.nationalarchives.ie/wp-content/uploads/2019/03/NAAC-Report-English-2012.pdf>> [accessed 14 May 2024].

⁵⁸ NAAC, *Annual Report 2012*, section 3.5.1.

⁵⁹ See Section 2.3.1 of this thesis.

to introduce Ireland's first FOI legislation in 1997, with amending legislation following in 2003 and 2014.

While it is not the purpose of this thesis to address FOI in detail, it is necessary to consider what it says about the manner in which public records are created and maintained, the extent of public access that is granted to such records and the areas in which it overlaps or conflicts with the NA Act.

The 2014 FOI Act describes itself as enabling 'members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies'.⁶⁰

This gives rise to the question of how to define the public interest and who is best placed to assess it, a theme which, as addressed above, also arose in the Oireachtas debates on the NA Act. Also of note here is the phrase 'to the greatest extent possible', which appears designed to favour the release of information rather than the withholding of information. This is confirmed by the various guidelines and procedural manuals issued by the Central Policy Unit of DPER in order to assist public bodies in implementing the legislation.⁶¹

In broad terms, FOI allows an individual to request access to any record held by a public body and, if the request is granted, to receive access within twenty working days. There are of course exceptions, for example with regard to commercially sensitive information, personal information, and records relating to security and defence.⁶²

One particular point worth noting is the scope of the FOI legislation when compared with that of the NA Act. FOI applies by default to all public bodies, unless they have a specific exemption granted to them. In effect, the FOI Act states that every public agency is included, unless stated otherwise.⁶³ This is a stark contrast to the limited remit of the NA Act as set out in the 1986 legislation.

⁶⁰ FOI Act, 2014, Long Title.

⁶¹ See for example the *FOI Code of Practice*, <<https://foi.gov.ie/code-of-practice/>> and the *FOI Decision-Makers Manuals*, <<https://foi.gov.ie/guidance/manuals/>> [accessed 14 May 2024].

⁶² The exceptions are, for the most part, detailed in sections 28–42 of the 2014 Act.

⁶³ The Schedule to the FOI Act lists a number of specific agencies that have particular reasons not to be included. See FOI Act, 2014, Schedule 1.

2.5 National Archives (Amendment) Act 2018

In the UK, the introduction of FOI, several years after Ireland,⁶⁴ quickly led to a re-assessment of the thirty-year rule that had been introduced in that jurisdiction by the Public Records Act of 1967. In 2007, the UK Government commissioned an independent review of the thirty-year rule, which concluded that in international terms, ‘the UK now operates one of the less liberal access regimes to its official records’.⁶⁵ Noting that the introduction of FOI ‘means that a great deal of official information can now be accessed by the general public long before it is 30 years old’, the report stated that this and other developments ‘cast serious doubt on the continued credibility and sustainability of the present 30 year rule.’⁶⁶ Based on its extensive consultations,⁶⁷ the review group recommended that the thirty-year rule be replaced with a new fifteen-year rule.⁶⁸ In fact, the UK Government eventually opted for a less radical twenty-year rule, to be implemented on a phased basis with effect from 2013.⁶⁹

2.5.1 Following the UK Lead

In Ireland, changes to the thirty-year rule were slower to arrive and were not linked directly to the impact of FOI. The National Archives (Amendment) Act of 2018⁷⁰ was presented as a reaction to the British changes, rather than something that was merited in its own right. It reduced Ireland’s thirty-year rule to a twenty-year rule, but only in limited cases. In introducing the amending legislation, the Minister responsible said that the legislation was being introduced because the Government ‘recognises the importance of synchronising the release of certain records between Ireland and the United Kingdom,

⁶⁴ The UK FOI Act was passed by parliament in 2000 and came into force in 2005. See <<http://www.legislation.gov.uk/ukpga/2000/36/contents>> [accessed 14 May 2024].

⁶⁵ The Stationery Office, *Review of the Thirty Year Rule*, January 2009, p.12, available at <<http://webarchive.nationalarchives.gov.uk/20090516124151/http://www2.nationalarchives.gov.uk/30yrr/30-year-rule-report.pdf>> [accessed 14 May 2024].

⁶⁶ *Review of the Thirty Year Rule*, p.19.

⁶⁷ For details of submissions received, see <<http://webarchive.nationalarchives.gov.uk/20090516124215/http://www.30yearrulereview.org.uk/default.htm>> [accessed 14 May 2024].

⁶⁸ *Review of the Thirty-Year Rule*, p.30.

⁶⁹ For a summary of the process, see <<http://webarchive.nationalarchives.gov.uk/+/http://www.nationalarchives.gov.uk/about/20-year-rule.htm>> [accessed 14 May 2024].

⁷⁰ Earlier attempts had been made to introduce legislative changes to the thirty-year rule via Private Members Bills in 2009 and 2012. Both Bills proposed a fifteen-year rule. See <<https://www.oireachtas.ie/en/bills/bill/2009/13/>> and <<https://www.oireachtas.ie/en/bills/bill/2012/8/>> [accessed 14 May 2024].

particularly in regard to those records relating to Northern Ireland and Anglo-Irish issues'.⁷¹

The Minister stated that 'resource implications for Departments [...] would have to be managed within existing budgetary allocations' and for that reason the change to a twenty-year transfer would be introduced on a phased basis, 'starting with departments and offices that have holdings with significant numbers of Anglo-Irish and North-South records, namely the Departments of the Taoiseach, Foreign Affairs & Trade, Justice & Equality and the Office of the Attorney General'.⁷²

The mechanism introduced for facilitating this change was to allow the Minister to make an order requiring that certain records (described in the legislation as 'relevant records'), which are more than twenty years old but less than thirty years old, be transferred to the NAI and made available for public inspection.

The 2018 Act states that in deciding which records should be declared to be 'relevant records', and thus transferred after twenty rather than thirty years, the Minister:

may make an order [...] where he or she is satisfied that (i) the records concerned are of significant historical or public interest [...] or the transfer of the records concerned to the National Archives will facilitate the balanced and fair reporting of matters of common interest to the State and other jurisdictions and (ii) the arrangements for such transfer are adequate.⁷³

Furthermore, having established that such records are suitable for transfer to the NAI for public inspection, the Minister may make an order for such transfer, but only with the consent of the Taoiseach, the Minister for PER and the relevant line minister (e.g. the Minister for Justice in the case of records from the Department of Justice). The Minister

⁷¹ Joint Committee on Arts, Heritage, Regional, Rural and Gaeltacht Affairs Debate, 1 March 2017, see <https://www.oireachtas.ie/en/debates/debate/joint_committee_on_arts_heritage_regional_rural_and_gaeltacht_affairs/2017-03-01/3/> [accessed 14 May 2024].

⁷² Joint Committee Debate, 1 March 2017.

⁷³ NA (Amendment) Act 2018, section 4(b), <<http://www.irishstatutebook.ie/eli/2018/act/12/section/4/enacted/en/html#sec4>> [accessed 14 May 2024].

must also consult the Director of the NAI prior to issuing such an order. All such orders made by the Minister must be placed before the Oireachtas for its consideration.

The eventual application of this legislation to all departmental records, rather than selected groups or series, is facilitated by section 4(c), which allows the Minister at some future stage to order that all departmental records be subject to a twenty-year rule rather than a thirty-year rule.⁷⁴ This is again subject to the consent of the Taoiseach and other ministers, and consultation with the Director.

2.5.2 Politicising Access

The most obvious characteristic of these provisions is the extent to which they introduce an element of ministerial discretion or judgement that had not previously been present. While the 2018 amendment has the stated intention of moving towards greater access via a twenty-year rule, the implementation is subject to the interpretation of the Minister of the day, and is subject to the consent of other office holders. This is reflected in the Minister's reference to the legislation allowing for the 'early release'⁷⁵ of certain records, implying that thirty years would remain the norm and that twenty years would be treated as the exception.

Indeed, the Minister seemed to argue in favour of limited release, emphasising what she referred to as 'checks and balances'. There is, she said:

no obligation for the documents to be released early [...] the checks and balances are done through the Taoiseach, the Department of Public Expenditure and Reform, myself and the Minister in place in a particular Department. Three conditions must also be met, namely, the documents have to be of historical relevance, they must be in the public interest and there must be fair and balanced reports⁷⁶

⁷⁴ NA (Amendment) Act 2018, section 4(c).

⁷⁵ Joint Committee Debate, 1 March 2017.

⁷⁶ Select Committee on Culture, Heritage and the Gaeltacht Debate, 7 December 2017, see https://www.oireachtas.ie/en/debates/debate/select_committee_on_culture_heritage_and_the_gaeltacht/2017-12-07/3 [accessed 14 May 2024].

In these comments, the Minister (presumably inadvertently) appeared to be emphasising the strength of the obstacles that have to be overcome before twenty-year old records would be released, rather than accentuating the openness and accessibility that the Act was designed to facilitate. She was making these comments in response to calls for some sort of independent oversight mechanism to be built into the legislation. A number of Oireachtas members had expressed concerns about the involvement of Ministers in the decision as to whether or not records would be released after twenty years, fearing that the availability of records could become subject to political considerations.

One participating TD, for example, commented that ‘in making this change we are potentially politicising access to public records which would be contrary to the spirit of openness and transparency [...] who will decide what records are of significant historical or public interest?’⁷⁷ In a similar vein, a Senator said ‘we do not want a situation in which an entire nation is denied part of its history because a Minister of the day [...] may not like what he or she sees even though he or she recognises its historical interest and recognises that it can be shared’.⁷⁸

The use of the word ‘may’ in the legislation was causing some concerns and a number of contributors requested that the legislation be amended so that the Minister would be *required* to order the transfer of records once the criteria were met. This was seen as a way to remove the potential political element from the decision-making process. This was rejected by the government, as was an amendment to give the Information Commissioner an oversight role to ensure that records meeting the criteria for twenty-year release were not withheld on political grounds.⁷⁹ A subsequent attempt to allow the Director a say in whether records were of sufficient historical interest to be transferred after twenty years was also rejected.⁸⁰

Apart from the fear (whether likely or remote) of inappropriate political involvement in deciding what might or might not be released after twenty years, some contributors to the

⁷⁷ Dáil Éireann Debate, 19 October 2017, see <<https://www.oireachtas.ie/en/debates/debate/dail/2017-10-19/62/>> [accessed 14 May 2024].

⁷⁸ Seanad Éireann Debate, 5 July 2018, see <<https://www.oireachtas.ie/en/debates/debate/seanad/2018-07-05/29/>> [accessed 14 May 2024].

⁷⁹ Select Committee, 7 December 2017.

⁸⁰ Seanad Éireann, 5 July 2018.

debates highlighted other issues. One Senator commented on the motivation and limited ambition of the legislation, stating that ‘we seem to be reacting to Britain and the North in order to harmonise with them rather than doing this for the positive good’.⁸¹

On the question of resources, a number of interesting points were made. One TD questioned the level of compliance with the existing 1986 legislation,⁸² expressed concern about existing capacity and service levels in the NAI and stated that while ‘we support the passing of legislation that opens up the archives, we entreat the Government to provide the necessary funding to enable people to access them.’⁸³ On this point, the Minister stated that issues of non-compliance would not be a concern for her Department: ‘I do not have the power to compel any Department to comply with this. That is not my job; I cannot do that. Each Department is responsible for its own records.’⁸⁴

2.6 Recordkeeping Practice

Having examined the legislative situation with regard to recordkeeping, and examined to some extent the level of compliance with those parts of the NA Act that relate to the transfer of records after thirty years, the rest of this chapter will focus on recordkeeping practices and the manner in which records are created, managed and used. The focus here will be primarily on public sector records, although reference will be made to organisations and institutions which have a significant overlap with State agencies in terms of providing services to members of the public. Reference will be made to a number of official reports and investigations which have relied upon access to records, and to the findings and recommendations which feature in those reports.

As already noted, the NA Act of 1986 included a provision for the Minister for the Public Service (now PER) to issue regulations for the proper management of records within government departments, and a similar provision was included in the FOI Act. As highlighted in successive reports of the Director of the NAI, these provisions were not acted upon during the decades that followed from the introduction of the 1986 Act.⁸⁵

⁸¹ Joint Committee, 1 March 2017.

⁸² Joint Committee, 1 March 2017.

⁸³ Dáil Éireann, 19 October 2017.

⁸⁴ Joint Committee, 1 March 2017.

⁸⁵ For example, section 1.10 of the Director’s annual report for 1997 stated: ‘To date, no such regulations have been made under either Act.’ Exactly the same phrase was used in each of the annual reports up to 2007.

As a result of the lack of guidelines and regulations, the creation, use and management of records within Irish public service bodies has been down to each individual agency. In real terms, very few government departments or public agencies have taken any significant steps to introduce consistent policies and procedures (see Chapter 5 for further assessment of this). Where such efforts have been made, they have tended to be inconsistent, isolated and dependent on the initiative of well-placed individuals rather than on defined policy and approved practice.

The inability of the NAI to issue regulations contrasts sharply with the standard approach of equivalent national archival institutions in places such as the UK (and separately in Northern Ireland and Scotland), the United States, Canada, Australia and New Zealand.⁸⁶ While not viewing the recordkeeping regime in those jurisdictions as perfect or ideal, the lack of regulations in Ireland has become all the more important as the move to digital record-keeping has gathered pace and new work methodologies have taken hold. The old concept of a central file registry with a remit to control and monitor the creation and movement of a limited number of hard copy files has been replaced by a decentralised, informal regime which relies for the most part on personal habits and preferences and features greater duplication, widespread sharing and a rapidly multiplying range of options with regard to formats, storage, access, editing and deletion.

A brief examination of some specific instances can serve to illustrate the difficulties that can arise from a lack of effective recordkeeping regulations and guidelines and the impact that poor practice can have on the rights of individuals.

2.6.1 Barron Report

On 17 May 1974, 33 people were killed when bombs exploded in Dublin city centre and in Monaghan town. This was the biggest loss of life on a single day during the Troubles. Nobody has ever been convicted for these murders and in the years that followed the bombings, relatives of the victims campaigned for an inquiry into the manner in which the authorities in both Ireland and Britain had investigated the crimes. This campaign

⁸⁶ For examples, see <<http://www.nationalarchives.gov.uk/information-management/>>, <<https://www.nidirect.gov.uk/articles/records-management-public-bodies>>, <<https://www.nrscotland.gov.uk/record-keeping>>, <<https://www.archives.gov/records-mgmt>>, and <<https://www.archives.govt.nz/manage-information>> [all accessed 14 May 2024].

came in the midst of increasing claims that the British authorities had colluded with loyalist paramilitary groups in the bombings.⁸⁷

In 1999, the Irish Government appointed a Commission of Inquiry into the Dublin/Monaghan bombings (known as the Barron Commission). In its final report, the Commission addressed a number of issues regarding records and recordkeeping within State institutions and the manner in which they had affected the inquiry. While acknowledging co-operation from the relevant agencies within the jurisdiction, the report notes that some documentation had been lost or destroyed at different points over the previous thirty years: 'In some cases, there is no longer even an index of the kind of information that might have existed in the first place.'⁸⁸

With regard to records of An Garda Síochána, the report notes:

no relevant files survive in the Louth/Meath division as a result of two changes in the Headquarters of the division [...] Although some relevant documents were located in the Sligo/Leitrim division, many must have been destroyed.⁸⁹

Barron also made the surprising discovery that while the Department of Justice maintained individual files in relation to serious crimes during the period under review, 'in relation to bombings there are no individual files. There is merely a general bombings file, opened in 1972, into which reports received from the Gardaí were placed'.⁹⁰ He found that this file contains reports of various bombing incidents forwarded by the Gardaí to the Department but 'it does not contain any Garda reports relating to the bombings in Dublin on 1 December 1972 or 20 January 1973, nor of the bombings in Dublin on 17 May 1974'.⁹¹

⁸⁷ See Colm Heatley, 'New Evidence of Collusion in Dublin and Monaghan Bombings', *Sunday Business Post*, 4 February 2007, available at <https://cain.ulster.ac.uk/victims/docs/newspapers/sunday_business_post/heatley_spb_040207.pdf> [accessed 14 June 2024].

⁸⁸ *Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings* (Dublin: Houses of the Oireachtas, 2003), p. 11. Available at <<http://relativesforjustice.com/wp-content/uploads/2016/11/barron03.pdf>> [accessed 14 May 2024].

⁸⁹ *Report of the Independent Commission*, p. 13.

⁹⁰ *Report of the Independent Commission*, p. 14.

⁹¹ *Report of the Independent Commission*, p. 14.

Whatever the reason for such an absence, it must be considered surprising, at least, that the Department of Justice did not maintain a file, or could not locate any file that was maintained, in relation to the biggest act of murder ever perpetrated in the State. The potential impact of this on the investigation of such a crime and on the rights, interests and welfare of survivors and relatives of victims is clear.

In explaining such a shortcoming to Barron, the Secretary General of the Department wrote: ‘the process is made more difficult by the fact that most of the documents are 25 to 30 years old and none of the staff who would have been dealing with them at the time are still in the Department’.⁹² This appears to confirm that recordkeeping in the Department relied on the personal knowledge of individuals, and that regular or consistent practices and procedures were absent, even in relation to records of such central importance to the State and its citizens.

The Barron Report was the subject of discussion at the Oireachtas Joint Committee on Justice, Equality, Defence and Women’s Rights, which heard evidence from the Director of the NAI on 10 February 2004. The Director speculated that the absence of relevant documentation in the Department of Justice was due to poor recordkeeping rather than any act of malice:

some individual has taken some kind of responsibility for them and I do not mean anything improper in saying that. It could quite easily be that a senior officer thought he should keep these files in his own personal filing cabinet – nothing more than that but unfortunately when he moved on, retired or moved to some other responsibility, somebody else made a mistake in what they did with the filing cabinet.⁹³

This may well indeed be a likely scenario, although – if accurate – it highlights the lack of control which the Department exerted over its records at a time of heightened security threats.

⁹² *Report of the Independent Commission*, p. 14.

⁹³ Joint Committee on Justice, Equality and Women’s Rights, Sub-Committee on the Barron Report Debate, 10 February 2004, <https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_equality_defence_and_womens_rights/2004-02-10/2/> [accessed 14 May 2024].

The Director also noted that ‘it is not my sense that the Department of Justice would have been one of the Departments that has ever had a really serious problem in its own internal recordkeeping’.⁹⁴ This suggests that problems of a similar nature were repeated, perhaps on an even more serious scale, in other Government Departments.

When the Joint Committee completed its consideration of the Barron report it issued its own report, in which it recommended that every Government Department:

should nominate and appoint a dedicated documents officer, whose responsibilities would be as follows: (i) to put in place a standardised system for the retention and filing of documentation; (ii) to keep an accurate log/record of the documentation; and (iii) to liaise with the Director of the National Archives in relation to the retention and, if necessary, destruction of documents.⁹⁵

2.6.2 Retirement of Garda Commissioner

Several years later, the Fennelly Commission also investigated a series of events involving An Garda Síochána and the Department of Justice. In this instance, the Garda Commissioner had resigned following a late-night visit to his home by the Secretary General of the Department of Justice, who had earlier attended a meeting with the Taoiseach, the Minister for Justice, the Attorney General and the Secretary General to the Government to discuss controversies then affecting the Commissioner and An Garda Síochána in general.⁹⁶

The dismissal of the Commissioner would be illegal without the prior authorisation of the Cabinet as a whole and so there was speculation and controversy as to whether the Commissioner had willingly decided to retire, as had been stated, or had been removed from office in an inappropriate manner. The Fennelly Commission describes the meeting which preceded the Commissioner’s resignation as ‘crucial and decisive [...] it is

⁹⁴ Joint Committee, 10 February 2004.

⁹⁵ Joint Committee on Justice, Equality, Defence and Women’s Rights, *Final Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings* (Dublin: Houses of the Oireachtas, March 2004), p. 51. See <http://www.dublinmonaghanbombings.org/home/docs/DubMonFinal.pdf> [accessed 14 May 2024].

⁹⁶ See Órla Ryan, ‘Timeline: The Eight Weeks That Led to Martin Callinan’s Resignation’, *The Journal*, 25 March 2014, <https://www.thejournal.ie/timeline-of-events-martin-callinan-resignation-1379773-Mar2014/> [accessed 14 June 2024].

impossible to overstate its importance'.⁹⁷ Yet it goes on to note that in a situation where those present at the meeting differ significantly in their accounts of what was discussed, there is no note or record of the meeting, despite the very significant consequences that resulted from it. Based on the evidence given to him during his investigations, Fennelly notes that 'it is clear that it has been a matter of public policy, for many years, that minutes are no longer kept of discussions at Government meetings'.⁹⁸ He goes on: 'it seems to the Commission to be beyond argument that good administration would require that a proper record be kept of such an important decision'.⁹⁹

Fennelly here highlights another risk associated with poor records management, that is the failure to create adequate records in the first place. Whereas many controversies, such as those outlined above with regard to the Dublin and Monaghan bombings, relate to the loss or destruction of records, it is necessary to note that accountability relies on adequate records being created to start with. One witness at the Fennelly Commission stated that lack of documentation was due to 'the grave risk of something coming out in an untimely way'.¹⁰⁰

2.6.3 Residential Institutions and Adoptions

Lack of records, or potential deliberate fabrication of records, has also been a factor in controversies surrounding the manner in which women and children have been treated by church and State authorities in Ireland over the last century. As information about such treatment emerged into the public domain in the 1990s and subsequent years, a number of public inquiries and commissions were established in order to ascertain the truth of what happened in various institutions run by religious orders and/or the State.¹⁰¹

⁹⁷ *Interim Report of the Fennelly Commission* (Dublin: August 2015), p.168. See <<https://opac.oireachtas.ie/knowviation/app/consolidatedSearch/#search/v=grid,c=1,q=field26%3D%5B2015%5D%2Ctitle%3D%5B%22fennelly%20commission%22%5D%2CqueryType%3D%5B64%5D,sm=s,l=library3 lib%2Clibrary7 lib,a=t>> [accessed 14 May 2024].

⁹⁸ *Interim Report of the Fennelly Commission*, p.169.

⁹⁹ *Interim Report of the Fennelly Commission*, p.170.

¹⁰⁰ *Interim Report of the Fennelly Commission*, p.169.

¹⁰¹ For example, the Commission to Inquire into Child Abuse (also known as the Ryan Commission), established in 2000, see <<https://childabusecommission.ie/>>; the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries (also known as the McAleese Commission), established in 2011, see <<http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013>>; the Commission of Investigation into Mother and Baby Homes, established in 2015, see <<https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/>> [all sites accessed on 14 May 2024].

It is not the purpose of this thesis to go into the detail of the various types of abuse and mistreatment that took place and which continue to be documented through witness testimonies, memoirs, media reports and other means. What is of relevance is the extent to which records play a leading role in bringing the reality to light and the manner in which recordkeeping has either helped or hindered in establishing what happened, who was responsible and how the individuals who suffered might have their rights upheld or recognised. The report of the McAleese Commission, for example, sets out some of the complexities associated with identifying, gathering and assessing records relevant to its investigation of Magdalen Laundries.¹⁰²

A related controversy arose in connection with Irish children who were resident in Industrial Schools and Mother and Baby Homes and who were adopted and sent abroad, in particular to the USA. This often occurred without the consent of the parents of the children and it emerged that in many cases, birth certificates were falsified to make it appear that the adoptive parents were the biological parents of the adopted child.¹⁰³

Moira J. Maguire has written of the unregulated adoption regime which operated in Ireland prior to, and in many cases even after, the Adoption Act of 1952. Several adoption agencies operated on the basis that the prime concern was to safeguard the Catholic religion of the children and such agencies ‘required little or no information about an adopting couple’s background, home life, or financial position’.¹⁰⁴ Maguire has used Department of Foreign Affairs archives to demonstrate the extent to which State agencies facilitated such practices.

The question of falsified identity documentation has been highlighted by publicity around one such adoption agency, St Patrick’s Guild. Speaking in relation to this controversy in Dáil Éireann on 16th June 2018, the Minister for Children noted that ‘while there have been suspicions about illegal [birth] registrations for many years, it has been extremely

¹⁰² Report of the Inter-Departmental Committee (McAleese Commission), Chapter 6.

¹⁰³ O’Loughlin, Ed, and Megan Specia, ‘Irish Leader Apologizes for Adoptions That “Robbed Children” of Their Identity’, *New York Times*, 30th May 2018, <<https://www.nytimes.com/2018/05/30/world/europe/ireland-illegal-adoptions-apology.html>> [accessed 3rd May 2024].

¹⁰⁴ Moira J. Maguire, ‘Foreign Adoptions and the Evolution of Irish Adoption Policy, 1945–52’, *Journal of Social History*, 36.2 (2002), 387–404 (p. 390).

difficult to uncover clear evidence because of the deliberate failure of those involved to keep records'.¹⁰⁵

The level of State knowledge of such activities has been called into question.¹⁰⁶ In any case, the level of access provided to relevant records for adopted persons who subsequently wished to establish the truth of their own identity has been a cause of extensive controversy. According to Maguire, individuals attempting to access records of their own background and personal history were met with 'brick walls, hostility, and a lack of understanding of their circumstances that only served to compound their already deep sense of alienation, rejection, and loss of identity'.¹⁰⁷

2.6.4 Refugee Rights

Issues of identity, culture and ethnicity continue to be relevant in Ireland in 2024, in particular in relation to asylum seekers who have come to this country and who find themselves part of the direct provision system.¹⁰⁸ Like Irish women and children in preceding decades, these men, women and children find that their rights and freedoms rely heavily on the creation and maintenance of adequate records.

The global refugee crisis has given rise to many issues and difficulties. The recordkeeping community is beginning to address issues related to the records that are required to protect and uphold the rights of refugees and asylum seekers. A symposium on this topic held in Budapest in January 2018 drew attention to the role that records play in documenting 'a person's identity, family, rights, attainments and property' and noted that:

creating and preserving documentation is key to ensuring the preservation and transmission of the memory and experiences of refugees, their families and

¹⁰⁵ Dáil Éireann Debate, 14 June 2018, <<https://www.oireachtas.ie/en/debates/debate/dail/2018-06-14/53/>> [accessed 14 May 2024].

¹⁰⁶ Journalist Conall Ó Fatharta has written several articles on these controversies, highlighting the level of knowledge in a number of Government departments. See <<https://conallofatharta.wordpress.com/about/>> [accessed 14 May 2024].

¹⁰⁷ Maguire, p.401.

¹⁰⁸ The direct provision system has been subject to widespread criticism. In February 2021, the government produced a White Paper on ending the direct provision system. See <<https://www.gov.ie/en/publication/7aad0-minister-ogorman-publishes-the-white-paper-on-ending-direct-provision/>> [accessed 14 May 2024].

communities; supporting the infrastructure/operations of NGOs; and holding governments and other official entities accountable.¹⁰⁹

Daniel Ayiotis has documented the experiences of asylum seekers in the direct provision system in Ireland. He notes that ‘documents that people provide to the Department of Justice when applying for asylum are often not returned’ and finds ‘a strictly instrumentalist approach that gave no regard to the meanings or values attached to those records or the effect on the subject of the record-gathering/generating process’.¹¹⁰ His conclusion that there is ‘a worrying lack of transparency within the asylum process, with examples provided of the misuse or withholding of records’¹¹¹ reflects the issues noted above with regard to illegal birth registrations, illegal adoptions and the lack of transparency that affected those in residential institutions such as Industrial Schools, Mother and Baby Homes and Magdalene Laundries.

2.7 Conclusion

This chapter has sought to explain the current state of public sector recordkeeping legislation and practice in Ireland and has identified a range of shortcomings. It has done so by briefly exploring the long neglect of public records in the decades after independence and by describing the slow evolution in public policy up to the 1980s.

The introduction of the NA Act of 1986 was the first time that the Irish State formalised requirements around the retention and disposal of official records and their availability for public inspection. An analysis of the parliamentary debates in relation to this legislation highlights that a small number of parliamentarians attempted to address significant policy and ethical issues, such as how the public interest might be interpreted and by whom, and the potential for political interference in withholding access to records for longer than necessary. Many other contributors to these debates expressed the hope that the new legislation would result in sufficient resources being devoted to the NAI.

¹⁰⁹ Anne J. Gilliland, *Refugee Rights in Records Symposium, Budapest, January 10, 2018, Summary Report and Research and Development Questions Arising* (23 January 2018), available at <http://www.osaarchivum.org/files/Final-Report_Symposium-on-Refugee-Rights-in-Records.pdf> [accessed 14 May 2024].

¹¹⁰ Daniel Ayiotis, *Documenting the Undocumented: A Case Study of the Developing Archival Heritage of Asylum-Seekers and Refugees in the Republic of Ireland* (MA in Archives and Records Management, University College Dublin, 2016) (unpublished), p. 31.

¹¹¹ Ayiotis, p. 53.

Subsequent years proved to be a disappointment in this regard and an examination of annual reports of the Director of the NAI and of the NAAC highlights an ongoing struggle to overcome chronic lack of resources, together with a casual approach by many Government Departments in terms of observing their legal obligations under the 1986 Act. Shortcomings of the legislation have also been highlighted, particularly with regard to the lack of provision for many public sector records, for example those of health sector agencies and semi-state bodies.

Changes in society since the 1980s have resulted in new legislation, most notably the FOI Act, but also in a broader public expectation for greater accountability and more routine access to information. In the UK, one result of these changing expectations was a reduction in the thirty-year rule to a twenty-year rule. Ireland followed suit in 2018 but, whereas the UK change resulted from an extensive consultation process, the Irish decision appears to have been purely reactionary and based on the premise that we should follow the example set by the UK.

Furthermore, the transfer of twenty-year-old records in Ireland is to take place as resources allow and only after the approval, on a case-by-case basis, of several members of government. This introduces an explicit political role into the process and appears contrary to the principle of an impartial transfer of records in the public interest. In addition, the Irish legislation of 2018 was introduced on the clear understanding that no additional resources would be made available, perhaps a recognition that the hopes and expectations expressed in 1986 had been naïve and over-optimistic.

Having established the legislative position, this chapter briefly considered some examples of recordkeeping practices in Ireland. This was done by highlighting a number of cases where the lives of individual citizens had been directly impacted by poor recordkeeping and an overall lack of clear procedures and recordkeeping accountability. A number of commissions of investigation have addressed issues of recordkeeping in the public sector and this chapter has looked at relevant examples in the administration of justice and the management of the relationship between the government and An Garda Síochána. Examples have also been highlighted in relation to the lives and livelihoods of those who were detained in Industrial Schools, Mother and Baby Homes and Magdalene Laundries.

All of these reports have highlighted issues around poor recordkeeping, loss or mismanagement of records and general lack of accountability. The example of refugee rights highlights that recordkeeping legislation and practice have an ongoing impact on individual rights and that the lack of comprehensive legislation and protocols needs to be addressed in an Irish context.

Chapter 3

Literature Review

3.1 Introduction¹¹²

This chapter assesses the current state of recordkeeping scholarship about the issues of accountability, human rights and social justice. In recent decades, recordkeepers have increasingly emphasised the role of archives and records in facilitating accountability, upholding rights and exposing instances of injustice and corruption. The traditional view of the archivist as a neutral facilitator has given way to more activist interpretations, with an increasing emphasis on serving the interests of a wider range of stakeholders, in particular those who had previously been under-represented or marginalised. The existence and availability of accurate and reliable records are seen as essential features of any functioning society, if the governing authority is to be held accountable by its citizens. Issues of human rights and social justice are therefore inextricably linked to issues of accountability; rights and justice cannot be protected in the absence of effective mechanisms for holding governments to account.

Laura Millar states that ‘neither the government nor the governed can achieve [their] goals without the creation, protection and dissemination of reliable information’.¹¹³ Such writings build on earlier work from the 1990s, in particular the development in Australia of the records continuum model of recordkeeping, which has heavily influenced recordkeepers in coming to terms with the shift to digital recordkeeping and in their approaches to accountability, human rights and social justice.¹¹⁴ Meanwhile, Duff et al. highlighted the significant increase in usage of the term ‘social justice’ in the recordkeeping literature from 2000 onwards, noting just five instances of the term in the

¹¹² A version of this chapter was published as ‘Accountability, Human Rights and Social Justice in Public Sector Recordkeeping’, *Archival Science*, 23 (2023), 161–85.

¹¹³ Laura Millar, ‘The Right to Information – the Right to Records: The Relationship Between Record Keeping, Access to Information, and Government Accountability’ (25th May 2003). Available at <https://www.humanrightsinitiative.org/programs/ai/rti/articles/record_keeping_ai.pdf> [accessed 14 May 2024].

¹¹⁴ See Frank Upward’s work on the records continuum, including ‘Structuring the Records Continuum Part One: Post-custodial Principles and Properties’, *Archives and Manuscripts*, 24.2 (1996), 268–85 and ‘Structuring the Records Continuum Part Two: Structuration Theory and Recordkeeping’, *Archives and Manuscripts*, 25.1 (1997), 10–35.

journals they surveyed prior to 2000, nineteen in the years 2000–2009 and eighteen in the three years 2010–2012.¹¹⁵

This literature review therefore takes the beginning of the 21st century as a logical starting point for assessing approaches to the ethical issues of accountability, human rights and social justice. The review examines the various facets of the ethical issues of accountability, human rights and social justice in public sector recordkeeping, as reflected in the academic literature in the 21st century. The focus of this review is not on individual records, nor on any particular class of records, but on the principles which guide recordkeepers and by which records are created, managed, used and maintained in a public sector environment; as described by Ann Laura Stoler the ‘focus is on archiving as a process rather than [...] archives as things’.¹¹⁶

This literature review begins by explaining the methodology, followed by the main findings of the review. In the subsequent discussion, it is argued that while there is an identifiable consensus in the literature regarding the role of recordkeeping in relation to accountability and human rights, there is less agreement with regard to social justice, which remains a contested and poorly-defined concept for the recordkeeping profession, with a lack of clarity over what social justice means and what role recordkeepers should play in relation to it. It is further suggested that while the literature has largely abandoned traditional recordkeeping norms of neutrality and impartiality, this is not fully reflected in practice and that longer-term efforts are required to translate recent recordkeeping theory into real-life changes for the profession and relevant stakeholders.

3.2 Methodology

3.2.1 Databases and Keywords

Searches were conducted using three main database sources: 1) Academic Search Complete, 2) Web of Science and 3) Library and Information Science Abstracts (LISA). These include sources specific to the recordkeeping profession (LISA), while also

¹¹⁵ Wendy Duff et al., ‘Social Justice Impact of Archives: A Preliminary Investigation’, *Archival Science*, 13.4 (2013), 317–48.

¹¹⁶ Ann Stoler, ‘Colonial Archives and the Arts of Governance’, *Archival Science*, 2.1-2 (2002), 87–109 (p. 87).

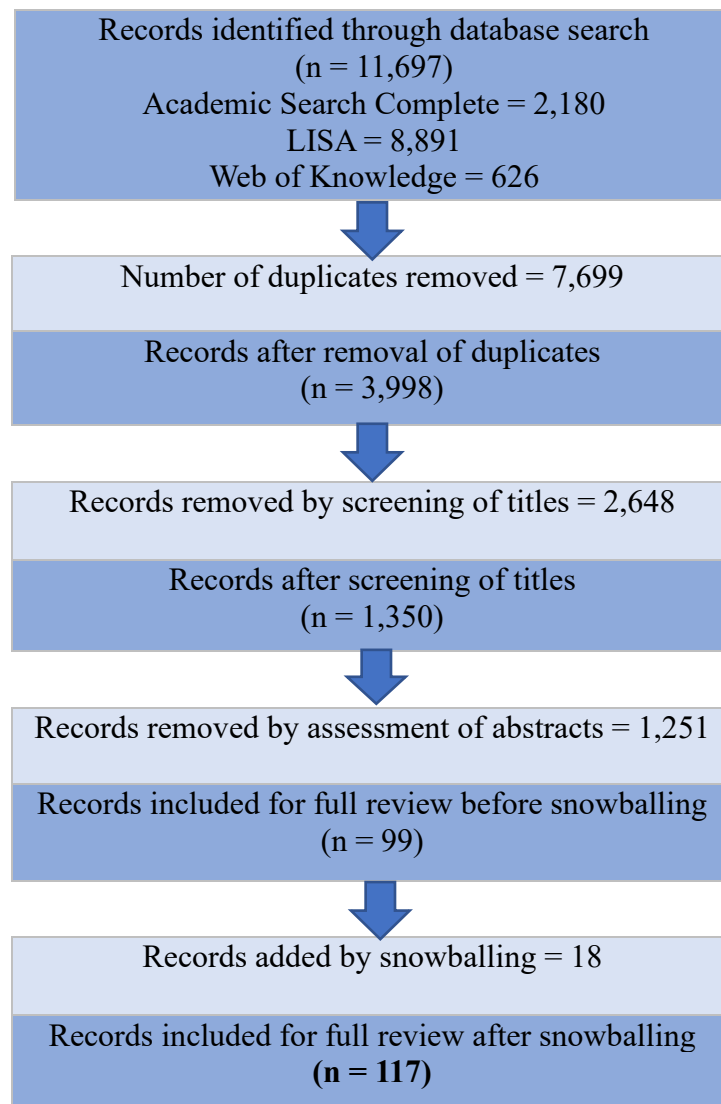


Figure 3.1: Research Flowchart

capturing sources with potential relevance from a wider range of humanities-related publications. Combinations of relevant Boolean terms were used to maximise the relevance of the results, and control terms were used as appropriate when combining phrases (e.g. AND, OR). All searches were restricted to English-language results from 2000 to mid-2022. Each of the three databases was searched for twenty separate search strings. The terms ‘human rights’, ‘social justice’ ‘accountability’ ‘moral*’ and ‘ethic*’ were used in conjunction with terms specific to this field of inquiry, namely ‘record* management’, ‘archiv* management’, ‘archivist’ and ‘recordkeep*’. This was done to filter out results relating to general ethical topics and debates, and to focus on results likely to be directly relevant to archives and records. Where appropriate, wild card

searches were used. For example, 'archiv*' allowed for variations such as 'archive', 'archives' or 'archival' while 'ethic*' covered the alternatives 'ethics' and 'ethical'.

In order to be eligible for inclusion, sources had to focus in a substantive manner on facets of the ethical issues of accountability, human rights and social justice in public sector recordkeeping. Figure 3.1 illustrates the process used to exclude duplicates and irrelevant items (for example, those with only incidental reference to relevant topics) to arrive at a final body of 117 items which were analysed in full as part of this literature review.

3.2.2 Researcher Positionality

The researcher's positionality is an important element in any research methodology. This research is undertaken by a recordkeeping practitioner, with over 30 years' experience as an archivist and records manager. Although supplemented by roles in teaching and training, with a resultant familiarity with modern recordkeeping theory, the dominant role of the author at the outset of this research was that of a practitioner, with extensive knowledge of public sector recordkeeping practice in an Irish context.

The author operates from a perspective of limited realism, i.e. that a basic truth can be said to exist, but that this truth is subject to multiple perspectives, understandings and interpretations. The author believes that if records and archives are to facilitate truth and justice, a fully contextualist or postmodernist perspective is problematic.

3.3 Results

3.3.1 Accountability

This section will summarise the literature as it relates to various facets of recordkeeping and accountability, highlighting problems with defining and understanding accountability, consequences arising from a lack of accountability, the relevance of historical accountability, the importance of access to records, and the limits of viewing recordkeeping purely through an accountability lens.

3.3.1.1 Understanding Accountability

Recognition of the link between accountability and recordkeeping has been present over an extended period, for example through the writings of Sue McKemmish¹¹⁷ and David Bearman, the latter pointing towards Australian trends in the 1990s which emphasised the role of records and archives in accountability, and urged actions ‘to create a corporate culture in which employees take the documentation of their activity seriously and plan systems that enforce the requirement to create evidence’.¹¹⁸ His comments reflect the work of research projects at the University of Pittsburgh¹¹⁹ and the University of British Columbia¹²⁰ related to the evidential value of digital records.

Many subsequent authors, including Cain et al.,¹²¹ Kemoni et al.,¹²² Tough¹²³ and Svård¹²⁴ continue to make the link between records and accountability, although several suggest that recognition of this link is limited beyond the confines of the recordkeeping community, at least partly due to a failure by recordkeepers themselves to properly understand and highlight it.¹²⁵ David Wallace states that recordkeepers ‘have been reluctant in pushing for policy changes or in taking advantage of prime opportunities to explain why records and archives are not just bureaucratic red tape or quaint warehoused artifacts’.¹²⁶

In noting the absence of an agreed definition or understanding of accountability among recordkeepers, Albert Meijer provides some context by suggesting six elements of accountability and by exploring how accountability forums (i.e. oversight bodies) with

¹¹⁷ Sue McKemmish, ‘The Smoking Gun: Recordkeeping and Accountability’, Keynote Address at 22nd Annual Conference of the Archives and Records Association of New Zealand, Dunedin, September 1998. Available at <<https://doi.org/10.4225/03/58056fee94b64>> [accessed 14 May 2024].

¹¹⁸ David Bearman, ‘Archival Strategies’, *American Archivist*, 58.4 (1995), 380–413 (p. 392).

¹¹⁹ Richard J Cox, ‘More Than Diplomatic: Functional Requirements for Evidence in Recordkeeping’, *Records Management Journal*, 7.1 (1997), 31–57.

¹²⁰ Luciana Duranti and Heather MacNeil, ‘The Protection of the Integrity of Electronic Records: An Overview of the UBC-MAS Research Project’, *Archivaria*, 42 (1996), 46–57.

¹²¹ Piers Cain et al, ‘Filing for Corruption: Transparency, Openness and Record-keeping’, *Crime, Law and Social Change*, 36.4 (2001), 409–25.

¹²² Henry Nyabuto Kemoni et al., ‘Public Records and Archives as Tools for Good Governance: Reflections Within the Recordkeeping Scholarly and Practitioner Communities’, *ESARBICA Journal*, 26.1 (2007), 3–18.

¹²³ A.G. Tough, ‘Accountability and Recordkeeping: Some Thoughts’, *ESARBICA Journal*, 27 (2008), 4–19.

¹²⁴ Proscovia Svård, ‘Accountability, Transparency, and the Role of Information Management’, in *Enterprise Content Management, Records Management and Information Culture Amidst E-government Development* (Sawston: Chandos Publishing, 2017) pp. 83–96.

¹²⁵ Chris Hurley, ‘Archivists and Accountability’, *Archives and Manuscripts*, 34.2 (2006), 82–111.

¹²⁶ David A. Wallace, ‘Recordkeeping for Accountability’, *ESARBICA Journal*, 23 (2004), 17–22 (p. 21).

sufficient levels of power can lead public servants to anticipate accountability requirements and thus create and maintain adequate records to provide evidence of their actions.¹²⁷ Such forums, however, must have actual powers that they are willing to invoke, so that public servants anticipate accountability, i.e. they actually expect to be held accountable.

3.3.1.2 Consequences of a Lack of Accountability

Despite a general assumption or expectation on the part of citizens that public bodies create and maintain accurate records and recordkeeping systems, Marlice Palmer notes a ‘widespread and often alarming deterioration in the management of official records’,¹²⁸ which often comes to light during official investigations, tribunals or parliamentary inquiries.

A lack of clarity and clout on the part of recordkeepers, shortcomings in highlighting the link between recordkeeping and accountability, and the perceived lack of actual accountability in many contexts all serve to undermine the case for well-resourced and comprehensively implemented recordkeeping systems within public service organisations. This is exacerbated by the challenges posed by digital records. Duff states that the value of records as instruments of accountability depends upon their authenticity, integrity, accessibility, and trustworthiness.¹²⁹ Meijer notes that the informality and flexibility of modern systems, email in particular, allow civil servants to operate independently of organisational policies and procedures, with implications for accountability resulting from the potential lack of organisational control over records.¹³⁰

3.3.1.3 Historical Accountability

While such discussions of email management, ICT systems and other issues relating to digital records appear to focus the accountability debate on current-day issues, the literature also reflects the importance of historical accountability, and the role of

¹²⁷ Albert Meijer, ‘Anticipating Accountability Processes’, *Archives and Manuscripts*, 28.1 (2006), 52–63.

¹²⁸ Marlice Palmer, ‘Records Management and Accountability Versus Corruption, Fraud and Maladministration’, *Records Management Journal*, 10.2 (2000), 61–72 (p. 62).

¹²⁹ Wendy Duff, ‘Issues of Authenticity, Social Accountability, and Trust with Electronic Records’, *The Information Society*, 17.4 (2001), 229–31.

¹³⁰ Albert Meijer, ‘Electronic Records Management and Public Accountability: Beyond an Instrumental Approach’, *The Information Society*, 17.4 (2001), 259–70.

recordkeeping in uncovering past abuses, bringing perpetrators to justice, validating the narratives of victims and survivors, and allowing societies to draw lessons from the past. James O'Toole provides several examples of human rights breaches under both totalitarian and democratic regimes, and the role of records in exposing them.¹³¹ The importance of historical accountability is also noted by Colin Gale, who argues that there is 'an ethical imperative behind construing accountability as widely as possible (and over the longest possible timeframe)'.¹³²

3.3.1.4 Importance of Access

Another important aspect of accountability highlighted in the literature is the question of access. Eric Ketelaar argues that upholding the right of access promotes transparency and encourages full participation of citizens in the democratic process.¹³³ He uses the example of the East German Stasi files to illustrate the importance of access to information in accountability processes, and discusses the Joinet/Orentlicher Principles and their insistence on 'the inalienable right to know the truth about past events'.¹³⁴

The importance of access to information in the context of accountability is taken up by Jeremy Pope, who states that every country has in place a set of 'integrity institutions', similar to the accountability forums mentioned by Meijer and Palmer. Each of these institutions, he says, are accountable to each other but the system cannot function if key institutions (such as courts) are denied access to the information they need to perform their essential tasks.¹³⁵

3.3.1.5 Limits of the Accountability Focus

Concern is expressed in the literature at the extent to which the focus on accountability may obscure other key values of recordkeeping. In the eyes of many, recordkeepers have been driven to highlight accountability issues by the battle for resources within public

¹³¹ James O'Toole, 'Archives and Historical Accountability: Toward a Moral Theology of Archives', *Archivaria*, 58.3 (2004), 3–19.

¹³² Colin Gale, 'Record-keeping as an Ethical Imperative', *Journal of the Society of Archivists*, 27.1 (2006), 17–27 (p. 19).

¹³³ Eric Ketelaar, 'Access: The Democratic Imperative', *Archives and Manuscripts*, 34.2 (2006), 62–81 (p. 62).

¹³⁴ Diane Orentlicher 'Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity' (United Nations Commission on Human Rights, 2005). Available at <<https://digitallibrary.un.org/record/541829?ln=en&v=pdf>> [accessed 19 March 2024].

¹³⁵ Jeremy Pope, 'No Records, No Rights, No Accountability', *Archifacts*, April 2006, 65–73.

sector organisations. Michael Moss notes the increasing demand for downsizing, financial efficiencies and accountability based on spending targets and productivity levels, and claims that ‘there must be more to recordkeeping and accountability than being the helpmate of the consumer society and the tort lawyer’.¹³⁶

This highlights a concern amongst many writers, including Mark Greene et al.¹³⁷, Frank Boles¹³⁸ and Huiling Feng¹³⁹, that the focus on accountability is too narrow and restrictive to properly reflect the importance of recordkeeping in society. From this perspective, archives are as much about preserving the memory, identity and experiences of individuals, groups, communities and societies as they are about documenting the actions and decisions of governments and organisations.

Advocates of this memory-based approach emphasise the importance that archives hold in many different ways for various stakeholders. Ketelaar states that people interact with documents in various ways and that they find their identity through documents such as photographs, family letters and scrapbooks.¹⁴⁰ The connection is often emotional and will be different for each person viewing and experiencing the record. Archivists, he says, should be hospitable to such varying experiences, for example in the way they arrange, describe or catalogue archives. A narrow focus on records that are necessary for accountability purposes is seen as excluding a huge range of record types that people and communities turn to in order to trace, understand and express their own memories, identities and cultures. This overlaps with considerations of human rights and social justice in recordkeeping. John M. Dirks, for example, states that attention to memory and identity is underpinned by ‘an element of justice and a demand for moral, if not legal accountability’.¹⁴¹

¹³⁶ Michael Moss, ‘Is it a Question of Trust or Why Are We Afraid to go to Nineveh?’, *Archival Science*, 11.3-4 (2011), 409–25 (p. 415).

¹³⁷ Mark Greene et al., ‘The Archivist’s New Clothes; or the Naked Truth About Evidence, Transactions and Recordness’ (2004), available at <https://scholarworks.iupui.edu/bitstream/handle/1805/42/ManifestoFinal.pdf;jsessionid=54C31182290DA8473CD2E1E97C8A31BD?sequence=4> [accessed 14 May 2024].

¹³⁸ Frank Boles, ‘But a Thin Veil of Paper’, *American Archivist*, 73.1 (2010), 19–25.

¹³⁹ Huiling Feng, ‘Identity and Archives: Return and Expansion of the Social Value of Archives’, *Archival Science*, 17.2 (2017), 97–112.

¹⁴⁰ Eric Ketelaar, ‘Cultivating Archives: Meanings and Identities’, *Archival Science*, 12.1 (2012), 19–33.

¹⁴¹ John M. Dirks, ‘Accountability, History, and Archives: Conflicting Priorities or Synthesized Strands?’, *Archivaria*, 57 (2004), 29–49 (p. 41).

The alternative approaches – accountability as opposed to memory and identity – are not necessarily mutually exclusive, however. Terry Cook is amongst those who claim that the division between the two approaches is a false one, and that a complementary approach, in which both the evidentiary value and the memory value of archives are recognised and appreciated, is appropriate – they are not enemies ‘but friendly cousins’.¹⁴²

3.3.1.6 Summary

It is a common theme throughout the literature that records and archives facilitate accountability, both with regard to current-day issues and in the historical context. Several practical recent examples relate to authorities’ treatment of women and children in residential institutions – for example in Canada¹⁴³ and Ireland.¹⁴⁴ The twenty-first century literature continues to highlight the core relevance of recordkeeping in holding governments to account and facilitating and defending democracy, for example María Betancur Roldán’s assessment of how archives have exposed injustices and abuses in Latin America,¹⁴⁵ and Mikuláš Čtvrtník’s examination of the links between democracy, accountability and access to classified records in a number of jurisdictions.¹⁴⁶

Acceptance of recordkeeping’s link to accountability, however, does not necessarily result in the creation and maintenance of adequate records and archives, as the connection is often absent in the minds of public servants and wider society. Poor recordkeeping frustrates accountability and potentially facilitates corruption and abuses, thus undermining the trust relationship between a state and its citizens. At the same time, the literature reflects a concern that recordkeeping must look beyond accountability to fully reflect and accommodate the needs and interests of all of society.

3.3.2 Human Rights

This section addresses various facets raised in the literature in relation to human rights, with consequent impact on matters such as changing perceptions of the role of the archivist and the trend towards person-centred recordkeeping approaches.

¹⁴² Terry Cook, ‘Evidence, Memory, Identity, and Community: Four Shifting Archival Paradigms’, *Archival Science*, 13 (2013), 95–120 (p. 104).

¹⁴³ National Center for Truth and Reconciliation, <<https://nctr.ca/>> [accessed 14 May 2024].

¹⁴⁴ Clann Project, <<http://clannproject.org/>> [accessed 14 May 2024].

¹⁴⁵ M. Betancur Roldán, ‘Archival Traditions in Latin America’, *Archival Science*, 22.4 (2022), 483–500.

¹⁴⁶ Mikuláš Čtvrtník, ‘Classified Records and the Archives’, *Archival Science*, 22.2 (2022), 129–65.

3.3.2.1 Role of Recordkeeping in Human Rights

The literature displays an increasing focus on traditionally-excluded, under-represented voices and on groups that have suffered at the hands of the powerful. Ketelaar states that there is ‘an essential connection between archives and human rights’,¹⁴⁷ while Graham Stinnett says that ‘human rights and archives have a perpetual relationship’.¹⁴⁸ Michael Cook notes that ‘for some time’¹⁴⁹ now, this focus on human rights issues has become more and more a significant part of the work of recordkeepers, and Mary Neazor argues that recordkeeping is ‘increasingly linked to ethical concerns in other areas, in particular human rights and the associated concepts of accountability and transparency’.¹⁵⁰

Mehluli Masuku and Ndakaitei Makwanise look beyond the recordkeeping literature to find a definition of human rights which relates to rights belonging to every human and which, as detailed in the UN Universal Declaration on Human Rights (UDHR) (1948),¹⁵¹ apply regardless of class, colour, ethnicity, gender, age, religion, political affiliations, country of origin or other distinctions.¹⁵² This interpretation is reflected in the concerns of Mick Gooda, who discusses recordkeeping in the context of upholding the rights and entitlements of Indigenous peoples and refers to the UN Declaration on the Rights of Indigenous Peoples (2007) as containing ‘the minimum standards for the survival, dignity and well-being of Indigenous peoples all over the world’.¹⁵³

Indigenous rights are of increasing concern in the literature, with Wendy Muñiz stating that, long before postcolonial scholars turned their attention to such matters, ‘radical Afro Caribbean scholars had interrogated the archive as a Western colonial institution’,¹⁵⁴ concerned with establishing and preserving colonial power, while silencing Indigenous

¹⁴⁷ Eric Ketelaar, ‘Archival Temples, Archival Prisons: Modes of Power and Protection’, *Archival Science*, 2.3 (2002), 221–38 (p.231).

¹⁴⁸ Graham Stinnett, ‘Archival Landscape: Archives and human rights’, *Progressive Librarian*, 32 (2009), 10–20 (p.10).

¹⁴⁹ Michael Cook, ‘Professional Ethics and Practice in Archives and Records Management in a Human Rights Context’, *Journal of the Society of Archivists*, 27.1 (2006), 1–15 (p.7).

¹⁵⁰ Mary Neazor, ‘Recordkeeping Professional Ethics and Their Application’, *Archivaria*, 64 (2007), 47–87 (p.48).

¹⁵¹ United Nations, Universal Declaration of Human Rights’ (New York, 1948), <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> [accessed 13 February 2024].

¹⁵² Mehluli Masuku and Ndakaitei Makwanise, ‘Archives, Accountability, Human Rights and Good Governance: Where is the Nexus?’, *Mousaion*, 30.2 (2012), 187–200 (p.193).

¹⁵³ Mick Gooda, ‘The Practical Power of Human Rights: How International Human Rights Standards can Inform Archival and Record Keeping Practices.’, *Archival Science*, 12.2 (2012), 141–50 (p.141).

¹⁵⁴ Wendy Muñiz, ‘Critical Archival Theory and the Caribbean’s Neoliberal Archival Turn’, *Archival Science*, 22.2 (2022), 239–57 (p.242).

voices. In a similar vein, Raymond O. Frogner notes ‘the early colonial role of public archives to culturally legitimize, and legally enshrine settler society’.¹⁵⁵

Access to information is seen by some writers as a human right in itself. Pope references Article 19 of the UDHR¹⁵⁶ in this regard, although he notes that it was originally ‘aimed at curtailing government censorship, rather than promoting government transparency’.¹⁵⁷ Ketelaar explores the notion of the right of access to information as a human right in his discussion of the Joinet-Orentlicher Principles, stating that the right to know the truth about past events is a collective right, as well as an individual one.¹⁵⁸ Access to information as a human right is also addressed by Brittany Grasmick in the context of enforcing other human rights elements of international free trade agreements,¹⁵⁹ and by Omwoyo Bosire Onyancha and Mpho Ngoepe, who make a direct link between access, human rights and accountability when discussing South Africa’s Promotion of Access to Information Act.¹⁶⁰

Maeve McDonagh also links access, human rights and accountability and makes the case that access to information should be considered an intrinsic human right in itself, independent of other rights.¹⁶¹ Related to this view is an approach which discusses access to information in the context of human dignity. Kay Mathiesen and Kimberli Kelmor are amongst those who view information as a primary social good, essential for individuals to lead a rewarding and fulfilled life.¹⁶²

¹⁵⁵ Raymond O. Frogner, ‘The Train from Dunvegan: Implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Public Archives in Canada’, *Archival Science*, 22.2 (2022), 209–38 (p.219).

¹⁵⁶ Article 19 reads: ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’.

¹⁵⁷ Pope, p.69.

¹⁵⁸ Eric Ketelaar, ‘Access: The Democratic Imperative’, *Archives and Manuscripts*, 34.2 (2006), 62–81.

¹⁵⁹ Brittany Grasmick, ‘Recognizing “Access to Information” as a Basic Human Right: A Necessary Step in Enforcing Human Rights Provisions Within Free Trade Agreements’, *Loyola University Chicago International Law Review*, 12.2 (2015), 215–30.

¹⁶⁰ Omwoyo Bosire Onyancha and Mpho Ngoepe, ‘The Protection of Information Bill and Access to Information in South Africa: An Informetric Study of the Media Coverage’, *EASRBICA Journal*, 30 (2011), 211–37.

¹⁶¹ Maeve McDonagh, ‘The Right to Information in International Human Rights Law’, *Human Rights Law Review*, 13.1 (2013), 25–55.

¹⁶² Kay Mathiesen, ‘Access to Information as a Human Right’ (2008) Available at SSRN: <<https://dx.doi.org/10.2139/ssrn.1264666>> [accessed 24 May 2024]; Kimberli M. Kelmor, ‘Legal Formulations of a Human Right to Information: Defining a Global Consensus’, *Journal of Information Ethics*, 25.1 (2016), 101–13.

3.3.2.2 *The Role of the Archivist: Neutral or Active?*

The discussion of rights as they relate to recordkeeping is inextricably linked to issues surrounding the overall role of recordkeeping in society. The literature highlights a fundamental shift in perceptions of the archivist's role, from the traditional neutral observer tasked with safeguarding a fixed set of records, to a more active agent with scope to affect and influence the records and their users, expose wrongdoing and protect and uphold human rights. The traditional perception of the archivist as a non-interventionist, prominently espoused by Hilary Jenkinson,¹⁶³ survived for much of the twentieth century but has come under much scrutiny in recent decades. Several writers note that the transition to alternative views has been slow and gradual, with Randall Jimerson, for example, stating that the re-assessment had 'only recently begun'.¹⁶⁴

The gradual evolution in perceptions of the archivist's role is traced by Cook through what he describes as four paradigms – evidence, identity, memory, community. The traditional view of the archivist was that of a custodian or guardian, charged primarily with safeguarding a set of fixed records which were inherited from record creators, typically public officials. From this starting point, Cook describes the evolving roles of the archivist, culminating in the community paradigm, where the archivist participates and co-operates with a diverse range of groups and communities generating a variety of records in a much wider participatory process. The transition results in the archivist 'documenting citizens as much as the state, margins as much as the centre, dissenting voices as much as mainstream ones'.¹⁶⁵

Amongst the most prominent advocates of a more activist and interventionist interpretation, Verne Harris draws on his own experiences in South Africa both during and after the apartheid era, strikingly describing the archivist as 'a memory activist either for or against the oppression system'.¹⁶⁶ Other writers explore this notion also, in particular with reference to recordkeepers who work in an environment where they are exposed to evidence of significant wrongdoing and major breaches of human rights.

¹⁶³ Hilary Jenkinson, *A Manual of Archive Administration* (London: Clarendon Press, 1922).

¹⁶⁴ Randall C. Jimerson, 'Archives for All: Professional Responsibility and Social Justice', *American Archivist*, 70.2 (2007), 252–81 (p.254).

¹⁶⁵ Cook, 2013, p.110.

¹⁶⁶ Verne Harris, 'Jacques Derrida Meets Nelson Mandela: Archival Ethics at the Endgame', *Archival Science*, 11.1 (2011), 113–24 (p.121).

Records and archives are presented as tools of oppression, with examples of Nazi Germany,¹⁶⁷ the Stasi secret police in East Germany up to the 1980s,¹⁶⁸ and the atrocities of the Khmer Rouge¹⁶⁹ all regularly cited. It is also recognised, however, that those same records can become ‘instruments of empowerment and liberation, salvation and freedom’,¹⁷⁰ as they represent evidence of wrongdoing which can provide an avenue for the oppressed to assert their rights and to advocate for justice.

This dual role for records and archives gives rise to a potential ethical conflict for recordkeepers: refuse to co-operate with the unjust system which they are part of, or work diligently to ensure that evidence of wrongdoing is maintained so that it can facilitate justice at a later stage. The notion of recordkeepers fulfilling a role as a mere operative within a wider bureaucracy is addressed by Caswell in the context of Hannah Arendt’s writings on the ‘banality of evil’.¹⁷¹ Arendt outlines a perception of Adolph Eichmann as an efficient bureaucrat, his motivation being to undertake the tasks assigned to him in an efficient manner even though they were designed to facilitate mass murder.¹⁷² In this interpretation, it is possible to facilitate evil without necessarily having evil intent, the individual being concentrated on the mechanics of the task while being divorced from its motivation or appropriateness. However, Caswell argues that a dutiful focus on doing a particular job efficiently cannot release recordkeepers from viewing and understanding their work and their responsibilities in the context of wider society.¹⁷³

Under the activist interpretation of the role, recordkeepers can and should wield considerable power and influence. Rather than taking a passive approach as neutral guardians of an inherited set of records, they are urged to recognise that the decisions they make have a role to play with regard to facilitating or inhibiting abuses of human rights, with the potential to affect existing power relationships, expose abuses, and facilitate justice, accountability and transparency.

¹⁶⁷ Ketelaar, 2002, O’Toole, 2004.

¹⁶⁸ Ketelaar, 2002 and 2006; O’Toole, 2004.

¹⁶⁹ Michelle Caswell, ‘Toward a Survivor-Centered Approach to Records Documenting Human Rights Abuse: Lessons from Community Archives’, *Archival Science*, 14.3–4 (2014), 307–22. Also Ketelaar, 2002 and O’Toole, 2004.

¹⁷⁰ Ketelaar, 2002, p.229.

¹⁷¹ Michelle Caswell, ‘Hannah Arendt’s World: Bureaucracy, Documentation, and Banal Evil’, *Archivaria*, 70 (2010), 1–25.

¹⁷² Hannah Arendt, *Eichmann and the Holocaust*. (London: Penguin, 2005).

¹⁷³ Caswell, 2010, p.23.

3.3.2.3 Person-Centred Recordkeeping

Reflecting Cook's fourth archival paradigm (community), many authors argue that the victims or survivors of human rights abuses need to become central and active participants in recordkeeping. Those people mentioned in the records are seen as co-creators of the records, with legitimate rights of ownership and valid claims to be involved in decisions regarding retention, description and access. A number of writers cite and reflect several works by Flinn¹⁷⁴ in highlighting the importance of what is termed participatory person-centred archiving. Caswell calls for what she terms a survivor-centred approach which, amongst other things, would move towards a model of shared stewardship of records, whereby an institution may have physical custody of records which document human rights abuses but would be answerable to survivors of abuse and the families of victims, rather than just to governments, politicians or academic researchers.¹⁷⁵

These trends are also reflected in an increasing questioning of rights-based models of recordkeeping. A focus on person-centred approaches encourages a move away from what Caswell and Cifor term a 'legalistic rights-based framework'¹⁷⁶ towards a model based on a feminist ethics of care, while James Lowry states that 'records subjects and users are more than rights holders or data points'.¹⁷⁷ This trend away from rights-based interpretations and towards an embrace of care and empathy as core elements of recordkeeping is further assessed in the discussion of social justice below.

While the connection between recordkeeping and human rights is widely discussed in the literature, and there is an increasing emphasis on participatory recordkeeping models, there has also been a recognition that 'with few exceptions, examples of action or intervention have not been proposed'.¹⁷⁸ Anne Gilliland calls for archival practice to reflect the developing theory, through the adoption of new approaches to acquisition,

¹⁷⁴ For example Andrew Flinn, 'Archival Activism: Independent and Community-led Archives, Radical Public History and the Heritage Professions', *Interactions: UCLA Journal of Education and Information Studies*, 7.2 (2011).

¹⁷⁵ Caswell, 2014, p.312.

¹⁷⁶ Michelle Caswell and Marika Cifor, 'From Human Rights to Feminist Ethics: Radical Empathy in the Archives', *Archivaria*, 81 (2016), 23–43 (p.23).

¹⁷⁷ James Lowry, 'Radical Empathy, the Imaginary and Affect in (Post)Colonial Records: How to Break Out of International Stalemates on Displaced Archives', *Archival Science*, 19.2 (2019), 185–203 (p.198).

¹⁷⁸ Stacy Wood et al., 'Mobilizing Records: Re-framing Archival Description to Support Human Rights', *Archival Science*, 14.3–4 (2014), 397–419 (pp.400-401).

appraisal, description and other aspects of recordkeeping.¹⁷⁹ Evans et al. identify a need for a comprehensive overhaul of legislation, policy, systems and practices if recordkeeping is to fulfil its potential with regard to protecting human rights.¹⁸⁰ More recently, Shepherd et al.¹⁸¹ and Evans et al.¹⁸² provide examples of how this is being attempted in the context of childcare records in the UK and Australia respectively, while Carbone et al.¹⁸³ endeavour to provide a framework for addressing the rights of refugees and Indigenous populations.

3.3.2.4 Summary

Recordkeepers are faced with competing perceptions of their role when it comes to human rights. Recognition of the power of archives to facilitate justice has led to calls for an activist role to replace the traditionally-dominant view of the archivist as a neutral facilitator. Some have taken this argument a step further, arguing that failure to take action in the face of records which document abuses amounts to complicity with the wrongdoing. Others, however, attach greater importance to preserving and protecting such records so that they can later act as a vital part of the justice process. Recent trends highlight alternatives to a rights-based approach and emphasise the importance of caregiving and empathy, in a manner also reflected in the literature's discussion of social justice.

3.3.3 Social Justice

The discussion in the literature of human rights is closely linked to that of social justice. This section of the review addresses the lack of clarity over what social justice actually means, and considers postmodern influences in the literature, along with competing views of the role of recordkeepers which reflect similar concerns to those raised in relation to human rights.

¹⁷⁹ Anne Gilliland, 'Neutrality, Social Justice and the Obligations of Archival Education and Educators in the Twenty-First Century', *Archival Science*, 11.3–4 (2011), 193–209.

¹⁸⁰ Joanne Evans et al., 'Self-determination and Archival Autonomy: Advocating Activism', *Archival Science*, 15.4 (2015), 337–68 (p.358).

¹⁸¹ Elizabeth Shepherd et al. 'Towards a Human-Centred Participatory Approach to Child Social Care Recordkeeping', *Archival Science*, 20.4 (2020), 307–25.

¹⁸² Joanne Evans et al. 'Transformative Justice: Transdisciplinary Collaborations for Archival Autonomy', *Archives and Records*, 42.1 (2021), 3–24.

¹⁸³ Kathy Carbone et al. 'Rights in and to Records and Recordkeeping: Fighting Bureaucratic Violence Through a Human Rights-Centered Approach to the Creation, Management and Dissemination of Documentation', *Education for Information*, 37.1 (2021), 3–26.

3.3.3.1 *Defining and Understanding Social Justice*

A desire to reflect a wider understanding of society has led to increasingly frequent references to the need to address the perceived dominance of records reflecting traditional power structures and limited views of society. Despite an increasing focus on social justice amongst recordkeepers, there are limited attempts in the literature to actually define social justice, with the term often used without a great deal of exploration or context. Punzalan and Caswell note this lack of clarity,¹⁸⁴ while Wallace claims that although ‘almost everyone’ agrees that social justice is a worthy objective, the uncertainty over what it actually means provides ‘little in the way of guidance or direction’.¹⁸⁵

Some efforts have been made to address this lack of clarity. Duff et al. attempt to provide a firm foundation for discussions relating to recordkeeping and social justice. They suggest an archival approach to social justice which recognises systemic inequalities and employs intellectual and physical resources to ‘challenge and change these structures of exclusion, marginalization and domination’.¹⁸⁶ They urge archivists to make an impact in social justice terms by enabling participation in, and access to, archives; by being mindful of exclusions and by understanding how archives can facilitate restorative justice. This work is later supplemented by further elaboration of these ideas and exploration of a number of relevant case studies.¹⁸⁷

3.3.3.2 *Postmodern Influences*

In encouraging a more diverse set of influences and a recognition that archives, as traditionally construed, have excluded and oppressed many groups seen as being situated outside traditional spheres of influence, Cook argues strongly for a postmodernist approach to recordkeeping.¹⁸⁸ Many writers note that authors from other fields have influenced and shaped the debate in this regard, with Jacques Derrida, in particular, invoked numerous times in the literature.¹⁸⁹ From the postmodernist standpoint, records

¹⁸⁴ Ricardo Punzalan and Michelle Caswell, ‘Critical Directions for Archival Approaches to Social Justice’, *Library Quarterly*, 86.1 (2016), 25–42.

¹⁸⁵ David A. Wallace, ‘Locating Agency: Interdisciplinary Perspectives on Professional Ethics and Archival Morality’, *Journal of Information Ethics*, 19.1 (2010), 172–89 (p.185).

¹⁸⁶ Duff et al., 2013, p.239.

¹⁸⁷ David A. Wallace et al., *Archives, Recordkeeping and Social Justice* (London: Routledge, 2020).

¹⁸⁸ Terry Cook, ‘Fashionable Nonsense or Professional Rebirth: Postmodernism and the Practice of Archives’, *Archivaria*, 51 (2001), 14–35; and Terry Cook, ‘Archival Science and Postmodernism: New Formulations for Old Concepts’, *Archival Science*, 1.1 (2001), 3–24.

¹⁸⁹ Jacques Derrida, *Archive Fever*. Translated by Eric Prenowitz (Chicago and London: University of Chicago Press, 1995).

are created and archives are retained to reinforce a particular dominant narrative and to reflect and perpetuate existing power structures. Certain groups are omitted and their voices silenced. The postmodernists argue that there is no single truth in records, but rather that each record is viewed, used and interpreted differently by those who interact with it, including archivists and those to whom the records relate, the latter rarely having an opportunity to influence the content or use of the records.

Several authors argue that social justice can be facilitated by recordkeepers taking an interdisciplinary approach, drawing on theories and experiences from outside the recordkeeping sphere. Caswell, for example, argues for recordkeeping to be influenced by religious pluralism and outlines her understanding of the concept of archival pluralism, whose goal should be a ‘transformation of practice’¹⁹⁰ through the acceptance of competing and dissenting voices and experiences. Others, such as Richard Cox,¹⁹¹ also see room for religious influences, while Anthony Dunbar argues for Critical Race Theory (CRT) to influence archival practice in a manner that would challenge traditional privileges and present alternative views and interpretations.¹⁹² This reflects Cook’s urgings for archivists to embrace postmodernism and accept that there is no single truth to be found in archives, but ‘many truths, many voices, many perspectives, many stories’.¹⁹³

3.3.3.3 *Competing Views of Recordkeeping’s Social Justice Role*

As already outlined with regard to human rights, there is an increasingly common case made in the literature for a community-based approach to recordkeeping, which would involve marginalised groups in core decisions regarding the records which document their lives and experiences. Inclusion of multiple viewpoints is encouraged by Clare Beghtol, who argues that information professionals must facilitate ‘cultural hospitality’¹⁹⁴ in their work, i.e. that they must accept and be informed by alternative views and interpretations of records in a manner that is respectful and welcoming of a variety of

¹⁹⁰ Michelle Caswell, ‘On Archival Pluralism: What Religious Pluralism (and its critics) Can Teach Us About Archives’, *Archival Science*, 13.4 (2013), 273–92 (p.278).

¹⁹¹ Richard J. Cox, ‘Rethinking Archival Ethics’, *Journal of Information Ethics*, 22.2 (2013), 13–20.

¹⁹² Anthony W. Dunbar, ‘Introducing Critical Race Theory to Archival Discourse: Getting the Conversation Started’, *Archival Science*, 6.1 (2006), 109–29. For a brief definition of Critical Race Theory, see <<https://www.britannica.com/topic/critical-race-theory>> [accessed 3 May 2024].

¹⁹³ Cook, 2013, p.110.

¹⁹⁴ Clare Beghtol, ‘A Proposed Ethical Warrant for Global Knowledge Representation and Organization Systems’, *Journal of Documentation*, 58.5 (2002), 507–32 (p.527).

cultures. In a similar vein, Duff and Harris call for the descriptive practices followed by archivists to incorporate the notion of hospitality.¹⁹⁵

An active social justice role for recordkeepers is not favoured by everyone, however, with some writers expressing a concern that actively seeking to represent certain groups will alienate others, thus defeating the stated intention of achieving greater balance and diversity. Amongst those expressing such concerns is Boles, who claims that adopting an activist social justice role means that ‘the archival community will become an advocate for one set of moral beliefs over another’.¹⁹⁶

Greene objects to the pursuit of social justice being viewed as some sort of moral obligation or imperative for recordkeepers, stating that the call to pursue social justice, so strongly espoused by Harris,¹⁹⁷ Jimerson,¹⁹⁸ and others is ‘outside the bounds of my understanding of our professional purpose’.¹⁹⁹ Archivists, he claims, can facilitate social justice by maintaining evidence of injustice, but need not and should not take on a role as social justice crusaders or advocates; such a role is for others to adopt, utilising the resources that have been safeguarded by archivists.

3.3.3.4 Summary

While recent recordkeeping literature leans heavily towards embracing a social justice role, there is some continuing debate in terms of defining social justice in the first place and in terms of whether recordkeepers are ethically bound to pursue social justice as part of their professional role. In a similar vein to the discussion of human rights and recordkeeping, there are those who argue for an activist role, a deliberate focus on re-balancing power relationships and accommodating the perspectives of previously

¹⁹⁵ Wendy Duff and Verne Harris, ‘Stories and Names: Archival Description as Narrating Records and Constructing Meanings’, *Archival Science*, 2.3 (2002), 263–85.

¹⁹⁶ Frank Boles, ‘To Everything There is a Season’, *American Archivist*, 82.2 (2019), 598–617 (p.606).

¹⁹⁷ Verne Harris, ‘Jacques Derrida meets Nelson Mandela: Archival ethics at the endgame’, *Archival Science*, 11.1–2 (2011), 113–24; Verne Harris, ‘Antonyms of Our Remembering’, *Archival Science*, 14.3–4 (2014), 215–29.

¹⁹⁸ Randall Jimerson, ‘Embracing the Power of Archives’, *American Archivist*, 69.1 (2006), 19–32 ; Randall Jimerson, ‘Archives for All: Professional Responsibility and Social Justice’, *American Archivist*, 70.2 (2007), 252–81; Randall Jimerson, ‘The Archive is Politics: Neutrality is Not an Option’, *Archifacts*, October 2010, 11–24; Randall Jimerson, ‘Archivists and Social Responsibility: A Response to Mark Greene’, *American Archivist*, 76.2 (2013), 335–45.

¹⁹⁹ Mark Greene, ‘A Critique of Social Justice as an Archival Imperative: What Is It We’re Doing That’s All That Important?’, *American Archivist*, 76.2 (2013), 302–34 (p.303).

unheard voices.²⁰⁰ Some who recognise the need to accommodate alternative perspectives deny that recordkeepers have a social justice imperative, arguing that it risks alignment with a particular set of political or cultural views which will inevitably alienate certain communities and skew the archival record in a particular direction. As with human rights and accountability, the debate around social justice and recordkeeping reflects some lack of clarity and certainty about how the recordkeeping profession views its own role and function, and how to develop and implement a set of practices which can adequately reflect the developing theories relating to that role and function.

3.4 Discussion

Despite the consensus in the literature on the importance of recordkeeping in holding governments accountable, there are concerns over why this link is not reflected in stronger and more comprehensive legislation, regulations and public sector practices. There is also concern at the impact of a limited, economic interpretation of accountability and how this restricts records and archives in fulfilling their potential.

The increasing focus on accountability and human rights feeds into differing interpretations of the fundamental role of the archivist, with support for the traditional neutral approach of guardian of records giving way to more activist interpretations. This impacts on the social justice debate within the profession, which is a more contested realm than that relating to accountability and human rights. There is a debate about the extent to which alternative voices and viewpoints should be actively accommodated and whether records can represent an identifiable truth in any fundamental manner. While the dominant trend in the literature is away from positivism and towards a contextualist world view, there is, nevertheless, ongoing support for a more traditional approach.

Furthermore, there is a recognition, even by those who enthusiastically espouse them, that participatory theories of recordkeeping may be difficult to translate into practice in a manner which has an identifiable and concrete impact for relevant stakeholders.

²⁰⁰ For examples, see Anne Gilliland, 'Permeable Binaries, Societal Grand Challenges, and the Roles of the Twenty-First Century Archival and Recordkeeping Profession', *Archifacts*, December 2015, 12-30; Mario H. Ramirez, 'Being Assumed Not to Be: A Critique of Whiteness as an Archival Imperative', *American Archivist*, 78.2 (2015), 339-56; Marika Cifor et al., "'What We Do Crosses Over to Activism': The Politics and Practice of Community Archives', *The Public Historian*, 40.2 (2018), 69-95.

3.4.1 Actual Accountability

The role of archives in relation to accountability and transparency is universally recognised and accepted throughout the twenty-first century literature. Svärd writes of such issues with a particular focus on developing countries which are making the transition to democracy and she also notes that accountability, facilitated by access to information, has an increasingly central role to play in meeting UN Sustainable Development Goals,²⁰¹ concluding that ‘all aspects of life are underpinned by access to information’.²⁰²

Despite this all-encompassing role which recordkeeping holds in relation to accountability, there is a persistent lack of adequate recordkeeping policies and procedures, not just in developing countries and new democracies but also in well-established, stable democratic systems. One reason for the lack of priority afforded to recordkeeping in many public sector environments is the lack of actual, as opposed to theoretical, accountability. If certain oversight bodies lack real power, or are disinclined to use those powers that are available to them, then public servants will not anticipate being held to account and the importance of accurate and reliable records will be relegated in the order of priorities.²⁰³

The most obvious solution to this is for governments to establish accountability forums with sufficient authority and resources to hold public sector agencies to account. Recordkeepers, however, must persuade administrators of the merits of proper recordkeeping and of its central importance to all aspects of government activity and the citizen-government relationship. This requires advocacy and co-operation with legislators and with public servants in order to highlight the essential link between recordkeeping and accountability, and the benefits to be derived for all stakeholders from effective recordkeeping.

²⁰¹ United Nations, *Sustainable Development Goals* (2015). Available at <<https://www.un.org/sustainabledevelopment/>> [accessed 17 May 2024].

²⁰² Proscovia Svärd, ‘Access to Government Information: A Global Phenomenon But What Are the Challenges?’, *ESARBICA Journal*, 37 (2018), 158–77 (p.164).

²⁰³ Albert Meijer, ‘Anticipating Accountability Processes’, *Archives and Manuscripts*, 28.1 (2000), 52–63.

3.4.2 A Limited Economic Interpretation of Accountability

In many Western democracies, questions of accountability in recent decades have often focused on financial efficiencies and the reining in of public spending, rather than on wider definitions of accountability. The efficient and accountable use of public funds is undoubtedly of great importance and is a significant ethical concern, but several writers criticise a concentration on such matters to the detriment of wider societal factors.²⁰⁴

Prioritising financial savings sees recordkeepers drawn into considerations such as cost-benefit analyses and cost reductions, which results in a narrow focus on the role and purpose of archives. Applications for funding must be made on the basis of return-on-investment, forcing archives to be treated as a commercial commodity, with a focus on number of users, number of clicks, generation of revenue, and so on. The neoliberal insistence on running public services in a manner similar to private sector enterprises is criticised by Cifor, who states that such an approach ‘profoundly shapes the government and academic structures in which much archival work takes place’.²⁰⁵ Similarly, Gauld states that ‘for funders, this market language of use and efficiencies is key whilst an ethos of managerialism strips the ethical and moral away from public services’.²⁰⁶

All of this highlights a need for recordkeepers to identify and pursue a purpose beyond that defined by a limited perception of accountability and to recognise that a wider understanding of the concept is necessary if recordkeeping is to fulfil its potential to benefit the citizenry.

3.4.3 Economic Impact on Records and Rights

According to Margaret Procter, the need to secure funding has caused recordkeepers to lose sight of their principal role and purpose. She claims that ‘the core and persistent function of archival activity’ is the upholding of rights.²⁰⁷

²⁰⁴ Marika Cifor, ‘Affecting Relations: Introducing Affect Theory to Archival Discourse’, *Archival Science*, 16.1 (2016), 7–31; Craig Gauld, ‘The End of Archival Ideas?’ in Caroline Browne (ed) *Archival Futures* (London: Facet, 2018), pp. 137–54.

²⁰⁵ Cifor, 2016, p.23.

²⁰⁶ Gauld, 2018, p.145.

²⁰⁷ Margaret Procter, ‘Protecting Rights, Asserting Professional Identity’, *Archives and Records*, 38.2 (2017), 296–309 (p.299).

If stuck in an economic argument relating to return-on-investment, how can recordkeepers highlight the value of records which uphold and protect human rights? Such an argument must be made on non-economic terms, or at least not exclusively on economic terms, and must revolve around concepts of rights, identities and justice rather than financial efficiencies. As noted by Duff et al., ‘even if one person only accesses a record, it may have wide-ranging impact’²⁰⁸ and the potential of archives may lie dormant for prolonged periods, until they are accessed, utilised and fed into the public arena.

Several writers urge recordkeepers to focus on the bigger picture – the *why* rather than the *how* – and to give greater consideration to the broader role and function of recordkeeping.²⁰⁹ Nevertheless, competition for public funds has never been fiercer, and recordkeepers are faced with the need to advocate for the cause of records and archives, to compete for funding and to justify their spending in a manner that is recognised and accepted by legislators and public servants.

3.4.4 Archival Activism

The call for recordkeeping to look beyond accountability is reflected by a consensus in the literature that recordkeeping has an essential role vis-à-vis human rights. The implications of this role, however, give rise to varying interpretations of how recordkeepers should conduct themselves and how they should view their responsibilities. Ketelaar,²¹⁰ Harris,²¹¹ Cook²¹² and others call for a shift towards re-balancing the relationship between the state and the citizen and for recordkeepers to recognise the role which records can play in exposing abuses of power and documenting the wrongs perpetrated against marginalised and oppressed groups.

²⁰⁸ Duff et al., 2013, p.332.

²⁰⁹ For example, Richard J. Cox, ‘Archival Ethics: The Truth of the Matter’, *Journal of the American Society for Information Science and Technology*, 59.7 (2008), 1128–33; Mark Greene, ‘The Power of Archives: Archivists’ Values and Value in the Postmodern Age’, *American Archivist*, 72.1 (2009), 13–41; Randall Jimerson, ‘Values and Ethics’, *Journal of Information Ethics*, 22.2 (2013), 21–45; Alan Mattlage, ‘Responsibilities of Information Professionals vis-à-vis Information Rights’, *Journal of Information Ethics*, 24.1 (2015), 65–81; Anne Gilliland, ‘To What Lengths the “Physical and Moral Defence of the Record” in Times of Conflict and Exigency?’, *Archives and Records*, 39.2 (2018), 117–38.

²¹⁰ Eric Ketelaar, ‘Tacit Narratives: The Meanings of Archives’, *Archival Science*, 1.2 (2001), 131–41; also Ketelaar, 2002.

²¹¹ Harris, 2011, 2014.

²¹² Cook, ‘Fashionable Nonsense’, ‘New Formulations’.

This call for ‘hospitality’ towards previously neglected groups and communities has been extended into a call for an activist approach by recordkeepers in an attempt to expose past injustices and prevent future ones. Cook urges an abandonment of the perception of recordkeepers as ‘passive guardians of an inherited legacy’²¹³ while Harris,²¹⁴ Caswell²¹⁵ and others strongly suggest that a failure by recordkeepers to expose and prevent injustice and wrongdoing amounts to complicity with the oppressing power. This perspective does not go unchallenged. Greene, for example, insists that the dual role of records, as tools of both oppression and liberation, requires recordkeepers to consider a number of competing options. Rather than rebelling against the system, maintaining accurate records of malpractice and abuse will, he says, later serve to facilitate justice and expose wrongdoing.²¹⁶

Such a challenge is not easily resolved and is influenced by a complex set of relationships which may involve the recordkeeper in attempting to balance a set of conflicting loyalties, for example to an employer, to record creators, to the groups or individuals to whom the records relate, to his or her own career, financial security and family wellbeing, to government, or to the wider public good. As noted by many writers, professional codes of ethics which attempt to address such conflicts in deontological or teleological terms are often contradictory and lack the flexibility to act as useful guides in real-life situations.²¹⁷ How to balance such competing demands and act in a manner which upholds human rights and facilitates social justice is one of the major unresolved issues in the literature.

3.4.5 Social Justice Debate

While the literature reflects a widespread consensus that recordkeeping has a central role to play in defending, upholding and asserting human rights, and in exposing breaches of

²¹³ Cook, *New Formulations*, p.4.

²¹⁴ Harris, 2011.

²¹⁵ Caswell, 2010.

²¹⁶ Greene, 2013.

²¹⁷ For example, see Glen Dingwall, ‘Trusting Archivists: The Role of Archival Ethics Codes in Establishing Public Faith’, *American Archivist*, 67.1 (2004), 11–30; Jason Speck, ‘Protecting Public Trust: An Archival Wake-up Call’, *Journal of Archival Organization*, 1.31 (2010), 31–53; Sarah Davy, ‘When Good Archivists Go Bad: The Role of Ethics and Values in Everyday Archival Decision-making’, *Archifacts*, October 2013, 11–22; Ronald Houston, ‘Archival Ethics and the Professionalization of Archival Enterprise’, *Journal of Information Ethics*, 22.2 (2013), 46–60; Alyssa Hamer, ‘Ethics of Archival Practice: New Considerations in the Digital Age’, *Archivaria*, 85 (2018), 156–79.

those rights, it also tends to conflate human rights with social justice, a topic which proves to be much more contentious and divisive. Whereas human rights can be defined with reference to the UDHR, the lack of clarity about what is meant by ‘social justice’ is problematic for many writers. Some, such as Duff et al., attempt to bring clarity to the term and to provide a framework for measuring the impact of archives on social justice.²¹⁸ Others remain concerned by the lack of clarity and worried that social justice implies a political bias which has no real place in the recordkeeping endeavour. Procter suggests that ‘the social justice debate needs to tease out exactly what it is about social justice which apparently makes it a “natural fit” with archival work’, and she suggests that the answer lies in those areas where inequalities in society intersect with human rights as defined in the UDHR, and where ‘those intersections are susceptible to recording’.²¹⁹

The demarcation lines in the debate are not definitive – many of those who accept and encourage an activist role for recordkeepers dismiss the social justice imperative. Greene, for example, claims a strong commitment to activism but insists that an imperative to follow a social justice agenda risks alienating one group or another, with the danger of distorting the historical record. Such an approach argues that it is not for recordkeepers to actively seek to re-balance power relationships in society, at least not in their professional capacities as recordkeepers. They may, however, facilitate others in seeking to expose injustice and re-balance inequalities by accurately and fairly documenting society and the various groups which contribute to it.

Greene questions the place of justice in a list compiled by Jimerson²²⁰ of the virtues or concepts which archivists should heed. Greene accepts the call to honesty, fairness, accountability and transparency but describes justice as an ‘outlier’ in this list.²²¹ However, it could be argued that justice is a virtue to be pursued by all professionals, and all people, regardless of their specific roles or political, cultural or social backgrounds or beliefs.

²¹⁸ Duff et al., 2013.

²¹⁹ Procter, p.303.

²²⁰ Jimerson, 2007.

²²¹ Greene, 2013, p.303.

3.4.6 Postmodernism, Participation and Empathy

The call for respect for alternative voices and an understanding of multiple perspectives led a number of prominent archival writers to engage with postmodern perspectives. Led by Cook, the call for a multiplicity of viewpoints has led to writers exploring the role of recordkeeping from a range of inclusive perspectives, including anthropology,²²² a feminist ethics of care,²²³ decolonisation and repatriation,²²⁴ affect and radical empathy.²²⁵

The move towards hospitality, empathy and affect has resulted in an increasing exploration of community or participatory archives. Again, the literature reflects a lack of consistency in terminology, with Gregory Rolan describing definitions of participatory archiving as ‘elusive’.²²⁶ The participatory model effectively sees archivists sharing their role with non-professionals, accommodating a co-operative approach which expands the type and scope of items to be considered archival, and facilitating a direct role for members of the particular group or community in question with regard to appraisal, description, access and other aspects of recordkeeping. As an example, Evans et al. cite the ‘Setting the Record Straight for the Rights of the Child Initiative’, which aims at an approach in which young people ‘share in their recordkeeping and have access and control of the records of their childhood experiences throughout their lives’.²²⁷

²²² Elisabeth Kaplan, ‘Many Paths to Partial Truths: Archives, Anthropology, and the Power of Representation’, *Archival Science*, 2.3 (2002), 209–20; David Zeitlyn, ‘Anthropology in and of the Archives: Possible Futures and Contingent Pasts. Archives as Anthropological Surrogates’, *Annual Review of Anthropology*, 41(2012), 461–80.

²²³ 2016; Kimberly Christen and Jane Anderson, ‘Toward Slow Archives’, *Archival Science*, 19.2 (2019), 87–116; Maria Caswell, ‘Dusting for Fingerprints: Introducing Feminist Standpoint Appraisal’, *Journal of Critical Library and Information Studies*, 3.2 (2021).

²²⁴ Mandy Banton, “‘Expatriate’ or ‘Migrated’ Archives: the Role of the UK Archivist”, *Archives*, 34.121 (2009), 14–24; Joanna Sassoon and Toby Burrows, ‘Minority Reports: Indigenous and Community Voices in Archives. Papers from the 4th International Conference on the History of Records and Archives (ICHORA4)’, *Archival Science*, 9.1-2 (2009), 1–5; Elena Danielson, ‘Archives and the Ethics of Replevin’, *Journal of Information Ethics*, 22.2 (2013), 110–40; Taylor Genovese, ‘Decolonizing Archival Methodology’, *AlterNative: An International Journal of Indigenous Peoples*, 12.1 (2016), 32–42; James Lowry, “‘Displaced Archives’: Proposing a Research Agenda”, *Archival Science*, 19.4 (2019), 349–58.

²²⁵ Cifor, 2016; James Lowry, ‘Radical Empathy, the Imaginary and Affect in (Post)Colonial Records: How to Break Out of International Stalemates on Displaced Archives’, *Archival Science*, 19.2 (2019), 185–203.

²²⁶ Gregory Rolan, ‘Agency in the Archive: A Model for Participatory Recordkeeping’, *Archival Science*, 17.3 (2017), 195–225 (p.196).

²²⁷ Joanne Evans et al., ‘Participatory Information Governance’, *Records Management Journal*, 29.1/2 (2019), 178–93 (p.185).

Gilliland and McKemmish argue that there is a ‘moral and ethical imperative for an archive that works in the interests of those who have been wronged’ and suggest that Indigenous protocols for archives offer a suitable model, giving examples which are said to be ‘built on the premise of mutual respect, consultation, and in some cases, shared governance’.²²⁸

The literature has moved from urging an awareness and appreciation of alternative viewpoints towards a more active and impactful engagement – not just tolerance but active caring and encouragement. Caswell and Cifor describe radical empathy as ‘a learned process of direct and deep connection between the self and another’.²²⁹ The increasing emphasis on emotion, personal experiences and empathy culminates in a call for recordkeepers to be viewed as ‘relational workers [...] professionals who work in close personal contact with other people and for whom empathy and the ability to build relationships are crucial’.²³⁰ Such a view equates recordkeepers with healthcare workers, counsellors or therapists. Whether empathy is a specific characteristic required of recordkeeping professionals as distinct from any other group of professionals is open to debate.

3.4.7 One Truth or Many?

The pursuit of the postmodernist perspective and the insistence on multiple valid truths may, if taken to a particular point, appear to undermine the ability of records and archives to contribute towards justice. If there are multiple simultaneous truths, and the recordkeeper must empathise with all of them, then how can any society decide that one or other set of views, or one or other set of participants in a particular engagement, is right or wrong?

Cook places the trend towards postmodernism in the context of a loss of trust in traditionally powerful and respected institutions (for example, governments, churches, media, and so on).²³¹ The era of ‘fake news’ and ‘alternative facts’ has resulted in anything

²²⁸ Anne Gilliland and Sue McKemmish, ‘The Role of Participatory Archives in Furthering Human Rights’. *Atlanti: Review for Modern Archival Theory and Practice*, 24 (2014), 78–88 (p.83).

²²⁹ Caswell and Cifor, 2016, p.30.

²³⁰ Jennifer Douglas et al., “‘Treat Them with the Reverence of Archivists’: Records Work, Grief Work, and Relationship Work in the Archives”, *Archivaria*, 88(2019), 84–120 (p.117).

²³¹ Cook, ‘Fashionable Nonsense’.

meaning what any person decides it to mean at any given time, and words and actions being routinely denied and dismissed despite the written, visual or aural evidence.²³² Insistence on multiple valid truths appears to be at variance with demands for restorative justice and an ‘imprescriptible right to know the truth’ as stipulated in the Joint-Orentlicher Principles.²³³ If, for example, an individual or a group was subjected to ongoing abuse, mistreatment or denial of rights, can the perpetrators of such abuse be excused on the basis of their different understandings and perspectives? If formerly dominant groups (perpetrators of injustice) are now in a minority and feel (however unjustly) marginalised, ignored and victimised, must recordkeepers display empathy towards them and endeavour to accommodate their perceived truths? There is surely a difference between documenting and empathising.

Gauld argues that the democratisation of information, the unfettered access to vast amounts of unverified claims, means that recordkeepers need to understand their role as gatekeepers if justice and accountability are to be facilitated. Recordkeepers, he argues, need to recognise their position as ‘guardians of the evidence on which an individual’s or societal truth can be established’ and accept that ‘evidence, cared for properly, in context, can proclaim an *approximation* of the truth’.²³⁴ This argument posits that there is some sort of basic truth which can be supported through authentic and reliable records, rather than a series of competing truths, all with equal value.²³⁵ This does not preclude multiple perspectives or viewpoints, nor does it mean that recordkeepers must look idly on in the face of human rights abuses or persistent injustice in society. It does not preclude empathy or hospitality. It does, however, suggest that a full-throated postmodernist perspective may be a step too far for recordkeeping.

If records and archives are facilitators of truth and justice, they must distinguish between valid truths and false assertions, not treat them all as co-equal. As Rachel Hardiman has asked, ‘how can a thirst for justice co-exist with a relativism that denies the possibility of a stable concept of justice?’²³⁶

²³² Corrie Commisso, ‘The Post-Truth Archive: Considerations for Archiving Context in Fake News Repositories’, *Preservation, Digital Technology and Culture*, 46.3 (2017), 99–102.

²³³ Orentlicher, principle 4.

²³⁴ Gauld, 2018, p.149.

²³⁵ Heather MacNeil, ‘Trust and Professional Identity’, *Archival Science*, 11.2 (2011), 175–92.

²³⁶ Rachel Hardiman, ‘En mal d’archive: Postmodernist Theory and Recordkeeping’, *Journal of the Society of Archivists*, 30.1 (2009), 27–44 (p.37).

3.4.8 Access as a Human Right

Accountability, human rights and social justice are inextricably linked to each other. Rights cannot be defended and upheld and inequalities cannot be highlighted and challenged in the absence of accountability. In turn, accountability relies on access to information. While it may be constrained by privacy concerns and appropriate legislative provisions and can involve conflicts of interest, most archivists agree on the need to maximise access.

Kay Mathiesen suggests that access to information should be viewed as one of the primary goods as described by John Rawls,²³⁷ i.e. those goods with which individuals ‘can generally be assured of greater success in carrying out their intentions and in advancing their ends, whatever these ends may be’.²³⁸ She also highlights the need, however, to consider Amartya Sen’s capability-based approach,²³⁹ i.e. there must be an actual means available to individuals to use and enjoy the relevant goods, in this case access to information. Mathiesen says that this requires information professionals to consider ‘whether the distribution of information resources and services is enabling people to engage in important life activities and states of being’.²⁴⁰ The view that access to information should be considered a human right, with consequent obligations on certain parties to support and vindicate that right, is explored in Chapter 6 of this thesis.

3.4.9 The Challenge – Theory and Practice

Access is just one of the concerns that needs to be addressed in concrete terms if the theories contemplated in the literature are to be reflected in practice. Despite the differences in emphasis (critical race theory, religious tolerance, feminist ethics of care, radical empathy, affect, etc.), the core and consistent notion remains one of hospitality to others and a consideration and accommodation of alternative voices and viewpoints. This would mean little, however, if recordkeeping does not have a solid legislative basis and if recordkeepers do not implement legislation in a manner which achieves the

²³⁷ John Rawls, *A Theory of Justice*, revised edition (Oxford: Oxford University Press, 1999).

²³⁸ Kay Mathiesen, ‘Informational Justice: A Conceptual Framework for Social Justice in Library and Information Services’, *Library Trends*, 64.2 (2015), 198–225 (p.210).

²³⁹ Amartya Sen, ‘Equality of What?’ in *The Tanner Lectures on Human Values*, ed. by Sterling M. McMurrin (Cambridge: Cambridge University Press, 1980), pp. 195–220.

²⁴⁰ Mathiesen, ‘Informational Justice’, p. 211.

fundamental objectives of the profession with regard to accountability, human rights and social justice. As noted by Evans et al:

Transformations of archival law, policy, systems and practices beyond the boundaries of individual organisations and jurisdictions is required for the development of archival and recordkeeping frameworks and infrastructures which better protects and respects citizen and human rights, as well as contributing to quality of life.²⁴¹

Despite limited examples such as those cited by Evans et al. and by Gilliland and McKemmish,²⁴² the literature notes that the theory around hospitality, empathy, affect and participatory approaches has been slow to translate into practice. Indeed, several writers who encourage such approaches highlight difficulties in terms of actual implementation. Rolan suggests that no single recordkeeping system can be fully hospitable to competing voices,²⁴³ while Gilliland and McKemmish note that ‘implementing an extended suite of rights would be very challenging as part of a participatory archive that serves a human rights agenda and subscribes to participative principles and approaches’.²⁴⁴

More recently, signs of progress are visible in resources such as the Indigenous Heritage Action Plan developed by Library and Archives Canada (2019)²⁴⁵ and the Guiding Principles for Reparative Description issued by the US National Archives (2022).²⁴⁶ Meanwhile the Australian Society of Archivists (2020) has developed training resources which encourage, and provide practical guidance on, a more inclusive approach to recordkeeping relating to out-of-home care and Indigenous populations.²⁴⁷ In the specific

²⁴¹ Evans et al., 2015, p.358.

²⁴² Gilliland and McKemmish.

²⁴³ Rolan, p.218.

²⁴⁴ Gilliland and McKemmish, p.10.

²⁴⁵ See Library and Archives Canada, ‘Indigenous Heritage Action Plan’ (2019). Available at <<https://library-archives.canada.ca/eng/corporate/about-us/strategies-initiatives/indigenous-documentary-heritage-initiatives/Pages/actionplan.aspx>> [Accessed 17 May 2024].

²⁴⁶ National Archives and Records Administration, ‘Guiding Principles for Reparative Description’ (2022). Available at <<https://www.archives.gov/research/reparative-description/principles>> [Accessed 17 May 2024].

²⁴⁷ Australian Society of Archivists, Online Learning (2020). Available at <<https://www.archivists.org.au/learning-publications/online-courses>> [Accessed 17 May 2024].

context of childcare recordkeeping, the UK-based MIRRA project²⁴⁸ has urged a participatory approach ‘structured around the human and information rights of care leavers, as a marginalised group desiring dignity, justice and information quality’ but ‘underpinned by legislation and regulation that explicitly references participatory approaches’.²⁴⁹

A continuation of such concrete efforts is necessary to develop a strong and workable framework of legislation, policy and procedure which will allow real progress in ensuring that records and archives fulfil their potential with regard to accountability, human rights and social justice.

3.4.10 Conclusion

In concluding the discussion of the relevant literature, it could be said that if accountability, human rights and social justice are such central concerns for recordkeeping, and if recordkeeping is core to ensuring and facilitating all three, then the connections made in the theory must translate to practice. Many of the theorists highlight this, and acknowledge that their own theories and proposals raise as many questions as they answer.

If the gap between theory and practice is not bridged, there will be few benefits for the ‘other’ voices that have been neglected for so long. In order to continue to strive to translate theory into practice, however, the recordkeeping profession would seem to have some work to do in terms of agreeing on what its fundamental purpose is. The differing approaches to neutrality, objectivity, activism and complicity suggest an ongoing struggle with regard to the fundamental purpose of the profession and where its main focus lies. While there is some agreement on accountability and human rights, the question of recordkeeping and social justice remains contentious.

Whether viewed from a positivist, postmodernist, feminist, postcolonial or any other perspective, none of the theories will have any real-life impact for marginalised and oppressed groups if there is no actual capability to avail of the benefits of recordkeeping.

²⁴⁸ MIRRA Project (Memory – Identity – Rights in Records – Access), <<https://blogs.ucl.ac.uk/mirra/about/>> [Accessed 17 May 2024].

²⁴⁹ Shepherd et al., pp. 316–17.

This points towards an ethical responsibility for government authorities and recordkeepers to co-operate in developing and implementing frameworks of legislation, policy and procedures which meet the needs and serve the interests of all relevant stakeholders, and live up to the potential of records and archives to ensure accountability, uphold and defend human rights and facilitate social justice. Such frameworks will vary according to local circumstance and culture, and any expectation of instant success in resolving the complex issues identified in the literature would be misplaced. The endeavour to find hospitable solutions which accommodate the various competing interests will be an ongoing one. In the absence of such an endeavour, however, the potential of archives remains unrealised and the citizens, as individuals and as members of communities and groups which make up society as a whole, will be frustrated in their ability to hold government to account.

Chapter 4

Interviews

This chapter will assess how stakeholders think about and experience issues of accountability, human rights and social justice in an Irish recordkeeping context. It will present the findings from a series of interviews with people who have an involvement or direct interest in recordkeeping. The chapter will first explain the overall purpose of the interviews, before outlining the practical steps taken in the preparation and conduct of the interviews. It will then outline the use of Reflexive Thematic Analysis (RTA) as a research method for the assessment of the interviews and will present and discuss the themes which were developed as a result of the analysis. The identification and assessment of the themes allow links to be made between the literature review and the lived experiences of the interview participants.

4.1 Purpose of the Interviews

In general, the qualitative research interview is a key tool for exploring the ways in which participants experience and understand their world.²⁵⁰ The focus of the qualitative interview is on meaning and experience, with regard to a particular group of participants. The aim is not to collect verifiable statistical data or findings, but rather to seek accounts of experiences, views and beliefs in specific contexts and from a variety of perspectives, with the objective of developing a justifiable and well-founded interpretation and analysis which will inform the consideration of the overall research question.

The purpose of the interviews described in this chapter is to conceptualise and assess the views and experiences of participants who have a variety of perspectives on accountability, human rights and social justice in public sector recordkeeping in an Irish context, through their empirical knowledge of working within the existing legislative framework. The lived experiences of the interview participants interact with those of the researcher, who has extensive experience of public sector recordkeeping in Ireland. Together with the assessment of the current legislation and practice described in Chapter 2 and the literature review provided in Chapter 3, the stories and experiences of the

²⁵⁰ Svend Brinkmann and Steiner Kvale, *Doing Interviews, Second Edition* (London: SAGE Publications, 2018), p. 9.

interview participants contribute to the assessments and recommendations that feature in later chapters.

The assessment of the interview data does not offer quantitative analysis and the findings are not presented as verifiable facts or objective truth. The analysis represents the researcher's interpretation of the interviews, based on his own experiences, perspectives, research and interactions with the interview participants. While not generalisable, the findings are claimed to have a relevance beyond the immediate interview cohort, as they are based on a comprehensive and in-depth analysis of the interview data and are presented as being 'sound, well grounded, justifiable, strong and convincing'.²⁵¹

4.2 Interview Methodology

Methodologies for the conduct and assessment of qualitative interviews vary. Brinkmann and Kvale posit a series of seven interlinked and overlapping stages of qualitative interviewing which can enable the researcher to make relevant decisions on a reflective level. These stages are: Thematising; Designing; Interviewing; Transcribing; Analysing; Verifying; and Reporting. Brinkmann and Kvale acknowledge, however, that there are no fixed models for qualitative interview planning, due to the need for flexibility and adaptability.²⁵²

The following description addresses the practical elements of the design and conduct of the interviews for this research, before explaining how RTA was used as a basis for analysing and interpreting the interview data, developing themes and reporting on findings.

4.2.1 Identifying and Recruiting Participants

As noted by King et al., qualitative research does not normally use sampling strategies aimed at producing statistical representativeness.²⁵³ Nevertheless, purely ad hoc sampling is not valid, as the sample needs to relate in some systematic manner to the phenomena under investigation. Sufficient diversity in the choice of participants is required so that a

²⁵¹ Brinkmann and Kvale, p. 142.

²⁵² Brinkmann and Kvale, p. 40.

²⁵³ Nigel King, Christine Horrocks and Joanna Brooks, *Interviews in Qualitative Research, Second Edition* (London: SAGE Publications, 2019), p.56.

Potential Participants:	Relevance to the research:	Recruitment email issued via:
Staff/former staff members of the NAI	Experience in working within the existing legislation, and familiarity with existing recordkeeping practice.	Director of the NAI; Archives and Records Association, Ireland (ARAI); Information and Records Management Society (IRMS).
Members/former members of the NAAC	Direct knowledge and experience of the working relationship between NAI, NAAC and government; familiarity with relevant legislation and practice.	Members of NAAC; ARAI
Archivists working in public sector environments other than the NAI	Knowledge and experience of recordkeeping legislation and practice within the public sector but outside the remit of the NA Act.	Local Government Archivists and Records Managers Group (LGARG); ARAI; IRMS.
Civil servants involved in drafting relevant legislation or otherwise interacting with the NAI	Familiarity with government or civil service interpretations of recordkeeping, relevant legislation and the workings of the NAI and NAAC.	Culture Division, Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media.
Researchers/historians/other users of the NAI or other public service archive services	Experience of interacting with NAI and other archival institutions; experience of how existing legislation and practice may impact on access, accountability and related issues.	Irish Society for Archives; School of History and Geography, Dublin City University; School of Law and Politics, Dublin City University.
Advocacy groups or NGOs with an interest in issues relevant to the research	With a direct interest in issues such as accountability, human rights and social justice, their views will reflect wider societal interests and experiences.	Email addresses available on relevant websites.

Table 4.1: Relevance of potential participants, and means of recruitment.

variety of perspectives is represented, in a manner that can provide meaningful findings about a range of experiences. The choice of participants depends on the researcher's own knowledge of the literature and on experience gained and knowledge accumulated through working in the relevant field of study.

Table 4.1 lists the categories of potential interview participants who were invited to take part, their relevance to the research and the means of recruitment. The overall numbers and the range of those represented do not allow for findings to be generalised or for verifiable factual findings to be drawn from the interviews. This, however, is not the intention of the interviews and the final list of participants has a sufficient level of diversity, interests and viewpoints to provide a meaningful set of views and experiences relevant to the research question.

Prior to approaching and recruiting participants for these interviews, an application was submitted to the DCU Research Ethics Committee (REC). The application was approved by the REC and the formal letter of approval was issued on 24th March 2021. The primary ethical concerns related to protecting the identity of participants, especially in such a small field of expertise, where most active practitioners are known to each other. Care was also taken that potential participants who were known personally to the researcher did not feel pressured to participate or to express certain views.

Recruitment of participants took place via emails issued in late April and early May 2021, accompanied by copies of the Plain Language Statement and Informed Consent Form. All email addresses used for recruitment purposes were publicly available via websites, or were known to the researcher through membership of relevant professional associations such as ARAI or IRMS.²⁵⁴

The sample size is influenced by the philosophical assumptions underpinning the research. Neo-positivist approaches typically require a higher number of participants due to their aim of establishing statistically reliable findings with a high degree of certainty. Other approaches, such as contextualism, do not aim at establishing generalisable

²⁵⁴ Interview data, including Plain Language Statement, Consent Form, REC approval, interview guide and sample codes are included in Appendix A.

findings and require a smaller sample size, often in single figures or low teens (i.e. below 15). Clive Roland Boddy notes that if a sample is too large, it can limit the depth of the analysis.²⁵⁵

Thirteen interviews were conducted, allowing for a substantive body of evidence to be collected and assessed. This is considered sufficient given that the research is qualitative in nature and does not aim to provide verifiable factual findings or statistical assessments. The breakdown of participants is presented in Table 4.2 below. The numbers total more than 13 due to several participants falling into more than one category. For example, all three members or former members of NAAC are or were also archivists working in public sector agencies, and so are included under both categories. Likewise, former staff members of the NAI may also be included in other categories.

<i>Participant Groups</i>	<i>Number of participants</i>
Staff/former staff members of the NAI	2
Members/former members of the NAAC	3
Archivists working in public sector environments other than the NAI	8
Civil servants involved in drafting relevant legislation or otherwise interacting with the NAI	1
Researchers/historians/other users of the NAI or other public service archive services	2
Advocacy groups or NGOs with an interest in issues relevant to the research	1

Table 4.2: Breakdown of interview participants

Due to public health restrictions related to the COVID-19 pandemic at the time, eleven of the thirteen interviews were held via a secure Zoom link, as per the requirements of DCU regarding virtual interviews. Two interviews were held in person, at the request of the participants concerned. Ten interviews were conducted in June 2021, with one in July 2021 and two in August 2021. Interviews ranged in length from 54 minutes to 1 hour and 28 minutes.

²⁵⁵ Clive Roland Boddy, 'Sample Size for Qualitative Research', *Qualitative Market Research: An International Journal*, 19.4 (2016), 426–32 (p. 429). Data saturation is described by Boddy as 'the point at which no new information or themes are observed in the data from the completion of additional interviews' (p. 427).

4.2.2 Reflexive Thematic Analysis

Thematic Analysis (TA) is described by Braun and Clarke as ‘a method for identifying, analysing and reporting patterns (themes) within data’.²⁵⁶ It is a flexible and adaptable analytic method, which can be underpinned by a range of ontological and epistemological perspectives. As such, TA can be conducted from a realist or relativist standpoint, and can accommodate positivist or contextualist views.

Braun and Clarke emphasise the value of a particular form of TA, which they call Reflexive Thematic Analysis (RTA), in which the researcher reflects critically on his or her own role. They refer to the importance of recognising a ‘subjective, situated, aware and questioning researcher’²⁵⁷ and they note that researcher subjectivity is not a problem to be overcome but rather a factor to be recognised and treated as an integral feature of the research. Amongst their core assumptions about RTA are that analysis and interpretation of data cannot be objective, that themes cannot passively emerge from the data but must be actively produced by the researcher, and that the researcher must strive to recognise and understand their own perspectives, i.e. they must adopt a reflexive and questioning approach.

Themes are thus identified from the data, from the manner of the interviewer’s interaction with the interview participants and from the established research procedures. The values and perspectives of the participants are viewed through the lived experiences of the participants themselves but also through the perspectives and lived experiences of the researcher, who in this case has been a recordkeeping practitioner for over thirty-five years and who has formed views and opinions based on his own observations, interactions and experiences. These have been supplemented by the researcher’s more recent studies in the field of ethics and his role as a tutor and lecturer, which has exposed him to developing and emerging recordkeeping theories.

In terms of a process designed to apply RTA, Braun and Clarke offer a useful six-step guide which has been employed for this research:

²⁵⁶ Virginia Braun and Victoria Clarke, ‘Using thematic analysis in psychology’, *Qualitative Research in Psychology*, 3.2 (2006), 77–101 (p. 79).

²⁵⁷ Virginia Braun and Victoria Clarke, *Thematic Analysis: A Practical Guide*, (London: SAGE Publications, 2022), p. 8.

- i. Data familiarisation
- ii. Systematic data coding
- iii. Generating initial themes from coded and collated data
- iv. Developing and reviewing themes
- v. Refining, defining and naming themes
- vi. Writing the report (analysis and write up).

These phases are not intended to be followed rigidly, but rather represent a helpful guide for data analysis and reporting. As intended, the phases have been treated as fluid and flexible, with ongoing revision and re-assessment as the process evolved.

RTA is appropriate for this research because it facilitates an assessment of the interview data, informed by the issues identified in the literature review in Chapter 3, and permits flexibility in interpreting and understanding how the relevant themes are viewed and understood from the various perspectives of the interview participants and the researcher.

RTA encourages the researcher to tell a story and to reflect on the interview experience in a meaningful and engaged manner. Braun and Clarke encourage writing in the first person, reflecting the central role of the researcher as a participant in the research, and documenting the evolving journey which the researcher embarked on in conducting, analysing and writing up the interviews. The following section of this chapter is, therefore, written in the first person and represents a personal reflection on the interview process and the assessment of the data.

4.2.3 Familiarisation, Coding and Developing Themes

Data familiarisation was achieved initially through transcribing each of the interview recordings. I undertook this task manually rather than via transcription software, as this was likely to result in more accurate transcripts. It also allowed for a greater degree of familiarisation through immersion in the data. Following initial transcription, I checked each transcript against the original recording in order to fill gaps, correct errors and to satisfy myself that I had an accurate transcript of each interview.

Interviewees were offered an opportunity to check the accuracy of their transcript, correct any misunderstandings or clarify any of their comments if they felt that their true intent

had not been captured. Of the thirteen interviewees, three did not respond to the offer to view their transcript, six stated that they did not wish to view their transcript and four requested a copy. Of these four, one person requested a minor correction to the transcript, and one other noted a minor error which they themselves had made in responding to a question.

After this process was concluded, I read and re-read each transcript, and took initial informal notes with a view to identifying potential codes, themes and areas of interest. I then moved on to more formal coding, equivalent to phase 2 (systematic data coding) of Braun and Clarke's suggested approach. To assist with the coding process, I imported the interview transcripts into NVivo, a qualitative data assessment software package.²⁵⁸ While convenient in terms of storing and collating codes, the software does not in any way replace the direct personal involvement and interpretation of the researcher in developing codes and identifying themes, and does not remove the need for a deep immersion in the data.

For the initial data coding, I undertook a detailed reading of each transcript and allocated individual extracts to a series of initial codes, which I generated on the basis of the transcripts themselves, informed by my own understanding and experiences of the matters referenced by the interviewees. At the end of this phase, I had generated 65 individual codes, which I further assessed during Phase 3 (generating initial themes from coded and collated data). Guest et al. describe codes as units of meaning that are 'observed (noticed) in the data by a reader of the text'.²⁵⁹ Most writers, however, view the identification of codes as a more active pursuit in which themes do not simply emerge from the data, but are actively sought out and developed through the endeavours of the researcher.²⁶⁰ According to Braun and Clarke, themes 'capture something important about the data in relation to the research question, and represent some level of patterned response or meaning'.²⁶¹

²⁵⁸ See <<https://lumivero.com/products/nvivo/>> [accessed 17 May 2024].

²⁵⁹ Greg Guest, Kathleen M. MacQueen and Emily E. Namey, *Applied Thematic Analysis* (London: SAGE Publications, 2012), p. 50.

²⁶⁰ For example, see Pat Bazeley, 'Analysing Qualitative Data: More than Identifying Themes', *Malaysian Journal of Qualitative Research*, 2.2 (2009), 6-22.

²⁶¹ Braun and Clarke, 2006, p. 82.

During this phase, I felt that my experience as an archivist with a direct involvement in and awareness of the matters discussed by the interviewees facilitated making linkages between various data extracts, and in identifying patterns which I could develop as themes. By assessing the codes I had developed in Phase 2, I devised ten themes, and gave each of them a brief description with a view to providing a coherent overview of what each theme represented.

In line with the reflexive nature of the process, I further assessed and re-considered these themes during Phase 4 (developing and reviewing themes) of the process. Mind maps, generated within NVivo, helped in providing a visual representation of the themes and how they related to and interacted with each other. In undertaking this further assessment, I concluded that, rather than themes, what I had developed was closer to a set of topics, i.e. a straightforward grouping of coded extracts according to the topics being discussed, summarising responses and comments in relation to those topics. Braun and Clarke are clear that themes should be more like stories which are told about the data, and should be seen as ‘patterns of shared meaning, united by a central concept or idea.’²⁶²

Phase 4 thus resulted in a comprehensive re-evaluation, including re-reading of the interview transcripts and re-assessment of the principal themes. The result was three broad themes, rather than ten, each of which tells a story about the interviews and is broken into a number of related sub-themes. In addition to telling three separate stories, each of the themes are linked to each other to provide an overall narrative which relates back to the research question. In Phase 5 (refining, defining and naming themes), I further refined these themes, assigned them names which reflected the overall story which each of them tells, and expanded on the preliminary definition of each theme which I had drafted in the previous phase, before proceeding to the writing and analysis phase (Phase 6).

Throughout the process, I documented my analysis in a series of memos which reflected the changes and re-assessments I undertook as I developed codes and identified themes. I created mind maps at various stages in order to provide a visual representation of the

²⁶² Virginia Braun and Victoria Clarke, ‘One Size Fits All? What Counts as Quality Practice in (Reflexive) Thematic Analysis?’, *Qualitative Research in Psychology*, 18.3 (2021), 328–52 (p.341).

various iterations of the hierarchy of themes and sub-themes.²⁶³ The memos and mind maps helped to demonstrate how my thoughts evolved throughout the process as I interacted with the data, and helped to ensure that the research process could be clearly demonstrated. As the analysis progressed, I viewed and interpreted the interview data through the prism of my own perspective and understanding as a recordkeeping practitioner with accumulated knowledge and experience of working within a public sector recordkeeping environment. The process of coding, developing themes, amalgamating, refining and re-arranging themes and providing names and descriptions was akin to the archivist's work in sorting, arranging, describing and cataloguing a collection of loose papers and manuscripts.

All of this was consistent with the reflexive nature of RTA as defined by Braun and Clarke, who state that this methodology is:

*An interpretative activity undertaken by a researcher who is situated in various ways, and who reads data through the lenses of their particular social, cultural, historical, disciplinary, political and ideological positionings. They edit and evoke participant 'voices' but ultimately tell *their* story about the data.*²⁶⁴

My overall perspective in this research is one of limited realism, and my analysis of the interviews was undertaken in this context, influenced by 35 years of experience as a recordkeeping practitioner and by my familiarity with contemporary recordkeeping theory. In writing up the analysis which follows, I have adopted Braun and Clarke's advice to use meaningful and evocative names for themes and sub-themes. The aim is to use the themes to tell a story about the data in a manner reflecting my own perspectives and interpretations of that data. As part of this process, the names of interviewees have been pseudonymised using gender-neutral names. While pseudonymisation is necessary to protect confidentiality, the use of personal names rather than codes or numbers gives the stories a more personal feel and makes for easier reading and a more free-flowing narrative. In addition, the use of gender-neutral pseudonyms affords an extra level of

²⁶³ Memos and mind maps were created and stored within NVivo.

²⁶⁴ Braun and Clarke, 2021, p. 339.

confidentiality. The thirteen participants referred to in the following sections are listed in Table 4.3.

<i>Participant Pseudonym</i>	<i>Participant Description</i>
Alex	An experienced local authority archivist and records manager
Bernie	An experienced archivist and records manager who has worked in the public sector and has been a member of the NAAC
Chris	An experienced public sector archivist
Frankie	An experienced public sector archivist and records manager
Ger	An experienced archivist who has worked in the NAI
Jackie	An experienced local authority archivist and records manager
Leslie	An experienced archivist who has worked in the NAI
Nicky	An experienced public sector archivist who has been a member of the NAAC
Pat	An experienced archivist who has been a member of the NAAC
Phil	A researcher and historian, experienced in dealing with community groups
Robin	A researcher and historian, experienced user of the NAI and other public archive services
Terry	A civil servant
Val	A representative of an NGO, advocate for accountability and related issues

Table 4.3: List of pseudonyms and brief description of participant background

4.3 Themes and Findings

The remaining sections of this chapter report and analyse the interviews under three principal themes, which were identified and developed as part of the processes outlined above. Each theme has a number of sub-elements, but each is consistent in terms of the story it is telling and how it contributes to the overall research.

Firstly, the theme ‘The (Restricted) View from Without’ relates to the widespread lack of understanding and appreciation outside the recordkeeping profession regarding the role, value and importance of archives and records in terms of the citizen-government relationship. It looks at some of the consequences of this as identified by interviewees, including shortcomings in or lack of implementation of existing legislation and regulations, lack of resources, gaps in recordkeeping, and associated problems with regard to accountability, human rights and social justice.

The second theme, ‘The (Conflicted) View from Within’ addresses the perceptions and experiences of the recordkeeping profession itself in relation to the matters under consideration. It considers the experiences of archivists within the public sector regarding existing work practices and examines their views regarding the role of archivists in the context of accountability, human rights and social justice. This encompasses matters identified in the literature review relating to the traditional neutral role of the archivist as opposed to more activist interpretations, and how this impacts on relations with community archives, minority groups and other stakeholders.

Finally, the theme ‘The (Limited) View of the Future’ assesses what solutions or remedies have been proposed or considered by interviewees in order to address the matters identified as being of concern. This includes potential changes to legislation, better implementation of existing regulations, and potential changes in how archivists view and interpret their own role within society.

The interviews have been carefully analysed and coded, as detailed in Section 4.2 above. The three principal themes reflect the dominant views and experiences of the participants as they relate to the research questions covered by this thesis. Some discussion of wider archival topics inevitably arose during the course of the interviews, and these at times reflected a more positive and encouraging set of experiences than was evident in relation to the specific issues of accountability, human rights and social justice. The following presentation of each theme represents the author’s analysis of the interviews as they relate to these three specific areas under discussion.

4.3.1 ‘The (Restricted) View from Without’

4.3.1.1 Theme Introduction

This theme reflects comments which were common to almost all interviewees, regarding the lack of awareness, understanding and appreciation of records and archives amongst those outside the recordkeeping profession, and the consequences thereof. The general lack of awareness includes a tendency by those outside the recordkeeping profession to view records and archives as mildly interesting heritage items, rather than essential components of accountability and the citizen-government relationship. The lack of public appreciation leads to a lack of political will to address shortcomings, resulting in inadequate legislation, poor implementation, and major gaps in accountability. This is

also reflected in comments relating to the tendency towards short-term reactions to high-profile controversies, rather than addressing issues in a consistent and pro-active manner. In essence, this theme relates to the poor visibility and lack of understanding regarding records and archives which exists outside the recordkeeping profession, and the consequences of this, in particular the lack of public sector accountability.

4.3.1.2 *Big House Syndrome*

The lack of value attached to records and archives may be attributed to the dominance of the ‘heritage’ or ‘curiosity’ element of recordkeeping, whereby archives are viewed as sources of quirky or idiosyncratic entertainment rather than as tools of accountability which are central to the citizen-government relationship. More than one interviewee identified what might be termed ‘Big House Syndrome’, in which things like 18th century recipes or family correspondence between members of the aristocracy have prime visibility in the public and media discourse about archives, but the core value and importance of recordkeeping in relation to individual rights is not given prominence. In the words of Frankie, an experienced public sector archivist:

Every third episode of *Nationwide* has someone discussing something historical or ancestry or something like that, but [...] for whatever reason, we have not been able to convert that kind of public awareness of what we do into an assumption that this is important [...] there’s no sense that there’s a duty of care or expectation that we have to do something about it to make it survive.²⁶⁵

While not downplaying the importance of such heritage-focused archives, or minimising the role they play in public engagement, the focus on such stories can obscure the more fundamental place which recordkeeping has in terms of accountability and individual rights. This carries through into official perceptions of the role and purpose of archives, and their place within public administration. Bernie described how politicians have traditionally viewed the NAI:

²⁶⁵ *Nationwide* is a popular early-evening television programme broadcast by RTÉ (the Irish national broadcaster), described as bringing ‘an eclectic round-up of news, views and events from around the country.’ See <<https://www.rte.ie/tv/programmes/nationwide/>> [accessed 17 May 2024].

It's their misunderstanding of what it is, because it's not a cultural institution, it is something that's there to preserve the records of the State. It has an element of culture and an element of heritage and all that but it's not a heritage institution or cultural institution per se. So I think it's the lack of understanding of that that has pushed it aside.

As will be reflected in discussion of later themes, the role of the recordkeeping profession in this is important. The annual release of archives under the NA Act generates significant media interest, but much of the coverage has a focus on the curiosity value of the information released, rather than more substantive issues. As an example, the media coverage in December 2021, when many records relating to the peace process of the 1990s and the negotiation of the Good Friday Agreement were made available, highlighted complaints about the pâté served at a dinner in Dublin Castle.²⁶⁶ The NAI website itself places a heavy emphasis on such curiosity value:

The records cover a large number of topics mainly relating to the Northern Ireland peace process and the ground-breaking Good Friday Agreement signed on 10 April 1998. However the releases also cover the more quirky or bizarre aspects of Irish political and social life such as catering catastrophes at an Irish government-hosted EU summit and the cost of flying an elephant from Tanzania to its new home in Dublin Zoo!²⁶⁷

A focus on the quirky or curiosity value of archives may generate items of short-term interest at a time of limited hard news,²⁶⁸ but is unlikely to generate the kind of interest, awareness or political commitment that will lead to increased funding and adequate legislative provisions.

4.3.1.3 Short-Termism: Reacting to the Latest Scandal

Participants noted that when politicians do express an interest or appear motivated to act, it tends to be in response to a specific controversy or set of circumstances, rather than on

²⁶⁶ See <<https://www.rte.ie/news/2021/1228/1268007-state-papers-12-things/>> [accessed 17 May 2024].

²⁶⁷ See <<https://www.nationalarchives.ie/article/annual-release-of-state-records-2022/>> [accessed 17 May 2024].

²⁶⁸ Media coverage of the annual release of archives is concentrated in the days between Christmas and New Year, with newly-released records open to the public from the beginning of January.

the basis of a fundamental recognition or appreciation of the importance of good recordkeeping. Interviews for this research were conducted in mid-2021, in the months following the publication of the Report of the Mother and Baby Homes Commission of Investigation, and almost every participant referenced that report as indicative of the value of recordkeeping with regard to accountability, human rights and social justice. Such short-term commitments are soon forgotten, however, as the political system moves on to the next news cycle. According to Frankie:

it only is responded to with importance when there is a crisis and you suddenly see the demand for accountability [...] I think you get spikes in this, but that doesn't seem to connect in anyone's head for the long-term sustainability or institutional provisions [...] it's regarded as these failures are one-off instead of systemic.

While it is natural that topical matters of national controversy are fresh in the mind, there are many, many more instances of the serious consequences of poor record-keeping. Apart from the Mother and Baby Homes Commission, there are several previous high-profile commissions and tribunals which have highlighted recordkeeping shortcomings but beyond that, there are many instances of how day-to-day recordkeeping failures impact on the lives and rights of citizens, without the need to flag up the major 'big story' controversies which arise periodically. The interviews suggest that recordkeepers themselves are also prone to 'big story' approaches, using them as visible case studies rather than explaining the more systemic, long-term role of recordkeeping in the citizen-government relationship. Given such a short-term focus, it will be difficult for those outside the profession to take a longer-term, more strategic view. The tendency will always be to move on to the next big story.

4.3.1.4 Limited Remit, Limited Accountability

All of this short-termism and lack of genuine awareness of the crucial role of recordkeeping in good governance is reflected in legislation and regulations that are either entirely lacking, severely deficient or, where they are seen as basically sound in themselves, ignored and neglected in terms of implementation.²⁶⁹

²⁶⁹ The lack of compliance is documented in successive Annual Reports of the Director of the NAI and of the NAAC, and is referenced throughout this thesis.

Some interviewees identified strengths in the NA Act of 1986, Ger viewing it as ‘a huge step forward in terms of citizens’ rights to see historical records’ and ‘a good workaday, serious Act’, while the civil servant interviewee, Terry, described it as ‘fairly robust’.

A more widespread view is that the legislation is seriously lacking both in content and in the manner of its implementation. Some identified the passage of time as diminishing the relevance of the 1986 Act, lamenting the fact that it assumes an analogue recordkeeping environment in a digital age. All participants viewed the limits on the number and range of public bodies that come within the remit of the Act as a serious liability, resulting in significant shortcomings in public service accountability. The fact that the Schedule to the Act, which lists the public bodies which come within its remit, had (at the time of the interviews) never been updated was, for Pat, ‘something that always perplexed me. I automatically just assumed ... someone in the Department would meet with someone in the National Archives every year and review the schedule’. A number of participants expressed concern that particular agencies are not included in the Schedule, Ger stating ‘the main one being the Health Service Executive, which deals with the lives of millions of our citizens all the time’.

Interestingly, the issue of private sector bodies that receive public funding was raised by a number of participants. Linking the issue once again to the Mother and Baby Homes controversy, there was a general concern that relevant records of religious orders and institutions are not in the public domain, while Bernie highlighted the lack of accountability for certain charities which are in receipt of public funds.

Regardless of the specifics of which bodies are or are not listed in the Schedule as it stands, it is an inescapable conclusion that the existing legislation, in terms of its reach, allows for major gaps in public sector accountability. As summarised by Nicky, an experienced public sector archivist who has also served on the NAAC, ‘whatever understanding of accountability we use, I think our current legislation is inadequate’.

4.3.1.5 A Limited Public Record

Accountability concerns are also relevant with regard to the National Archives Amendment Act of 2018. Ostensibly designed to increase access to records by releasing them into the public domain after 20 years rather than 30 years, this legislation is selective

in its remit and facilitates potential political involvement in the decision to release records. Terry, the civil servant, admitted that ‘the focus [of the legislation] really is around the Good Friday Agreement’, the intention being to release Irish government papers to balance the narrative presented by UK government papers which have already been released under that country’s 20-year rule.

But the focus on one particular area of government activity means that the records of other government functions, central to the day-to-day lives of citizens (e.g. health, education, housing, and so on) remain subject to a 30-year release clause which, in any case, is infrequently observed. According to Leslie, who has worked in the NAI, this means ‘you’re getting a very distorted public record of Ireland’, with records not related to Anglo-Irish matters effectively pushed ‘to the back of the bus or the bottom of the pile’. Other interviewees also had concerns, with Frankie describing the 2018 Amendment Act as ‘a very retrograde piece of legislation’ and Ger interpreting its provisions as ‘completely contrary to the spirit of what should be happening’.

The gaps in accountability resulting from the 2018 Amendment Act can be seen by reference to a selection of events which took place in Ireland during the 1990s and for which no records have been transferred to the NAI. Major public issues of the 1990s include the Hepatitis-C scandal of 1994, the handling of the Grace abuse case in the mid-1990s and the introduction of a tax amnesty in 1993.²⁷⁰ Records relating to these are undoubtedly of public interest, yet the application of the 2018 Amendment Act relates, at least for now, only to records with an Anglo-Irish dimension. The legislation allows for selective, rather than routine, release of 20-year-old records into the public domain. By allowing for political judgement and assessments regarding which records should be released, it could be said to have the potential to act as an impediment rather than as an aid to accountability.

4.3.1.6 Limited Enforcement

Regardless of the merits of the legislation itself, all interviewees, with the exception of the civil servant participant, identified lack of implementation as a major shortcoming

²⁷⁰ For brief overviews of each of these cases from a range of perspectives, see <<http://www.transfusionpositive.ie/history.html>>, <<https://www.thejournal.ie/grace-case/news/>> and <<https://www.irishtimes.com/business/the-revenue-the-politics-and-the-consequences-1.167272>> [all accessed 17 May 2024].

which results in major gaps in accountability. Implementation of the 1986 Act was described variously as ‘very poor’ by Alex and as ‘partial and selective’ and ‘very lacking’ by Leslie. Many participants noted that while the legislation does contain penalties for breaches, no penalties have ever been imposed, nor has any attempt been made to impose them. Some interviewees see this non-compliance in a wider context of non-enforcement of Irish legislation in general, a kind of cultural apathy or disrespect for authority, rather than anything specifically related to recordkeeping.

While non-compliance with the transfer of records to the NAI dominates discussion of the Act’s non-implementation, problems also arise at the beginning of the records life cycle, i.e. day-to-day recordkeeping practices within public bodies. The NA Act allows the Minister for PER to issue regulations and guidelines for the ‘proper management and preservation’²⁷¹ of records within government departments. No such regulations have ever been issued, however,²⁷² and the creation, use, storage and maintenance of records within government departments and public agencies remains subject to ad-hoc practices and personal preferences, with potentially major implications in terms of accountability and individual rights, including the potential failure (through neglect or carelessness or by design) to create records in the first place. As noted by Nicky, ‘if the records that hold people accountable haven’t been captured or planned to be captured or created in the first place, or have been chosen not to be created ... then the ability of those records to hold government accountable is kind of limited’.

Consequences of poor recordkeeping on a day-to-day basis range from inefficiencies in routine operations to long-term damage in terms of accountability and the citizen-government relationship. The disconnect between awareness and actual practice was highlighted by Val, an NGO representative who campaigns on issues of public accountability:

²⁷¹ NA Act, 1986, Section 19(3).

²⁷² The NAI website makes clear that ‘Statutory responsibility for records management in the civil service rests with the Department of Public Expenditure and Reform’ and that ‘in the absence of a standardised approach to records management across the civil service’ the NAI only issues guidance, as distinct from regulations or instructions. See <<https://www.nationalarchives.ie/services-to-government-and-courts/records-management-guidelines/>>[accessed 17 May 2024].

the role of good recordkeeping in effective public administration is self-evident, but it doesn't seem to be always so evident to the people who are responsible for it [...] I think we've seen in the past the cost of failing to maintain accurate and timely records of decisions that are made in government ... and that has been highlighted in more than one tribunal of inquiry now.

One danger of the unregulated records management environment in the Irish public sector is the unauthorised and unmonitored destruction of records, as noted by Jackie, an experienced local authority archivist who recounted the deliberate disposal – a 'shredding orgy' – of large volumes of planning application files in a local authority. This resulted in Jackie being pressured to destroy similar records on the basis that, if the other local authority did it, then Jackie's authority could too.

4.3.1.7 Limited Resources

Lack of public appreciation, lack of political will and the overall lack of urgency and implementation means that the NAI and other public archive services struggle to secure adequate levels of resources to properly perform their duties. Through all of the discussions by participants of lack of regulations and lack of compliance runs the common thread of resources. Successive annual reports of the Director and of the NAAC highlight shortcomings in terms of staffing but also in terms of adequate storage and of the skillset to deal with digital record formats.

All interview participants mentioned resources as an issue, although opinion was divided on whether it is as big a factor as commonly perceived. While numerous interviewees bemoaned the lack of money available to the NAI, others questioned whether more could be done within existing limits. Comments such as 'they need more resources, they need more money, more staff' (Robin, a researcher and historian) and 'give them way more resources, way more staff' (Bernie) were common, and all participants recognised the struggle to maintain services on limited resources. Nevertheless, there was some questioning as to whether lack of resources was a convenient excuse and something of a comfort blanket for the NAI and the wider recordkeeping community. One experienced archivist, Alex, stated 'I don't think it's lack of resources. Resources can be found when necessary' and 'lack of resources can be used as an excuse for anything'. More than one interviewee lamented the lack of progress made by the NAI during the economic boom

years of the Celtic Tiger, when resources and investment were secured by other public sector agencies.²⁷³

Regardless of the pros and cons of this view, it is notable that successive annual reports of the Director and of the NAAC lay out in stark terms the lack of funding, lack of staff, lack of storage accommodation, and lack of provision for digital archives which have had a direct negative impact on the ability of the NAI to fulfil its basic functions, and which reflects a lack of political commitment and overall lack of value attached to the safeguarding of the nation's archives.

4.3.1.8 Theme Summary: A Vicious Circle

The lack of public, political and official awareness and appreciation of the role of recordkeeping in the citizen-government relationship enables a vicious circle of neglect, inadequate legislation, poor visibility and under-resourcing, which in turn makes it virtually impossible to improve the profile of archives or drive home awareness of the central importance of recordkeeping to democratic accountability and the upholding of individual rights. Archivists find themselves repeating the same arguments over and over again, and have had limited success in moving the narrative away from viewing archives as charming relics of peripheral interest, and towards an understanding of the dangers posed to accountability, human rights and social justice if due attention is not paid to the creation and maintenance of accurate records and archives.

As has been noted, several participants were concerned at the role which recordkeepers themselves play in this. The next theme will look in detail at the profession's view of itself and its role, whether its existing outlook and work practices are adequate in the current environment and whether the profession has a consistent interpretation of its own purpose in an Irish context.

²⁷³ Specifically, Jackie recalled a commitment for a substantial investment for redevelopment of the storage facilities at the NAI premises many years previously, and a lack of success in following through on that commitment. Over the course of many years, various announcements were made regarding resources to provide adequate storage for the NAI. For an example of media reports related to this, see <<https://www.irishtimes.com/news/funding-of-new-building-for-national-archives-agreed-in-principle-1.325456>> [accessed 17 May 2024]. Work finally commenced on upgrading the storage facilities in May 2024, see <<https://www.gov.ie/en/press-release/a8760-works-commence-on-ambitious-re-development-of-national-archives/>> [accessed 7 June 2024].

4.3.2 ‘The (Conflicted) View from Within’

4.3.2.1 Theme Introduction

The recordkeeping profession’s own perceptions and practices are reflected in this theme, which relates to how archivists view their role regarding accountability, human rights and social justice and how they currently attempt to implement that role. These perceptions encompass views and interpretations of archival neutrality versus archival activism, and whether current practice reflects recent developments in theoretical approaches. This theme also considers potential conflicting demands which impact on how archivists go about their tasks, along with work practices and perceptions within the NAI, the nature of the NAI relationship with the NAAC and DTCAGSM, and other factors. Overall, this theme considers experiences within the recordkeeping profession itself, its perceptions of its own role, and the degree to which such perceptions are reflected in practice.

4.3.2.2 A Fatalistic Narrative

In addressing their experience of how the NAI implements its role and conducts its business in the face of public, political and official apathy, Frankie in particular was doubtful as to whether the issue of resources was really core to the problems faced:

There is a narrative, certainly inside the National Archives, that they can’t do anything because they don’t have enough resources and this tends, I think, to lead to a bit of fatalism when they engage with anyone else, that was my experience of dealing with them [...] it seems their argument is always, you know, we need more resources to do what we’re doing, or we need more resources to do more, rather than we are doing more and please give us the resources because we’re showing some successes. So I think there is a problem there, institutionally and definitely in terms of the narrative the National Archives presents itself with in terms of compliance.

The suggestion of fatalism was also raised by other participants, who had what they considered to be first-hand experience of such an outlook. Such has been the extent of non-compliance and non-enforcement that some interviewees felt that the NAI itself had become enmeshed in a kind of self-defeating approach, resigned to a lowly status and accepting non-compliance by public bodies that come within its remit. Leslie observed that within the NAI ‘you’re kind of, not pressurised but just convinced that it’s pointless

to go down that avenue of trying to challenge departments who, you know, are sometimes just taking the piss', and also noted that the NAI 'would naturally be submissive and would not be looking to be confrontational'.

Such frustrations were reflected in the experiences of some members of the NAAC. Pat described membership of the NAAC as 'a very demoralising experience', going on to state:

It seemed impossible to get things done. The senior civil servants weren't interested, the minister wasn't interested, and at one stage the senior officers in the National Archives weren't very interested either, they seemed quite happy with whatever status quo prevailed.

The perception amongst several participants was that a certain element of negativity and fatalism had become part of the working culture in the NAI over a period of years. Such resignation might be construed as stoicism in the face of unremitting apathy from those in power, but it might also be seen as symptomatic of a timid and unambitious profession, which has been traditionally reluctant or ill-equipped to take a persuasive approach in making its case.

Alex, an experienced local authority archivist, laid much of the blame for the lack of public and political engagement at the feet of archivists themselves, noting 'we're not a very evangelical profession, we're not very good at selling our wares'. This point was expressed in a number of different ways by almost all other participants, ranging from frustration that archives services had not benefitted more when significant public funding was available to other institutions during the 'Celtic Tiger' economic boom, to criticism of the lack of exhibition space at the NAI, described by Pat as a 'glaring omission' which resulted in a lack of opportunities to engage with the public.

Several participants highlighted a need to engage with those outside the profession in order to increase public awareness and appreciation, and some noted the opportunities presented by social media, seeing hope in the fact that younger members of the profession are exploring and utilising such means. The dominant belief, however, is that archivists themselves have failed to raise awareness and to provide education around the role of recordkeeping with regard to the citizen-government relationship.

4.3.2.3 Archival Accountability

One way of achieving buy-in, according to Frankie, would be for archivists themselves to be more open and accountable, and to provide a rationale for their decisions in a manner that educates the public about the core relevance of records:

I think we as a profession have decided that we know best on certain things [...] there should be more transparency there. That probably is something we could do right now but the profession isn't particularly interested in doing ... I think we could get better engagement if we were actually more engaging about [...] how we're making our decisions, what we're collecting and why we're prioritising certain things over another.

While the release of records through the NAI is, in theory, a means of facilitating accountability on the part of public bodies, the accountability of the NAI itself appears limited. While the Director is required by the legislation to submit annual reports to the relevant Minister, there is little else in the legislation by way of holding the organisation accountable for its conduct. What appraisal criteria are used, for example, when assessing applications to dispose of records, or on what basis does the NAI decide not to pursue those public bodies which fail to live up to their legal obligations? Limited resources and legislative shortcomings are likely to be major factors, although annual reports do not clearly set out what specific achievements or improvements would flow from additional resources or revised legislation.

4.3.2.4 A Pleasant Relationship

The NAAC, as its name suggests, has a purely advisory role and the government seems to find it easy to ignore whatever advice or recommendations are made. As noted by one Council member, Bernie: 'I think we're on our third minister, and we only got to meet one of them I think [...] we've written to the minister and we've communicated quite a few times with the minister and [...] I'm not sure we always got a reply actually.'

While there is some appetite for a body with some oversight and accountability functions, the more widespread view is that the NAAC and the NAI should work hand-in-hand, with the NAAC having a supportive role rather than an oversight role. Some interview participants saw merit in a 'beefed-up' council with more than just advisory powers but

just as many, including members of the NAAC itself, opposed such a measure and saw benefits in a friendly and supportive relationship. According to Bernie, ‘it’s a pleasant relationship [...] and we would, from what I can gather from the other members, we would like to do more to help the National Archives’. Another member, Nicky, remarked that ‘it’s important that our role is a supportive one [...] advocating for the National Archives is what I think the NAAC should be doing’.

However, if the NAAC is advocating for and supporting the NAI, who is overseeing it and holding it to account for the manner in which it operates? The collaborative relationship between the NAI, the NAAC and DTCAGSM can be gleaned from the comments of Terry, a civil servant, who described how NAAC annual reports are prepared for the minister in order to fulfil the reporting obligation:

Well, they’re an independent advisory body [...] they would advise the Minister so they would do a report every year and they would send it to us, well sorry, they would send it to the Minister but we prepare it for the Minister, we prepare it, we would go through it, see if there’s anything of note.

Although no participants suggested that NAAC reports are comprehensively re-written by the Department, this description suggests that ‘independent’ may not be the most suitable descriptor for the process. An oversight body with more independence, and less of a symbiotic relationship with the NAI and the Department, might have more success in drawing attention to the shortcomings in existing recordkeeping legislation and practice.

4.3.2.5 Engaging with the Outside World

In favouring a co-operative and supportive relationship between the NAI and the NAAC, with no supervisory or oversight element involved, interview participants appear to lack enthusiasm for meaningful accountability to be applied to the NAI or the profession as a whole. This may perhaps be reflective of a degree of insularity which persists within the profession. When asked about their experiences of human rights and social justice issues in a working environment, most of the participants recounted a limited or non-existent engagement with such issues, despite having worked in public sector recordkeeping environments for many years. Comments included ‘to be quite honest with you, it’s not

something I've thought that much about' (Alex), 'I haven't really had any experience in that' (Bernie) and 'it's not my forte professionally, let's say' (Chris).

Most participants saw social justice as a vague or poorly defined concept, and most also viewed human rights and social justice as a single concept, with Chris, for example, commenting 'I would see them as one and the same, you know [...] I think everything I have said about human rights you would apply to social justice'. Those who had given serious consideration to the role of recordkeeping with regard to human rights and social justice were critical of the lack of awareness and engagement from the profession as a whole. According to Frankie:

We still have that perception of ourselves as people in a darkened vault guarding stuff and people come to us, and I don't think that's realistic if we have any ambitions to really deal with human rights and social justice in a proactive, in a realistic and useful way for society right now, rather than validating previous conclusions. We need to talk to the actual stakeholders, which we say a lot but we don't do.

The reference to 'validating previous conclusions' refers to Frankie's strongly-expressed belief that the recordkeeping profession follows rather than leads on issues of human rights and social justice. Frankie feels that, despite the lip service paid to marginalised and under-represented groups, archivists only begin actively acquiring and publicising such collections after the groups in question have secured an element of recognition and acceptance, not while the struggle for justice and recognition is ongoing:

I think the best archives have managed to do in social justice is positive reinforcement, not contributing to it in any sense [...] I think this trails back to the problem in the public sector in Ireland, which represents the overwhelming majority [of archivists], that they don't want to touch political material until it's over and then they pick the winning side.

Chris hinted at something similar, with reference to resistance from their employing institution to fully supporting an exhibition of LGBTQI records and artefacts: 'the thing

about it is, only for they were carried away on an LGBTQI rainbow wave and couldn't row back, they had to go with it because it gathered such momentum'.

This apparent lack of engagement is despite a widespread recognition amongst archivists themselves that archives have a direct relevance to contemporary issues which impact directly on citizens and on how governments develop policies in response to issues of human rights and social justice. A number of respondents made the link to the issue of housing, how archives document the manner in which it was addressed in the past, and how this could benefit contemporary policy-makers, 'even to the extent of the architects coming to have a look at the drawings of old estates that we have [in a local authority archive]'. Likewise, and in common with a number of participants, Ger was exercised about the archives of hospitals, in particular those which dealt with mental health services, and how they could inform and educate current-day policies towards mental health:

... it goes to government's stated policy, in multiple reports and investigations [...] that we should try to lessen the stigma of mental illness [...] To me, this is one of the ways of doing that ... saying why are these records locked up? Why are we still ashamed? Why are we putting a burden of shame on people who landed up in these institutions, they're there for multiple different reasons ... how were they treated, what was society's attitude towards mental illness at the time? All of that is there for us to look at and from that we can learn and say [...] this is how compassion arises, from contemplating the past.

If this awareness is present and if archivists are making this case in research interviews, why the limited level of visible engagement on such issues and the absence of human rights and social justice in the discussions around legislation, regulations and proper funding of archival institutions?

4.3.2.6 External Pressures

Part of the answer lies in concerns about the limits on political activity placed on public servants, and part lies in concerns about an unstated but clearly real fear of loss of funding and resources. Several participants referred to the ban on political activity on the part of public servants, interpreting this as a prohibition on expressing views or opinions on matters of controversy or public interest. Referring to referendums on same-sex marriage

or access to abortion, Frankie stated that archivists ‘felt they had to stay out of potential advocacy, maybe people had opinions personally but they certainly wouldn’t have used their collections in a way to further explore the debate by looking at women’s rights ... or LGBT rights over the time period of their collections’.

Separately from the ban on political activity, several participants expressed a concern about the impact on sources of funding and on employer perceptions, Leslie commenting that ‘archivists and information professionals would like to be active but they can’t be active, perhaps, in their own job at certain times’. Non-archivists also identified this as an issue, with Phil, a researcher, describing the problem facing archivists as follows:

if you are applying for, you know, grants, funding to have a particular programme, and your programme runs against what the government is advocating or the narrative the government wants to spin, then you’re going to find it very difficult to get funding for your particular programme.

The fear of political or financial backlash feeds into the perceived need to present an account or a narrative that is seen as balanced, rather than one which may expose injustice or past failings. Phil was also concerned about a perceived need to be seen to be impartial, regardless of the rights and wrongs of the particular circumstance:

This desperate need to allow both sides to be heard, you know? [...] that is actually one of the reasons why grassroots organisations are reticent to place documents in the trust of these sort of well-known, well-funded institutions because they’re going to be presented in this very toothless sort of way [...] there are a lot more nuanced ways that materials can be presented, that I’m not sure State-run archival repositories are *allowed* to do.

The potential of crossing swords with a disapproving employer or funder must act as a disincentive, especially given that, according to Leslie, ‘the type of people we get into archives and records management could be argued to be kind of risk-averse and they’re not, kind of, confrontational’.

4.3.2.7 Clinging to Traditions

It may also tie in with an ongoing attachment to more traditional perceptions of the archivist's overall role, to act as guardian and keeper of inherited records. The traditional Jenkinsonian model of an archivist has been supplanted in the professional literature with more activist interpretations of how archivists should perform their duties. Interview participants in this research are certainly aware of such a shift but have an inconsistent and somewhat contradictory view of it. There is a stated commitment to the important role of recordkeeping in holding governments to account, ensuring human rights and social justice, and exposing wrongdoing when it occurs. But there is also a lingering attachment to the concept of neutrality and objectivity, indicating that theory and ideals have not fully translated into practice.

More recently-qualified archivists tend to express a clearer commitment to an activist role, although this is not exclusively the case. More pertinent may be a pattern which suggests that more direct exposure to certain issues in one's personal life has a bearing on views of professional duties and roles. Those with personal or family connections to issues of marginalisation and exclusion are more committed to advancing the role of archives in addressing human rights and social justice shortcomings. Participants who referenced family or other personal connections to marginalised communities (such as LGBTQI, disability, or experience of residential institutions) were amongst those with a clearer commitment to an activist role for recordkeepers. Furthermore, those with such a commitment do not feel it is widely shared within the recordkeeping community, noting an apparent ongoing attachment by their fellow archivists to a passive facilitator role.

One archivist, Chris, noted that their colleagues 'see their job as head down, catalogue a collection, make it available, be as neutral as possible, and I'm not saying that's wrong or that's bad, I think it definitely comes down to, I think, the individual'. Ger, meanwhile, was vocal in their support for an activist role and also in the claim that this view is not shared widely in the profession:

it should be part of our understanding of ourselves as archivists that we're on the side of those people [marginalised groups]. I know that's a big claim to make and not every archivist agrees with it, most don't actually [...] I think archivists should be more activist than they are in relation to forgotten cohorts of our society.

The perception that many in the recordkeeping profession do not share these views seems well-placed. Alex, for example, stated a commitment to the more traditional view of the role by stating ‘the records are the records and I would say let others speak ... let others interpret the records, let the archivist preserve, protect and make accessible’. Pat expressed a similar view, noting a need for trust and for the archivist to be seen as a welcoming home for all shades of opinion:

I think the archivist and the archives have to be seen by the community as safe places and as impartial places, that the archivist does not, in public at least, have an opinion, he or she is simply a facilitator. So actually, we go back to first principles, that the first responsibility is to preserve and the second responsibility is to make available [...] if the archivist gets in a situation where he or she is *seen* to be partial, it gets very difficult, it gets very difficult indeed.

It should be emphasised that this does not indicate any intent to ignore or discriminate against any particular viewpoint. Indeed, all participants who supported a ‘neutral facilitator’ role stipulated that they encouraged the documentation of all available points of view. They did not, however, see an argument for actively addressing gaps in the archive. The approach is more ‘we take what we are given.’

The question for Irish archivists is whether such an approach plays into what Ger referred to as ‘the mechanisation of archives, when all that matters is things are in this order, they’re described in this way, sorry that’s it, their meaning doesn’t matter’. In contrast, should the principles of justice form a core part of everyone’s professional purpose, taking on a role as an activist archivist, in a manner that, as described by Phil, ‘essentially means that you enact the principles of social justice in your work, you know, in your profession’?

The conflicting views carry over into perceptions of how professional archivists should interact with community groups who have taken steps to preserve their own identities and memories through the creation of their own archive services, usually referred to as community archives.

4.3.2.8 *Community Archives – with Limits*

Andrew Flinn describes a community as ‘a group who define themselves on the basis of locality, culture, faith, background, or other shared identity or interest’ and community archives as ‘the grassroots activities of documenting, recording and exploring community heritage in which community participation, control and ownership of the project is essential’.²⁷⁴

The interviews for this research demonstrated widespread recognition of the potential value of community archive initiatives and the role they play in allowing marginalised groups define their own identity, document their own history and tell their own story. There is also a recognition that such initiatives have often been dismissed by professional archivists as amateurish or lacking in authenticity.

Leslie stated ‘I’d have ... friends, colleagues of mine who are professional archivists and records managers who take offence [at] people without qualification collecting and managing and doing kind of community initiatives like that’. Speaking of one particular community archiving effort, another archivist, Chris, noted ‘on the whole it isn’t an archive, as in it’s full of digital copies of archives. And the archives are not kind of accumulated in any way, they’re all over the place’.

Several participants noted a perspective which is also referenced frequently in the literature, namely that community groups may not trust and may not want involvement from traditional archival institutions, especially state-funded ones. In the words of Leslie:

I think lack of trust in national cultural institutions is one of the biggest issues and as you scratch the surface of what national cultural institutions are doing, it’s always an incredibly selective, subjective, limited [...] preservation of records and memory and I think the public are becoming more aware of that.

While there is an increasing recognition of the value and importance of community archives (in the words of Robin, a historian and researcher, ‘if they don’t do it, maybe nobody else will’), it is tempered by a concern that community groups may be transitory

²⁷⁴ Andrew Flinn, ‘Community Histories, Community Archives: Some Opportunities and Challenges’, *Journal of the Society of Archivists*, 28.2 (2007), 151–76 (p. 153).

in nature and that their records may eventually be lost if they do not end up in recognised institutions. Even those participants most supportive of community archives expressed a concern in this regard. According to Phil, ‘these community archives have a shelf-life of, you know, fifty, sixty, seventy years, and they lose the one or two passionate people that were really involved in keeping it all together, they can fall into disarray’.

The solution to this is widely seen as a collaborative effort between traditional archival services and community groups, a joint effort to match the autonomy of the community with the professional expertise of the archivist to ensure long-term preservation and access in a manner which recognises the agency of the community. Nicky said:

If you’re going to do it in a way which preserves it in the long term, in particular makes it accessible [...] it has to be ... catalogued, it has to be discoverable, it has to be all these things, and these things are things that are rightly seen as belonging to a professional skillset.

The archival profession, sometimes reluctantly, is willing to acknowledge the value and role of community archive initiatives but that recognition is tempered by ongoing concern about lack of standards and lack of sustainability. Those who are willing to recognise the autonomy and agency of community groups still express the strong opinion that traditional archives have a role to play in providing advice or assistance. While support and encouragement may be present, it has its limits. In the words of one experienced archivist, Alex, ‘by all means have your community archives, by all means have your oral history project, by all means have other places where information is stored but not at the expense of properly constituted archival services’.

4.3.2.9 Theme Summary: A Slow Emergence from Isolation

The recordkeeping professionals who participated in this research demonstrated an awareness and appreciation of the changing perceptions of the profession’s role with regard to how it interacts with wider society. There is a recognition of the potential role which recordkeepers have with regard to the citizen–government relationship, although it is not always widely or strongly articulated. The stereotype of a timid profession is recognised within the profession itself as having some validity, and this reserve

demonstrates the challenges it faces in increasing public awareness and influencing the political will to address the shortcomings identified in existing legislation and practice.

The profession, although recognising the issues it faces, seems reluctant to address them head-on by fully embracing an activist role with regard to issues of human rights and social justice, and remains attracted by the traditionalist neutral approach to recordkeeping. Engagement with community archives is accepted as a reality rather than welcomed as something that will benefit the communities themselves and wider society. A traditionally stoic attitude has led, at least at times, to a fatalistic acceptance of neglect and a forbearance in the face of a low status within the public sector and the public mind at large. There also appears to be a reluctance to embrace accountability for the profession itself and for its institutions. As the next theme suggests, the reticence, risk aversion and stoicism mean that the solutions and remedies suggested are themselves limited, procedural and lacking in ambition.

4.3.3 ‘The (Limited) View of the Future’

4.3.3.1 Theme Introduction

This theme addresses potential remedies to the shortcomings in legislation and practice identified by interview participants. It considers the importance of the recordkeeping profession itself in terms of advocacy and engagement, and suggests that, while there is an awareness of how recordkeeping relates to issues of accountability, human rights and social justice, the proposed remedies are, for the most part, unambitious and procedural. They focus on amendments to the existing legislation but generally do not extend to a thorough examination and updating of the role of archivists themselves with regard to the matters identified in the literature and in the interviews. The cautious approach adopted by the civil servant participant suggests that archivists will need strong and persistent arguments in order to affect major changes in legislation and regulations, but that this must also be accompanied by a more enthusiastic engagement with shortcomings in recordkeeping culture and practice in order to develop a more person-centred approach to recordkeeping with a focus on rights and justice. This theme addresses the ‘theory into practice’ problem and how best to resolve it.

4.3.3.2 Expansion and Enforcement

A common suggestion from participants was the need to extend the remit of the NAI to cover a wider range of public bodies. As has been noted, the Schedule to the existing Act is very limited and had, at the time of the interviews, never been updated. Every interviewee urged a review of the Schedule, with some highlighting specific bodies or sectors which need to be included, most frequently semi-state bodies and the Health Service Executive. Certain participants identified a need for a more comprehensive approach which would see the Act extended to cover private agencies in receipt of state funds, including charities and religious institutions. The general approach was put most succinctly by Pat, who said ‘I think in broad terms, you need an Act which is more comprehensive, instead of depending on tacking bits of legislation onto other Acts, that you define the National Archives in the broadest possible sense, so that everything which is created by any functioning part of the State is protected’.

Extending the remit of the Act in such a way would undoubtedly facilitate greater accountability, in theory. But with reports from successive Directors and from the NAAC documenting such low levels of compliance with the existing legislation, it is clear that simply extending the remit would be insufficient, if adequate implementation measures were not also included in any revised Act. All interview participants urged a greater level of compliance with whatever legislation is in place, with Alex remarking ‘We can pass whatever the hell legislation we want but unless it is properly introduced and monitored, it’s just another paper exercise’.

Despite the awareness of existing levels of non-compliance, specific suggestions to ensure implementation of any new Act were sparse, apart from a frequently-expressed opinion that moving the NAI to the Department of the Taoiseach would result in greater visibility and influence.²⁷⁵ Nicky’s comments were typical in this regard:

I think it should be in a department which has huge authority, because I think [...] that goes back to the idea around enforcement, if you’re not being backed by the biggest people [...] says quite a lot about the government perception of the institution.

²⁷⁵ The NAI was under the auspices of the Department of the Taoiseach from 1986 until the establishment of a new Department of Arts, Heritage and the Gaeltacht in 1993.

4.3.3.3 *Advice and Oversight*

The role, purpose and status of the NAAC was a matter of divided opinions among interviewees. As noted previously, many participants, including members of the Council, see the NAAC as having a supportive role in relation to the NAI, rather than any sort of oversight or enforcement role. Some participants felt that, even in this context, the NAAC has been too reluctant to make its voice heard. While praising the commitment of its members and noting that the NAAC takes its role seriously, Ger felt that it is ‘perhaps a little quieter’ than it could be, although members of the NAAC point out that its powers and its ability to speak out are limited. There is some support for the idea of increased powers and a wider remit for a revised council, Bernie suggesting something with ‘the powers of a board of management’. Even participants with a clear preference for an oversight board were sceptical about its chances of being achieved. According to Pat, a Council with oversight powers ‘would be very helpful, but I doubt there’d be a taste for that, I mean the civil servants wouldn’t want that’.

In short, there are divided views within the profession regarding the role and powers of the NAAC, and a distinct lack of clear and substantial ideas about whether, and how, its role should be improved and strengthened. In the absence of an oversight role for the NAAC or some other authority, there were no suggestions or comments as to how accountability would be applied to the NAI itself, suggesting that archivists approach accountability in terms of holding others to account but give limited consideration as to how the profession itself should or could account for its actions and decisions.

Other suggestions for improved enforcement of archival legislation included a duty to document, suggested by Val, an NGO representative, as a measure which would ‘go a long way to ensuring that we have a full record of, or a more complete record of, decisions made’.²⁷⁶ A number of participants suggested that the audit process conducted by the Comptroller and Auditor General²⁷⁷ could be extended to include the quality of recordkeeping within public bodies and the level of compliance with the NA Act.

²⁷⁶ A legal ‘duty to document’ has been suggested as a means to increase accountability in government. See, for example, <<https://www.oic-ci.gc.ca/en/resources/news-releases/backgrounder-duty-document>> [accessed 17 May 2024].

²⁷⁷ See <<https://www.audit.gov.ie/en/>> [accessed 17 May 2024].

In the minds of many participants, any changes introduced must percolate down to the day-to-day work of public servants in the form of clear policies and guidelines with regard to records creation and management. This could be achieved by the Minister for PER exercising the powers available under the existing legislation, and could encompass records management guidelines on matters such as adequate storage, retrieval systems, management of emails and the implementation of formal retention and disposal policies.

Whether increasing the remit of the NAI, revising the role of the NAAC, developing measures for better enforcement or introducing more specific steps like audits and a duty to document, all of the above suggestions focus on what might be termed a procedural approach, with an emphasis on rules, regulations and enforcement. A small number of participants went further, identifying the need for a more comprehensive change in the perception of recordkeeping within the public sector.

4.3.3.4 Cultural Changes

As a researcher and user of archives, Robin commented that ‘there needs to be a greater appreciation among government departments of the need to deposit their records with the National Archives’, while Nicky, an archivist, took a wider view, seeing a need for a more wide-ranging revision of the legislation to incorporate modern archival concepts: ‘there has to be a records continuum model as the framework for any legislation, that encompasses current and past records and gives authority to the [National] Archives to make recommendations about how these new records are going to be captured’.²⁷⁸ These comments hint at a broader view of the changes that are required in Irish recordkeeping practice, changes which extend to culture and ethos rather than focusing on rules and legislation.

Although all interviewees in this research were, to a greater or lesser extent, aware of and supportive of the role of recordkeeping with regard to the citizen-government relationship, few addressed the need for cultural or attitudinal reform in a comprehensive manner when considering how to address the shortcomings they had identified. The focus

²⁷⁸ The records continuum model of recordkeeping is considered by its advocates to have several advantages over the more traditional records life-cycle model. The continuum model is seen as more suited to digital recordkeeping; it allows for multiple creators and users of records, and for records to be viewed as constantly changing and developing in terms of content and purpose. For a brief definition, see <<https://dictionary.archivists.org/entry/records-continuum.html>> [accessed 17 May 2024].

on legislative changes and ways to better enforce rules was to the neglect of potential changes or improvements to recordkeeping culture and practice and how to better match it to the developing theories of archival activism.

Some participants did make this connection, Leslie lamenting the ‘complete lack of a kind of human-centric approach to recordkeeping and archiving’. As an experienced researcher, Robin echoed this point:

You rarely get the true voice of the poor person or the marginalised person, so approaching issues of social justice are quite challenging [...] when, speaking broadly, the only perspective you have is a top-down one. So in Ireland there are very few instances of a bottom-up [perspective], a voice of the marginalised in society.

In the eyes of a number of participants, this requires an inclusive approach to recordkeeping, a kind of stakeholder approach with a view to accommodating previously-unheard voices. Again, the actual means of doing this are not clear, and the emphasis on legal or regulatory changes suggests that the profession, while aware that improvements need to be made, is focused on codifying rules and regulations and has not fully engaged with the changes which it may need to adopt itself in order to facilitate such changes.

A minority of participants were able to suggest in any specific way what might be involved. Many spoke of the need for greater advocacy and visibility, for archivists to make themselves heard in the public domain, and several highlighted that younger members of the profession are doing good work in this regard via social media campaigns and other forms of publicity. But there was little or no emphasis on the need to re-focus the discussion on the core accountability role of recordkeeping, as distinct from the heritage element which is so familiar.

With a general focus on the need to improve recordkeeping through better policies, rules and regulations, only one participant spoke in any substantive way about embedding a sense of pride in recordkeeping within the public service. Nicky referred to a need to highlight the positive impact of recordkeeping from the public servant’s perspective:

I think it's also about pride somehow, about pride and about people ... people thinking 'what I'm doing is valuable and deserves to be documented' [...] because the focus is on, is always on the criticism of an action [...] other actions, good actions, are also documented along with ones that aren't so good. But that also has to be sort of brought into the mix [...] that kind of advocacy for using records as a powerful tool to demonstrate what you've done as opposed to a stick to beat you for what you haven't done.

4.3.3.5 Implementing the Changes

Changing from a negative to a positive perception of the role of recordkeeping also extends to archivists themselves and the manner in which they interact with the outside world and potential stakeholders, especially those who have not previously had a voice in the archives. This involves not just roadshows, social media posts and exhibitions, but extends to appraisal policies, description and arrangement, access to collections and collaboration with community archives. As put by Phil, it involves 'working with community groups, ensuring that [...] the people are at the heart and that the community are at the heart of the work, really letting that be the starting point and moving on from there'.

The challenge is how to translate this, via legislation and policies, into practice in a manner that can make a difference in real terms. Nicky noted that 'the best theory will try always to connect to the day-to-day, to the person opening up the archive in the morning or writing a policy or doing whatever' and also identified international examples where legislation and practice has attempted to introduce a greater focus on individual and community rights in recordkeeping.

Archivists cannot do this alone and one of the stakeholder groups to be engaged are the civil servants and the politicians who decide on policy and on the content of new legislation. This brings us back to the issue of political will and how to create an awareness and an appetite for change. Regardless of how enthusiastically archivists embrace new ideas, they are likely to meet a reluctance and a caution which reflects the traditional resistance to the type of changes suggested during the interviews for this research. There is a stereotype that the civil service moves in incremental phases and does not embrace radical change easily. Terry, a civil servant, noted the desire for a stable and

predictable environment, explaining that the civil service operates on the basis of precedent and a belief that change should be minimal: ‘in theory, nothing new should happen to you’. Terry also noted that within the DTCAGSM, the view is that the NA Act ‘has proved itself to be fairly robust’, before going on to note that ‘public policy is supposed to take a minimum of 18 months to make any change, and generally a lot longer ... [if] you legislate it takes years’. These comments, together with experience to date, suggest that change in recordkeeping legislation is likely to be slow and gradual, with potential resistance from official circles to anything considered too radical, especially if it requires additional resources.

4.3.3.6 Theme Summary: A Broad Approach to Change

Before it takes on any reluctance for change in the civil service or elsewhere, the recordkeeping profession needs to clarify its own thinking on what change is needed. An extended Schedule to the existing legislation, some sort of council with oversight powers, and increased resources are all easily identified as necessary. But all are procedural solutions to a problem which requires reflection and change on the part of the profession itself. This will require a greater focus on individual and community rights, on the role of recordkeeping in the citizen-government relationship and on the responsibility of the recordkeeping profession in increasing awareness and appreciation of that role. All of this must come as a consolidated whole, with changed attitudes and perceptions allied to updated and improved legislation and regulations. A greater focus by the profession itself on accountability, human rights and social justice, engagement with communities, and a more visible engagement with the political and public domains will all be necessary to develop a greater culture of appreciation for recordkeeping, and thus facilitate the development of improved legislation, better regulation and a recordkeeping system which facilitates individuals in seeking accountability and justice.

4.4 Reflections

This section offers reflections on my experience of undertaking the Reflexive Thematic Analysis, followed by some general reflections on the interview findings.

4.4.1 The RTA Process

Using RTA for the interview process and subsequent assessment of data has provided a flexible way of engaging with the views and experiences of recordkeeping stakeholders

in Ireland, and linking these to the findings of the literature review and my own experiences and insights as a recordkeeping practitioner.

As an archivist working with (but not as a member of) public service agencies over three decades, much of the motivation for this research stemmed from a frustration with the low priority attached to recordkeeping within the public service over that time. This was exacerbated by frustration at the lack of urgency displayed by many within the recordkeeping profession itself, and a resistance to adopting new approaches due to a perception that suggestions for change would not be accepted higher up the management chain. As a member of the profession, I cannot represent myself as being immune from this criticism. I have witnessed many false dawns in terms of projects which aimed to address shortcomings but which stalled due to lack of funding, lack of engagement and an overall apathy and lack of awareness at senior levels within the public service and the political class.

Anecdotally, I was aware that many of these frustrations were shared by colleagues. The interviews carried out as part of this research have highlighted and confirmed this and have provided useful insights into the experiences of archivists and other stakeholders. From discussions held over a number of years with professional colleagues, the views expressed in the interviews are familiar to me and will be familiar to other recordkeeping professionals.

The process of identifying and developing themes, rather than simply listing topics, was challenging and informative, forcing me to change the focus from a range of independent issues toward bigger, overall patterns. For example, rather than focus on specific topics such as particular shortcomings in the legislation, lack of recordkeeping regulations or lack of resources, I was able to link these together as stemming from a general misunderstanding and lack of engagement with the overall role and purpose of recordkeeping. Likewise, topics such as lack of accountability on the part of recordkeepers themselves, lack of influence and lack of progress in making the case for archives are linked to the overall perception of the recordkeeping profession as viewed from within, rather than being a series of individual issues to be addressed separately.

After assessing the interviews, I feel that some of my perceptions have been confirmed and strengthened. Other perceptions may have been too fixed or too rigid and did not give sufficient credit to archivists who may be committed to the role of recordkeeping with regard to accountability and justice but who struggle on a day-to-day basis with resources, internal reporting structures and other practical concerns which may detract from longer-term planning and strategy. While it is easy to dismiss this approach as ‘mechanistic’, the reality of the day-to-day can give little time to devote to considerations which can seem more remote and which are difficult to quantify to financial managers.

4.4.2 Concluding Reflections

The interviews presented a range of useful and sometimes contrasting views and experiences. As noted, it was possible to discern some greater level of engagement with issues of human rights and social justice among younger and more recently qualified archivists, although this was by no means a universal pattern and does not suggest that more experienced archivists are less concerned with justice and accountability. More likely, the younger participants have been more exposed to recent archival literature which has moved towards a more activist interpretation of the recordkeeping role.

The reluctance to embrace accountability for the profession itself is frustrating and, again, in line with my own experiences as a practitioner. Despite a general societal trend towards greater openness and despite the central role which the recordkeeping profession imagines for itself in this, there remains a tendency to operate behind closed doors, and to resist explaining and accounting for decisions taken by archivists. This mindset is further evidenced in Chapters 5 and 7 of this thesis.

This kind of contradiction and resistance to change is reflected in several other ways in the interviews. There is engagement with accountability, human rights and social justice but in a limited way which seems suspicious and wary, for example, of the role of community archives. There is an awareness and a frustration that politicians and the public fail to grasp the central importance of records in the lives of citizens, yet there is an ongoing tendency to highlight the quirky or curiosity aspect of archives and their contents.

There was also, in my opinion, a limit to the interpretation of human rights and social

justice amongst those interviewed. Social justice was often conflated with human rights and examples of marginalised groups referenced by interviewees tended to relate to those which had been the subject of recent or ongoing high-profile public campaigns, such as the LGBTQI community or Mother and Baby Homes survivors. Apart from a small number of interviewees who had direct family experience, there was no mention of people with either physical or intellectual disability. There were two isolated references to the Traveller Community and one reference to residents of direct provision centres, with no discussion of wider immigration issues. One participant mentioned labour/trade union history but otherwise there was no reference to groups or communities who suffer marginalisation on socio-economic grounds. This may lend credence to Frankie's claims that recordkeeping engagement with social justice comes after the event, when the groups in question tend to have gained a certain level of acceptance and when their cause is adopted as part of the mainstream discourse. It is almost as if certain groups have a level of official recognition or public validation as formerly marginalised groups, at which point it is acceptable to document and record their previous struggles against injustice.

There are, nevertheless, signs of change, some of which were mentioned in the interviews and some of which I and others have identified through professional interactions. A number of interview participants highlighted that younger archivists are more engaged with issues of accountability and justice and that they are motivated to see this reflected in their work. Others noted a greater level of engagement with the outside world, largely through social media networks and podcasts, and there is no doubt that this is the case, although the long-term impacts have yet to be seen.

There are also signs that the NAI is having some success in addressing some of the issues highlighted during these interviews. Staff numbers have increased, for example, and in 2021 the organisation organised its first ever public exhibition of original archives.²⁷⁹ The exhibition in question relates to the centenary of the foundation of the State, so it will be interesting to see whether the greater visibility this has attracted for the NAI will be

²⁷⁹ The exhibition 'The Treaty, 1921: Records from the Archives' marked the centenary of the Anglo-Irish Treaty of 1921. See <<https://www.nationalarchives.ie/2021commemorationprogramme/the-treaty-1921-records-from-the-archives/>> [accessed 17 May 2024]. A further exhibition, 'Society and State – Ireland Through its Records', opened in April 2024, see <<https://www.nationalarchives.ie/news/exhibition-society-state-ireland-through-its-records/>> [accessed 7 June 2024].

sustained after the various commemorative events have concluded, or whether this becomes another example of short-term publicity giving way to sustained apathy and neglect.

This chapter has drawn on the lived experiences of recordkeepers and other stakeholders as they relate to public sector recordkeeping and the ethical issues of accountability, human rights and social justice. It has identified the manner in which, and the extent to which, the experiences and views of the participants reflect the findings of the literature review in Chapter 3. This allows a connection to be made between recordkeeping theories and the perceptions and practices of the recordkeeping profession in an Irish context. The interviews raise a range of issues to be addressed, and they give some basis for optimism that archivists are willing to address them. While the willingness is there, however, the profession needs to find a way to address its role regarding accountability, human rights and social justice in a more comprehensive and consistent manner, to concentrate on the wider societal concerns rather than day-to-day mechanics, and to convince the public sector and society at large of the central role of recordkeeping in a positive citizen-government relationship.

Chapter 5

Recordkeeping and Accountability

5.1 Introduction

This chapter considers a model that can be used as a basis for fulfilling recordkeeping's role with regard to accountability, and conducts a normative analysis of Irish recordkeeping legislation and practice, based on that model. The model used is that posited by Mark Bovens, and views accountability as both a mechanism and as a virtue. Studies of accountability as a mechanism may identify shortcomings which manifest themselves as flaws or loopholes in the web of control mechanisms.²⁸⁰ Studies of accountability as a virtue, meanwhile, may identify shortcomings which manifest themselves as inappropriate behaviour or poor governance, such as opaque practices or a reluctance to be inclusive of and responsive to relevant external views and interests.

By applying Bovens' normative model of accountability, public sector recordkeeping legislation and practice in Ireland will be shown to have a number of shortcomings which impact negatively on the public's ability to hold governing authorities accountable.

5.2 Bovens' Dual Concepts of Accountability

Bovens, in common with other writers,²⁸¹ notes the persistent vagueness and lack of clarity associated with the term 'accountability'.²⁸²

Several writers claim that, in many contexts, accountability has come to be interpreted narrowly in terms of cost-saving, with a strong focus on statistical-based performance indicators and checklists.²⁸³ Accountability can thus lead to a concentration on bureaucratic procedures, checklists, box-ticking and league tables with the stated aim of

²⁸⁰ Mark Bovens, 'Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism', *West European Politics*, 33.5 (2010), 946–67 (p. 957).

²⁸¹ Peter Walker, for example, refers to a general acceptance 'that accountability somehow exists and is needed, with seemingly little understanding of either its definition or its theoretical underpinnings'. See Peter Walker, 'Understanding Accountability: Theoretical Models and their Implications for Social Service Organizations', *Social Policy and Administration*, 36.1 (2002), 62–75 (p.65).

²⁸² Bovens, 2010, pp. 946–47.

²⁸³ For examples, see Bryane Michael, 'Questioning Public Sector Accountability', *Public Integrity*, 7.2 (2005), 95–109; Burt Perrin, 'Bringing Accountability up to Date with the Realities of Public Sector Management in the 21st Century', *Canadian Public Administration/Administration Publique du Canada*, 58.1 (2015), 183–203; and Ewan Ferlie, 'The New Public Management and Public Management Studies', in *Oxford Research Encyclopaedia of Business and Management*, ed. by Ramon J Aldag (Oxford: Oxford University Press, 2017), available at <<https://doi.org/10.1093/acrefore/9780190224851.013.129>> [accessed 24 May 2024].

creating more trust, but deflecting public agencies from their core focus and interfering with the delivery of services and the achievement of positive goals.

Onora O'Neill urges a wider understanding of accountability, stating that 'much that has to be accounted for cannot be easily measured, it cannot be boiled down to a set of stock performance indicators'.²⁸⁴ This is echoed by Bovens, Schillemans and 't Hart, who highlight the need to assess and understand why accountability is important in public life and what purposes it really serves.²⁸⁵ They identify three broad perspectives for such an assessment – the democratic perspective, the constitutional perspective and the learning perspective. From all three perspectives, the interests and wellbeing of the public are paramount and the purpose of accountability is to ensure that these interests are addressed to the optimal degree by ensuring that public authorities act appropriately and in a trustworthy manner. This requires that any checklists, performance measurements, cost-savings or efficiencies, while important in their own contexts, must have a wider overall purpose.

In addressing this need for a wider interpretation of accountability, while still recognising the requirement for appropriate levels of reporting and oversight, Bovens describes accountability as both a mechanism and a virtue. Viewed as a mechanism, accountability is a specific relationship in which an actor is obliged to explain and justify conduct to a specified forum. Viewed as a virtue, it represents 'substantive norms for the behaviour of actors',²⁸⁶ albeit with standards varying across a range of organisations, systems and contexts.

Bovens refers to these two approaches as the narrow (i.e. accountability as a mechanism) and the broad (i.e. accountability as a virtue) understandings of accountability. Like O'Neill, he states that the two must go hand-in-hand. There must be a fundamental purpose to accountability, beyond financial efficiencies and checklists, incorporating a set of behavioural expectations or standards by which public bodies act in order to fulfil their obligations to the public.

²⁸⁴ Onora O'Neill, 'A Question of Trust, Lecture 3 - Called to Account', *BBC Reith Lectures* (2002). Available at <<https://www.bbc.co.uk/programmes/p00gpzdf>> [accessed 24 May 2024].

²⁸⁵ Mark Bovens, Thomas Schillemans and Paul 't Hart, 'Does Public Accountability Work? An Assessment Tool', *Public Administration*, 86.1 (2008), 225–42.

²⁸⁶ Bovens, 2010, p. 949.

Under the narrow interpretation of accountability as a mechanism, transparency, openness, responsiveness and responsibility are properties of the mechanisms put in place to provide oversight; under the broad interpretation, they are characteristics of the actor. Bovens emphasises that the two approaches are necessary, but the mechanisms and the reporting relationships must remain a means rather than an end and the aim must be to build trustworthy public institutions which operate in an ethical manner and which are deserving of trust from the citizens:

Processes of account giving and account holding cannot operate without standards against which the conduct of actors can be assessed [...] Accountability mechanisms are meaningless without a sense of virtue and, vice versa, there is no virtue without mechanisms.²⁸⁷

The literature review and the interviews conducted as part of this research identified a direct link between effective recordkeeping and accountability. All such links, however, are made in the absence of a clear definition of what accountability actually means. Both Wallace and Hurley claim that recordkeepers have little real appreciation of what actually constitutes accountability, while Cifor and Gauld are amongst those who lament the impact of narrow, economic-based interpretations of accountability.²⁸⁸ By providing a clear conceptualisation which addresses both the mechanics of reporting structures and relationships, and the wider beneficial purpose and aims of accountability, Bovens' model provides a firm foundation for assessing Irish public sector recordkeeping, identifying potential shortcomings in accountability and suggesting ways to address them.

5.3 Accountability as a Mechanism

Bovens defines accountability as a mechanism in the following manner:

A relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences.²⁸⁹

²⁸⁷ Bovens, 2010, p. 962

²⁸⁸ Wallace, 2004; Hurley, 2006; Cifor, 2016; Gauld, 2018.

²⁸⁹ Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework', *European Law Journal*, 13.4 (2007), 447–68 (p.450).

Crucial elements of the definition include ‘relationship’, ‘obligation’, ‘justify’, ‘judgement’ and ‘consequences’. Bovens is keen to emphasise the term ‘consequences’ rather than alternatives such as ‘sanctions’ or ‘penalties’ because, he says, these latter terms imply punishment or chastisement, while consequences can be positive as well as negative; accountability processes can highlight and reward good performance, as well as punish bad performance.²⁹⁰ As will be explored later, this is a critical element of the broader view of accountability.

Typical accountability relationships, when observing accountability as a mechanism, include those between junior civil servants and their managers, between senior civil servants and government ministers, and between government ministers and parliament. Civil servants, ministers and members of parliament may also be accountable to oversight bodies or regulators, while certain public sector agencies may be accountable to other agencies which have regulatory powers relating to specific areas of operation.²⁹¹ Under a democratic perspective of accountability, members of the public are the ultimate forum, in a position to ask questions, pass judgement and impose consequences (positive or negative) through participation in the electoral process, or through direct action or protests.

The reporting structures, channels of communication and lines of investigation which exist as part of these various interlocking relationships represent accountability as a mechanism. According to Bovens, studies which focus on accountability as a mechanism are primarily concerned with how the relevant institutional arrangements operate. As an example, he cites the empirical appraisals of accountability mechanisms conducted by the Utrecht School of Governance, which studied whether appropriate reporting relationships exist in the first place, whether they operate appropriately, and what their effects are.²⁹² The following sections of this chapter will assess whether Irish public sector recordkeeping meets the standards set out in Bovens’ model of accountability as a mechanism.

²⁹⁰ Bovens, 2010, p. 952.

²⁹¹ For example, the Data Protection Commission, which monitors and investigates how public and private organisations manage personal data.

²⁹² Bovens, 2010, p. 960. The studies addressed accountability mechanisms relating to various agencies of the European Union and European Council.

5.3.1 Accountability as a Mechanism in Irish Public Sector Recordkeeping

Bovens' conceptualisation will be assessed in relation to its three features, i.e. the actor has an obligation to justify conduct; the forum can pose questions and pass judgement; and the actor may face consequences. These will be examined as they relate to the NAI, firstly as a forum and secondly as an actor.

5.3.1.1 *NAI as a Forum*

A) The actor has an obligation to explain and justify his or her conduct

Government departments, courts and scheduled bodies listed in the legislation are the actors in this relationship and are required by law to transfer 30-year-old records to the NAI, where they will be made available for public inspection. In addition to the transfer of records, bodies covered by the legislation are prohibited from disposing of any records without the prior authorisation of the Director of the NAI. The legislation thus creates a legal obligation in relation to the retention of records and their subsequent transfer to the NAI.

Annual reports of the Director of the NAI and of the NAAC, together with comments of interview participants as reported in Chapter 4 of this thesis, indicate a widespread disregard by the various actors for their obligations under the legislation. While the legislation contains penalties for members of the public who destroy public records or archives, there are no such penalties for civil servants.²⁹³ The NAI acknowledges that disposal of public records takes place without its authorisation and that it has no facility for preventing this or for seeking explanations from those responsible.²⁹⁴ So while the obligation to take certain actions is specified in the legislation, there is no corresponding obligation for actors to explain or justify their conduct.

B) The forum can pose questions and pass judgement

The legislation contains no specific reporting or communications channels. It does not, for example, say that the NAI may demand, or even request, explanations from scheduled bodies in the event of non-compliance. Presumably, the NAI is in a position to 'pose

²⁹³ NA Act, 1986, section 18.

²⁹⁴ NAI, *Protecting the Public Record? National Archives Act, 1986*, (online seminar, 24 June 2021), at 16:37; available at <<https://www.nationalarchives.ie/article/protecting-the-public-record-models-of-international-best-practice-seminar-24-june-2021/>> [accessed 24 May 2024].

questions and pass judgements’ in the form of day-to-day contacts and communications, although there is no evidence of it in annual reports or other publicly-available sources. This may be due partly to a reluctance to alienate government departments, and partly to the lack of any formal facility within the legislation for holding non-compliant actors to account.

Apart from the lack of regular transfers of records to the NAI, the lack of accountability extends into other areas of the Act also, including the continued withholding of records from public access even after they are 30-years old. In such cases, the relevant Department or scheduled body must apply to the Department of the Taoiseach (not to the NAI) for permission to withhold such records. There is no review or appeal process, other than a routine requirement for the relevant department to review the need to withhold the records every five years. Furthermore, if the records to be withheld are from the Department of the Taoiseach itself, the procedure effectively involves that Department applying to itself for permission to withhold its own records from public view, with no review or appeal procedure in place.²⁹⁵

In light of the above, it can justifiably be said that the facility for the NAI, or the public, to pose questions and pass judgement on the various actors in the recordkeeping sphere would appear to be, to all intents, very limited.

C) The actor may face consequences

Finally, there is no evidence that any actor will face consequences, either positive or negative, as result of their actions in relation to the NA Act. Annual reports of the Director do include lists of which bodies have or have not transferred records.²⁹⁶ While this may be seen as a form of sanction (i.e. naming and shaming, as it were, those who do not transfer), the lists are included without comment or criticism, and thus any sanction would seem to be of the mildest form possible. Furthermore, the text of successive annual reports makes it clear that at least some of the responsibility for lack of transfers lies with the lack of storage space available in the NAI, thus making it impossible to assess whether individual agencies have attempted to transfer their records or not. For example, the

²⁹⁵ Sections 8(2) and 8(4) of the NA Act set out the conditions for withholding records from public inspection even after 30 years have elapsed.

²⁹⁶ For example, see the Director’s Annual Report for 2022, Appendix A.

Director's report for 2020 states: 'As in previous years, several Departments have been asked to retain records which we are unable to accept'.²⁹⁷

It would appear easy, on the basis of the information available to the public, to place responsibility for the lack of transfers on the NAI's lack of storage resources, rather than on lack of compliance by government departments. There are thus no negative consequences to be faced for non-compliance. Indeed, this scenario may result in positive consequences for those few bodies which are actually up-to-date with their transfers, in the sense that they may receive disproportionate praise for simply meeting the minimum legal requirement in the face of apparent widespread breaches by other agencies.

D) Summary

In reviewing all of the above, it can be said that, in the context of Bovens' framework of accountability as a mechanism, there appears to be little effective accountability in the relationship between the NAI and the agencies which come within the remit of the NA Acts. While public agencies covered by the Acts have a legal obligation to undertake certain tasks (e.g. transfer 30-year old records) and to refrain from certain other tasks (e.g. disposing of records without authorisation), there appears to be no obligation on them to explain and justify their actions, the NAI has little or no facility to pose questions and pass judgment, and there is no facility for ensuring that the actor faces any consequences for non-compliance.

The wider potential implications of this are that the public is denied access to public records without explanation, without the possibility of review or appeal, and without external checks or balances. This has a direct impact on public sector accountability, with potential consequences for individual rights and justice.

5.3.1.2 NAI as an Actor

A) The actor has an obligation to explain and justify his or her conduct

As an actor, the NAI is responsible to the relevant minister, currently the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (TCAGSM), who constitutes the

²⁹⁷ *Report of the Director of the National Archives, 2020*, p. 22. Available at https://www.nationalarchives.ie/wp-content/uploads/2022/01/21.10.01-NA-AR-2020-English-and-Gaeilge-V001_Directors-Exp-compressed_2.pdf [accessed 5 May 2024].

forum in this accountability relationship. This is facilitated through civil servants who work within the relevant Department and liaise with the NAI and the Minister as part of the standard operating procedures of the civil service. In addition to day-to-day contacts and communications with civil servants, the Director submits a report to the Minister each year on the work of the NAI.

The reports provide detail (and the level of detail has varied greatly over the years) on the activities of the NAI, and every report details lack of investment, lack of resources, lack of compliance by scheduled bodies and an inability by the NAI itself to carry out basic legislative functions. This could perhaps be termed accountability in that the NAI acknowledges some of its own shortcomings, and the difficulties it faces in securing buy-in from bodies which come under the remit of the legislation. But the mere publication of a report does not constitute accountability in a meaningful sense, as it is a purely retrospective summary of events which cannot be influenced or undone.

Annual reports present a limited insight into the work of the NAI. They describe what the NAI has done and not done, but do not provide explanations of the basis on which important operational decisions were made. As such, they can be said to meet the standards expected of an actor in an accountability relationship in a limited way, with little or no input from stakeholders, and limited information available to the public.

B) The forum can pose questions and pass judgement

If the NAI explains and justifies its actions to the Department, it does so purely in an internal management sense, with no public visibility, save for potential FOI requests. No information is available about the reporting channels or mechanisms within the Department, what measures are used to assess and critique the performance of the NAI, or what judgements, if any, relevant civil servants within the Department pass regarding the performance and the behaviour of the NAI. It could fairly be said, however, that this is not very different to any other public agency and that full transparency and openness about routine day-to-day communications and relationships would be virtually impossible on an ongoing basis.

Moving up the accountability chain, if viewing the public as the forum (in line with Bovens' democratic perspective of accountability), there is no facility for members of the

public to pose questions about the actions of the NAI, except in a retrospective manner after decisions are taken. Since 2018, a list of decisions to approve or refuse applications for disposal of records is published in the Director's annual report. This is a welcome improvement, but these lists are retrospective and offer no rationale for decisions made.²⁹⁸ There is no evidence that any of these decisions are subject to discussion, scrutiny or review by anyone outside the NAI. There is no facility for stakeholder input or consultation as part of this appraisal process, nor for any appeal or review mechanism prior to the disposal of records. There is no intention here to suggest that these decisions are flawed or inappropriate, but there appears to be limited accountability, oversight or transparency associated with the process, and the public can only have knowledge of the reasoning behind a decision to retain or dispose of public records retrospectively, via an FOI request; even then, significant details are likely to be redacted.²⁹⁹

C) The actor may face consequences

In terms of the NAI's role as an actor reporting to a forum (the Department), it is not clear what consequences may be faced as a result of any judgements passed by the forum – for example, reduced funding in the event of under-performance, or increased funding in the event of positive assessments of needs and performance. The NAI operates as a business unit of DTCAGSM, and has no independent status or operating capability beyond its status as an internal part of the Department.³⁰⁰

If the public is seen as the forum, then it can be pointed out that positive consequences may sometimes flow from an assessment of NAI performance. The few high-profile interactions which the NAI does have with the public have resulted in praise and appreciation, for example the digitisation of census records and the Beyond 2022 project, both of which resulted in positive media commentary which reflected well on the NAI and other relevant institutions.³⁰¹

²⁹⁸ For example, see the Director's Annual Report for 2022, Appendix B.

²⁹⁹ Appraisal reports released in response to FOI Request TCAGSM-FOI-2022-0004 were, in most cases, heavily redacted, with information withheld not simply on specific record content but also on a range of contextual information, including the titles of the relevant file series.

³⁰⁰ National Archives, *Comparator Report* (Dublin: National Archives, 2023) (unpublished), pp. 5–7.

³⁰¹ For example, see John Grenham, 'How to Trace Your Irish Family Tree', *The Irish Times*, 12 March 2018, <<https://www.irishtimes.com/life-and-style/abroad/how-to-trace-your-irish-family-history-a-step-by-step-guide-1.3423973>> and Philip Bromwell, 'Groundbreaking Project Brings Lost Archive Back to Life', RTE, 27 June 2022, <<https://www.rte.ie/news/ireland/2022/0624/1306668-virtual-record-office/>> [both accessed 24 May 2024].

Beyond media coverage, there is limited public engagement with the NAI, except for groups or users already holding a direct interest, such as local history groups, genealogy groups, or academic researchers. In terms of the NAI's role in acquiring, protecting and making available records which impact directly on the citizen's relationship with the State, there appears to be limited awareness, interaction, or relationship and there is no meaningful manner in which citizens may pose questions or form judgements. Nor, apart from the limited examples outlined above, is there scope for consequences (positive or negative) as a result of such interactions.

D) Summary

As an actor, the reporting obligations of the NAI are unclear and, from the perspective of the public acting as a forum, warrant improvement. There is no opportunity for the public to pose questions or pass judgement, and access to relevant information comes almost entirely via annual reports which represent a retrospective account of decisions already taken, with little context provided and no scope for questioning, appeal or review. By the time an annual report is published, it is too late for the public to influence actions or decisions – records cannot be un-destroyed, for example.

In concluding this assessment of accountability relationships in public sector recordkeeping in the context of Bovens' definition of accountability as a mechanism, Table 5.1 below summarises the position when the NAI is viewed as a forum or as an actor.

5.3.2 Gaps in the Mechanism

5.3.2.1 NAAC

The NA Act states that the NAAC's role is to advise the Minister 'in the exercise of his powers under this Act, and on all matters affecting archives and their use by the public'.³⁰²

The NAAC appears to take a conservative interpretation of this role and members of the NAAC who were interviewed for this research were clear that its role is (and should be) to advise and to offer support and succour to the NAI. The report of the NAAC for 2020

³⁰² NA Act 1986, section 20.

NAI as a Forum	
<i>Requirement</i>	<i>Present in Irish public sector recordkeeping</i>
The actor has an obligation to explain and to justify his or her conduct	No
The forum can pose questions and pass judgement	No
The actor may face consequences	No (other than inclusion in a list in Annual Reports)
NAI as an Actor	
<i>Requirement</i>	<i>Present in Irish public sector recordkeeping</i>
The actor has an obligation to explain and to justify his or her conduct	As an internal business unit within departmental routines but not to the public
The forum can pose questions and pass judgement	Within departmental routines but no facility for the public to pose questions or pass judgement
The actor may face consequences	Unknown, apart from positive or negative publicity from media coverage

Table 5.1: NAI as a forum and as an actor

refers to ‘our role in advocating for the National Archives’,³⁰³ although the Act makes no reference to such a role for the NAAC.

Earlier annual reports of the Council took a different view, with a greater willingness to comment directly on the performance of the various public bodies which are subject to the Act. The opening paragraph of the very first annual report of the NAAC stated that the Council’s role ‘is both supervisory and advisory’.³⁰⁴ In the final paragraph of that same report, the NAAC stated that it viewed one of its major activities as ‘the monitoring of the manner in which the various Departments of Government and other scheduled bodies carry out their statutory duties under the Act’.³⁰⁵ In its second report, the NAAC stated that ‘it considers that it should draw attention to those Departments where there

³⁰³ *Annual Report of the National Archives Advisory Council, 2020*, p. 3. Available at <https://www.nationalarchives.ie/wp-content/uploads/2021/07/TCAGSMdocs/20210721d_230721_160210.pdf> [accessed 14 May 2024].

³⁰⁴ NAAC, *First Report*, p. 7

³⁰⁵ NAAC, *First Report*, p. 15.

has been a spectacular failure to transfer records’ and goes on to comment on the performance of specific departments and agencies.³⁰⁶

The Council’s fourth report provides a good illustration of the more direct, and more critical, approach which it took, compared to later Councils. It provides detail, for example, of the NAAC’s intervention in commissioning a report on the adaptation of the storage warehouse at the NAI premises, and in commenting on the findings of that report.³⁰⁷ This points to a Council which believed itself to have a direct role and function which went beyond general observations and advocacy, and which extended into areas of accountability, in the sense that it asked questions, sought explanations and passed judgement.

Early incarnations of the NAAC, therefore, appear to have taken a more interventionist approach than more recent ones. The phrase used in the Act itself – to ‘advise on all matters affecting archives and their use by the public’ – seems to have been interpreted in an increasingly restrictive and limited fashion as time has passed, with the result that there now appears to be little if any accountability relationship between the NAI and any sort of independent or semi-autonomous forum. The belief of members of the NAAC, as reflected in recent annual reports and in interviews with members conducted as part of this research – that its role is to advocate for and support the NAI – is not borne out by the legislation itself. Nowhere in the Act is it stipulated that the NAAC should support, advocate for or represent the views of the NAI.

While it may certainly be appropriate that the NAAC should advocate for the NAI in efforts to secure more funding, more storage and increased levels of staffing, it is also valid to question, and to advise the Minister accordingly, whether the NAI is making best use of the resources that are available and whether it can carry out its duties more effectively, more transparently and in a manner which better fulfils its responsibilities to its stakeholders, including researchers and the public at large. The giving of advice can certainly relate to resourcing levels, but it can equally relate to use of resources and how

³⁰⁶ NAAC, *Second Report*, p. 12.

³⁰⁷ NAAC, *Fourth Report*, December 1994, section 8.1. Available at <https://www.nationalarchives.ie/wp-content/uploads/2019/03/NAAC-4th-Report-1994.pdf> [accessed 14 May 2024].

effectively existing legislative functions are delivered, as the first Council appeared to believe.

At the moment, the NAAC does not appear to be making such assessments or asking such questions, at least not in any publicly-available manner, and there is no other agency or forum in a position to do so. It appears that the NAAC does not, therefore, play any concrete role with regard to accountability, which seems to be contrary to the intentions of the original incarnation of the Council. If this is the case, this limits the capacity of the public at large to assess the performance of the NAI, and results in a significant accountability gap.

5.3.2.2 Amendment Act of 2018

The National Archives Amendment Act of 2018 introduced a facility for certain records to be transferred to the NAI when they reach 20 years old, rather than 30 years old. As outlined in Chapter 2, this was introduced as a specific response to a similar change in the UK, which resulted in UK records relating to Northern Ireland and Anglo-Irish relations being released several years before the corresponding Irish records. Rather than move towards a universal 20-year rule applying to all records, the 2018 Amendment Act introduced a facility for the Minister to designate certain records as ‘relevant records’ and therefore suitable for release after 20 years.

The criteria for assessing which records fall into the category of ‘relevant records’ includes that the records concerned ‘are of significant historical or public interest’ or that their transfer to the NAI ‘will facilitate the balanced and fair reporting of matters of common interest to the State and other jurisdictions’.³⁰⁸ Furthermore, it states that in designating records as suitable for transfer after 20 years, the Minister must consult the Director of the NAI and must secure the consent of the Taoiseach, the Minister for PER and the relevant line minister (e.g. the Minister for Justice in the case of records originating in the Department of Justice).

All of this introduces a significant political element into decisions relating to the release of public records. Someone, for example, has to decide what constitutes ‘significant

³⁰⁸ NA (Amendment) Act, 2018, section 4.

historical or public interest’ as well as ‘balanced and fair reporting’. In requiring consent from senior political figures, there is a potential risk of bias and politicisation of access to public records. While an order identifying certain records for release after 20 years must be placed before the Houses of the Oireachtas, there is no facility for questioning how records were assessed as either having or lacking significant historical or public interest, nor for questioning a decision *not* to release records after 20 years. Neither is there a facility for identifying, for example, instances where one Minister consented to release but another Minister, or the Taoiseach, objected.

In referring to the release of records to facilitate ‘the balanced and fair reporting of matters of common interest to the State and other jurisdictions’, the 2018 Amendment Act prioritises records from certain departments and relating to certain areas of policy. It seems inevitable, therefore, that with limited resources available, records not relevant to Anglo-Irish relations will fall further back in the queue and will continue to accumulate without being transferred to the NAI. These concerns are reflected in the comments made during the interviews conducted for this research, where participants commented negatively on the 2018 legislation.’³⁰⁹

The 2018 changes increase the potential for political interference in the release or non-release of public records and, by focusing on records relating to specific policy areas, also have the potential to reduce the chances of facilitating accountability in areas which have a direct impact on the lives of individuals, such as health, education, housing, economic policy or environmental strategies. In simple terms, selective release of public records on the basis of subjective political assessments is not compatible with effective accountability.

5.3.2.3 Non-Scheduled Bodies

As has been highlighted in Chapter 2 and Chapter 4, there are many significant public bodies which fall outside the remit of the legislation. These include, for example, semi-state agencies which have had a significant role in the development of the social, economic and cultural life of the nation over many decades. They include public companies which have since been privatised, and whose records are therefore now the

³⁰⁹ See section 4.3.1.5 above.

Public Agency	Function/role as described on website³¹⁰
Health Service Executive	'provides health and social services to everyone living in Ireland. Our services are delivered to young and old, in hospitals, health facilities and in communities across the country'.
Health Information Quality Authority	'an independent authority that exists to improve health and social care services for the people of Ireland'.
Garda Síochána Ombudsman Commission	'our function is to deal with matters involving possible misconduct by members of the Garda Síochána in an efficient, effective and fair manner'.
Túsla	'the dedicated State agency responsible for improving wellbeing and outcomes for children'.
Córas Iompair Éireann (CIÉ)	'Ireland's national public transport provider, with a goal to deliver attractive sustainable public transport services, which supports the continued growth of the Irish economy and social cohesion'.
National Asset Management Agency (NAMA)	'established in 2009, during the Irish banking crisis, in order to deal expeditiously with non-performing property loans acquired from Irish banks'.
Uisce Éireann (Irish Water)	'Ireland's national water utility [...] we are responsible for providing water and wastewater services throughout Ireland'.
Central Bank of Ireland	'We serve the public interest by maintaining monetary and financial stability while ensuring that the financial system operates in the best interests of consumers and the wider economy'.
Raidio Teilifís Éireann (RTÉ)	'To enrich Irish life with content that challenges, educates and entertains [...] RTÉ will be outward looking, creative, respectful, sustainable and accountable, collaborative and transparent'

Table 5.2: Sample of public bodies falling outside the remit of the NAI

responsibility of purely commercial enterprises. They also include significant public enterprises established since 1986 and which have had a major bearing on some of the

³¹⁰ Brief descriptions of agency roles or functions are taken from the following websites: <https://www.hse.ie/eng/services/list/>; <https://www.hiqa.ie/>; <https://www.gardaombudsman.ie/>; <https://www.tusla.ie/about/>; <https://www.cie.ie/Who-We-Are/What-We-Do/>; <https://www.nama.ie/>; <https://www.water.ie/about/>; <https://www.centralbank.ie/about/>; <https://about.rte.ie/inside-rte-2/mission-values/> [all accessed 24 May 2024].

most significant events in the history of the nation. North-South bodies, established on an all-Ireland basis under the Good Friday Agreement of 1998, also fall outside the remit of the National Archives Act.³¹¹

Table 5.2 provides a very small sample of some of the bodies which fall outside the remit of the legislation, together with a brief description of their role or function, giving an overview of the core importance of such bodies to the lives of Irish citizens. Some of these agencies have taken voluntary steps to properly manage their records, preserve their archives and make them available for public inspection but the vast majority have not done so and have no obligation to do so.³¹²

The NAI itself estimates that over 150 public bodies are not covered by the legislation, and as such:

They have no statutory obligation to provide access to their records beyond FOI and Data Protection, no obligation to transfer records to the National Archives, and no obligation to seek authorisation from the Director of the National Archives before disposal of their records takes place.³¹³

The gaps in public accountability arising from this are obvious. A large number of public agencies, including many of those central to the rights and wellbeing of Irish citizens and residents, have no legal obligations with regard to the management, safeguarding, preserving and accessibility of their records. As such, they are free to do as they wish with their records, from the point of creation to the point of disposal, and members of the public have no facility to access such records, save through the limited provisions of FOI or Data Protection legislation, or the voluntary goodwill of the relevant agencies.

³¹¹ The six implementation bodies established by the Good Friday Agreement are: Waterways Ireland; the Food Safety Promotion Board; InterTrade Ireland (Trade and Business Development Body); the Special European Programmes Body; the Language Body/An Fóras Teanga/North-South Body o Leid; the Foyle, Carlingford and Irish Lights Commission. See <<https://www.northsouthministerialcouncil.org/north-south-implementation-bodies>> [accessed 24 May 2024].

³¹² For example, the Central Bank of Ireland has established an archive service which is open to members of the public. See <<https://www.centralbank.ie/about/central-bank-archive>> [accessed 24 May 2024]. In the interests of disclosure, the current author has been involved in the establishment and running of this archive service, as a contractor to the Central Bank of Ireland.

³¹³ NAI, *Protecting the Public Record*, at 24:01.

5.3.3 Summary: Accountability as a Mechanism

Interpreting accountability as a mechanism should result in a network of reporting relationships and assessment criteria whereby relevant forums and the public at large can insist on reports and explanations from relevant actors, ask questions and pass judgement, and have the opportunity to reward or penalise, depending on the outcome of the accountability process. Bovens states that in studies of accountability as a mechanism, gaps and shortcomings will be manifested as flaws or loopholes in the control mechanisms. The assessment above has identified several such flaws in Irish public sector recordkeeping.

The NAI appears to have shortcomings in operating satisfactorily as either an actor or a forum in this context, and other potential accountability forums, such as the NAAC, do not actively fulfil any accountability role. Meanwhile, many important public bodies remain outside the remit of recordkeeping legislation and the amending legislation of 2018 introduces political involvement and subjective assessments such as ‘balanced and fair’, while prioritising records relating to selected policy areas. As a result, members of the public – who are frequently both the main subjects of public records and the stakeholder group most often impacted by government decisions – are denied accountability in the recordkeeping process.

5.4 Accountability as a Virtue

While accountability as a mechanism is concerned with reporting structures and relationships, accountability as a virtue in the public sector environment is concerned with the outlook, demeanour and behaviour of public sector agencies. It refers to a set of substantive norms for the behaviour of actors, which Bovens likens to ‘a willingness to act in a transparent, fair, and equitable way’.³¹⁴

Andrew Torrance defines the virtue of accountability as ‘the disposition that characterises the person who embraces the condition of being accountable’.³¹⁵ He views accountability as a relationship which enables a person to learn from another, to respond to comments and opinions and to improve themselves as individuals. In such a relationship, he says, ‘a

³¹⁴ Bovens, 2010, p. 949.

³¹⁵ Andrew Torrance, ‘Accountability as a Virtue’, *Studies in Christian Ethics*, 34.3 (2021), 307–15 (p. 313).

person serves to bring about the fulfilment of the other by helping them to become all that they should be within the relationship of accountability'.³¹⁶

This approach views accountability as very much a process of responsiveness and improvement. It cannot be present without openness and transparency, a willingness to share information and to learn from the opinions and views of others in the relationship. It requires a demeanour or a character which is open to scrutiny, learning and self-improvement, rather than an outlook which is closed, defensive and resistant to outside influences.

In encouraging this kind of broader understanding of accountability, O'Neill argues that societies which are closed or restrictive are dysfunctional, even where they have rigid reporting, control, and accountability systems in place. She writes of 'enclave cultures' where professions and institutions stifle debate and discourage the possibility of 'exploring or testing, accepting or rejecting, varied ways of understanding situations and meeting relevant requirements'.³¹⁷ Laws and regulations, accountability forums and oversight bodies serve a purpose but they are often limited to showing that decisions or actions were taken by a duly constituted legal authority in line with rules and regulations. They rarely, if ever, concern themselves with more fundamental ethical assessments about the rights or wrongs of actions and decisions. O'Neill concludes that:

legislation, regulation and systems of accountability are not enough. They need the support of trustworthy and effective cultures and subcultures that enable those who inhabit them to explore, share and consider ethical as well as institutional standards to the tasks of understanding what is at stake and working out what to do.³¹⁸

Bovens states that assessing accountability as a virtue can formulate standards for the behaviour of public agencies: they should be open, engage in dialogue and be willing to learn from it. In practice, this translates to visible policies developed with the input of

³¹⁶ Torrance, p. 314.

³¹⁷ Onora O'Neill, 'Accountable Institutions, Trustworthy Cultures', *Hague Journal of the Rule of Law*, 9 (2017), 401–14 (p. 407).

³¹⁸ O'Neill, 2017, p. 411.

stakeholders, voluntary and comprehensive explanations of actions and decisions, and active engagement with the views and opinions of relevant interested parties. Studies which identify shortcomings in accountability as a virtue may highlight behaviour which is ‘unresponsive, opaque, irresponsible, ineffective, or even deviant’.³¹⁹

Monica Blagescu et al., in their *Global Accountability Framework (GAF)*³²⁰ share in the broad interpretation of accountability, encompassing in particular the learning perspective described by Bovens et al. They describe accountability as ‘less a mechanism of control and more a process for learning’ which ‘provides a pathway to better performance’.³²¹ The *GAF* is cited by Bovens as providing guidance on how to operationalise the understanding of accountability as a virtue. The *GAF* states that a retrospective assessment or judgement of actions already taken is too narrow a focus for accountability, and that there is a need to look ‘beyond its role as a disciplinary mechanism and towards its use as a transformative process’.³²²

The *GAF* states that accountable organisations should be ‘constantly providing stakeholders with information and engaging with them in decision-making and policy formulation before they take place’.³²³ Indeed, the *GAF* demonstrates that the creation, maintenance and provision of reliable information is central to accountability. According to the *GAF*:

a transparent organisation is one which opens up its inner workings to stakeholders and their influence; this openness relates specifically to decision-making structures. The processes through which decisions are made from the operational, to the policy, to the strategic levels are open to input from key stakeholders.³²⁴

It must be recognised that virtues and virtuous behaviour need to be cultivated and encouraged over a period of time, whether at the individual or the organisational level.

³¹⁹ Bovens, 2010, p. 959.

³²⁰ Monica Blagescu, Lucy de las Casas and Robert Lloyd, *Pathways to Accountability: Global Accountability Framework* (London: One World Trust, 2005).

³²¹ Blagescu et al., p. 11.

³²² Blagescu et al, p. 19.

³²³ Blagescu et al., p. 24

³²⁴ Blagescu et al., p. 30.

Those who aim to align their behaviour with a particular set of virtues are on a continuing and potentially never-ending journey of reflection and self-improvement. Simple or short-term solutions should not be sought in this journey.

In that context, the following sections of this chapter address the presence or absence of a culture of accountability as a virtue within Irish public sector recordkeeping as a whole before assessing the degree to which the recordkeeping profession, through its own conduct and procedures, meets the broad understanding of accountability as a virtue.

5.4.1 Accountability as a Virtue in Irish Public Sector Recordkeeping

5.4.1.1 Identifying Stakeholders

Because inclusion of and active engagement with stakeholders forms a central part of the *GAF* approach to accountability, it is necessary to identify relevant stakeholders in the public sector recordkeeping process. Stakeholders are defined as ‘individuals or groups that can affect or are affected by an organisation’s policies and actions’.³²⁵ To embed a culture of responsiveness and accountability, an organisation needs to: identify key stakeholders and define their interests and characteristics; assess the manner in which stakeholders might affect or be affected; understand the relations between stakeholders; and assess the capacity of different stakeholders to participate.³²⁶

There is a potentially wide range of stakeholders in public sector recordkeeping. Internally, we can identify the organisation itself, its board of directors (if there is one) and senior staff, such as the Secretary-General in government departments or equivalent post in other agencies and organisations. Other staff, at various levels within the organisation, are also stakeholders; they assist in developing policy and procedures and, at lower levels, are responsible for day-to-day implementation of policies and schemes. Many of them may be the first point-of-contact for members of the public seeking assistance, enquiring about rights or availing of services, with significant consequences in terms of recordkeeping.

External stakeholders include direct users of the core services of a public sector organisation, i.e. those who directly avail of, or who are the subject of public services.

³²⁵ Blagescu et al., p. 20.

³²⁶ Blagescu et al., p. 22

Examples include patients using public health services, students who receive educational services or a wide range of individuals who avail of welfare payments and supports according to their circumstances, or who rely on prompt, efficient and fair delivery of public services. This group also includes what might be termed involuntary stakeholders. For example, it would be inaccurate to describe prisoners as availing of a public service, but they are the subject of a service provided by government and, as such, must be considered stakeholders with certain legitimate interests in how the service is provided and managed. Stakeholders also include suppliers or service providers, typically commercial enterprises who provide goods or services for a fee. Beyond this, we can also identify indirect stakeholders, for example families of prisoners or patients, victims of crime, or employees of companies who provide services and receive payments from public service agencies.

Finally, the public at large is considered a stakeholder because all public services are provided in the name of the state, by the authorities to whom the public have delegated power. The appropriate use of public funds, the protection of individual rights, the defence of justice and an overall fair and defensible management of the public interest means that the public are the ultimate stakeholders with regard to recordkeeping by public bodies. Bovens, Schillemans and 't Hart refer to a 'concatenation' of relationships in the democratic perspective of accountability,³²⁷ and this is reflected here, with the public at the apex of the edifice of accountability relationships. Individuals with no direct involvement in a particular service still have a right and an interest in accessing information about how services are delivered and operated. For example, adults without children are entitled to re-assurance that proper safeguarding is in place within schools to protect the interests of children, and those who own their own homes have a legitimate interest in the fairness and equity of services provided to homeless people.

With such a wide range of stakeholders, it can become almost impossible to address the interests of all with equal detail and commitment. Blagescu et al. place particular emphasis on the place of stakeholders who are affected by an organisation's policies and/or actions but who do not have the power to influence the organisation. Failure to address the needs of such stakeholders 'will have adverse effects by reinforcing already

³²⁷ Bovens, Schillemans and 't Hart, p. 230.

skewed accountability systems towards those stakeholders with power, at the expense of those less powerful but affected by an organisation'.³²⁸ In recordkeeping terms, this can be seen to equate with a concern, as detailed in the literature review in Chapter 3, that records and archives have traditionally reflected the official views of powerful and influential institutions, to the exclusion of marginalised groups and individuals. Members of the public, as users (direct or indirect) of public services are frequently the primary subjects of public service records, yet they have limited agency in terms of influencing the content, use, sharing, retention or disposal of such records.

5.4.2 Gaps in Virtue

5.4.2.1 Public Sector Agencies

The literature review suggested a lack of appreciation for the value of records amongst public servants. It found a tendency to view recordkeeping in narrow accountability terms, with the broader cultural, memory and identity value of records being ignored or minimised. Such a view neglects the benefits to be derived from a wider virtue-based perspective, encompassing a transparent and responsive approach to recordkeeping functions, and accommodating stakeholder interests.

As described in Chapter 2, and also commented upon by interview participants, several tribunals, commissions of inquiry and other investigations have highlighted the consistently poor quality of public sector recordkeeping in Ireland and the lack of priority afforded to the maintenance of records within public sector organisations.³²⁹ Attention tends to be paid to recordkeeping at times of public controversy, again emphasising their potential negative impact for public sector agencies which are the subject of criticism for poor recordkeeping practices.

Gillian Oliver and Fiorella Foscarini highlight that cultural attitudes, including national cultures, have an impact in a recordkeeping context. For example, they claim that the need to educate and push for recognition of the importance of archives is not universal, and that outside the English-speaking world, there may be a greater appreciation of the value of records.³³⁰ Where the culture has been traditionally less accepting of

³²⁸ Blagescu et al., p. 22.

³²⁹ See section 2.6 above.

³³⁰ Gillian Oliver and Fiorella Foscarini, *Recordkeeping Cultures* (London: Facet Publishing, 2020) p.36.

recordkeeping, however, ‘where respect for and understanding of records and recordkeeping processes cannot be taken for granted, or where the act of documenting is perceived as negative behaviour, the records manager can appear to be faced with insurmountable difficulties’.³³¹ This is the type of culture that appears to have dominated in the Irish public sector, as evidenced by the interviews assessed in Chapter 4, by the lack of compliance with the NA Act since 1986, by multiple reports of the Director and of the NAAC, and by many investigations, tribunals and commissions which have repeatedly highlighted shortcomings in recordkeeping in the Irish public service.

Introducing new regulations, policies and procedures has a limited chance of success in such an environment because ‘if recordkeeping is not accepted as being of critical importance, then any additional tasks involved will be seen as an imposition, the straws breaking the camel’s back’.³³² The key to Oliver and Foscarini’s approach is that cultural issues and mindsets are central to any recordkeeping endeavour. A separate research project relating to the introduction of electronic records management systems makes a similar point, concluding that ‘the people, process, and systems/technology aspects’ of electronic records management are ‘inextricably linked’ and that ‘people issues are predominant, fundamental and challenging’.³³³

Given that practice and culture are central to successful implementation of legislation, it could be argued that the existing 1986 legislation in Ireland is perfectly adequate and merely requires better and more consistent implementation. There is no doubt that the current legislation could be better implemented, and almost certainly would have more of an impact if the cultural issues of the type described by Oliver and Foscarini had been addressed in an Irish context over the last 35 years. Such questions of culture relate to Bovens’ interpretation of accountability as viewed from the narrow (mechanism) perspective and the broad (virtue) perspective. The mechanisms provided by improved legislation and regulation must be accompanied by cultural changes which attach a greater value to records and their role in upholding and defending the rights of citizens and allowing citizens to monitor and manage their relationship with the State.

³³¹ Oliver and Foscarini, p. 36.

³³² Oliver and Foscarini, p. 40.

³³³ Julie McLeod, Sue Childs and Rachel Hardiman, ‘Accelerating Positive Change in Electronic Records Management’, *Archives & Manuscripts*, 39:2 (2011) 65–93 (p. 72).

Accountability as a virtue requires openness about strategies, policies and procedures – not just their content, but how they came to be developed and who had input into them. One way of embracing accountability as a virtue, therefore, would be to adopt and share recordkeeping policies and regulations which are not only available to stakeholders but which are influenced by and encompass the views and needs of those stakeholders. No such regulations have ever been issued, with the result that there are no consistent regulations in place for the creation, management and use of public records. In the annual report for 2014, for example, the Director stated: ‘My predecessors have consistently highlighted the importance of developing best practice for records management across the civil and public service [...] and I must reiterate the long-standing and pressing need for Regulations by the Minister for Public Expenditure and Reform in this area’.³³⁴

The lack of policy and associated guidelines means that recordkeeping within government departments and agencies is subject to local preferences and personal habits. Such a lack of clear policy and procedures not only restricts members of the public in accessing information and exercising their rights, but also places limits on their knowledge and understanding of how public sector agencies manage records in the first place. This is contrary to the understanding of accountability as a virtue, which requires a willingness to be transparent, to be subject to scrutiny and to be responsive to the needs and contributions of stakeholders, all with a view to fostering a culture of improvement and learning.

The opaque nature of recordkeeping within government departments is illustrated by responses to an FOI request submitted as part of this research, requesting copies of records management policies.³³⁵ Of the sixteen government departments that responded to the request, eight had no central records management policy of any sort (as of 6th September 2022); one had a policy which had not been updated since 2008. One issued

³³⁴ *Annual Report of the Director of the National Archives, 2014*, p. 5. Available at <<https://www.nationalarchives.ie/wp-content/uploads/2019/03/DirectorsReport2014.pdf>> [accessed 20 June 2024].

³³⁵ FOI request submitted on 9th August 2022 to eighteen government departments in existence on that date, as listed on <<https://www.gov.ie/en/help/departments/>> [accessed 9th August 2022]. No response was received from the Department of Rural & Community Development. The response from the Department of Education stated that its policies also applied to the Department of Further & Higher Education, Research, Innovation & Science and thus no response was received from the latter.

a set of procedural guidelines and referred to it as a policy, although it is in effect a user guide to a document management software system.

While the detail of individual policies is beyond the remit of this research, the absence of policies in many departments could be said to indicate a widespread lack of priority afforded to recordkeeping. Where policies do exist, they are limited and focus on procedural matters rather than identifying the key role of records in the lives of citizens. The few references which do exist in such policies to accountability appear to pay lip service to a term which is not defined or explained in any meaningful manner.³³⁶ No policy identifies any external stakeholders, apart from three generic references to ‘citizens’ and there is no reference to stakeholder input or participation in policy development or implementation.³³⁷ Any notion of person-centred or participatory recordkeeping as reflected in the literature review is entirely absent from these policies. Also absent is any suggestion that external stakeholders could or should have any input into policy development, review or improvement.

Interpreting accountability as a virtue involves a recognition that policies and guidelines on their own will never be sufficient to ensure accountability. The *GAF* makes it clear, however, that visible policies are necessary in order to provide a context and a culture within which public service organisations operate and fulfil their duties to the public.³³⁸ Clear policies establish priorities for the organisation and its staff. The absence of records management policies in Irish public sector organisations highlights the need for greater understanding and greater appreciation of the role of recordkeeping. The importance of quality and reliable information is not to the forefront in the Irish public sector; records are often viewed as a bureaucratic encumbrance rather than as positive tools of engagement with concrete benefits to a range of stakeholders, both internal and external. The lack of recordkeeping policies in most government departments means that

³³⁶ In the six policies provided in response to the FOI request, the words ‘accountability’ or ‘accountable’ are mentioned a total of nine times, but always without explanation or definition.

³³⁷ Three policies mention ‘citizens’ (once each) and five use the term ‘stakeholders’. Only one policy (the Department of Defence) actually identifies any stakeholders, however, and this refers only to internal stakeholders, as follows: ‘This policy applies to all employees of the Department of Defence. It also applies to secondees, interns, work experience students, and any other agent who creates, processes, or manages Departmental records or data’.

³³⁸ Blagescu et al., p. 29.

recordkeeping as a whole is given a low priority and is not viewed in a positive sense by public servants in terms of the rights and interests of citizens.

5.4.2.2 Recordkeeping Professionals

As those advocating for better recordkeeping and a better appreciation of the role of archives in accountability, archivists could be said to have a special responsibility in encouraging and nurturing a culture of accountability in public sector recordkeeping. The literature review and the interviews conducted as part of this research regularly point up the core value of recordkeeping with regard to accountability and the need to spread awareness and appreciation of this beyond the recordkeeping community. Equally, however, the literature review and the interviews note the long-term struggle of archivists to successfully fill this role.

In a study of archival researchers' choice of language in article titles and abstracts, Jennifer Pearson has assessed the traditional view of the archival profession as introverted, passive and non-assertive, and has concluded that while these characterisations may be something of a stereotype, there is a basis to perceptions of archivists as being motivated by values which are somehow a reward in themselves and which do not require managers, administrators or decision-makers to devote resources to satisfy the demands being made. Pearson finds that archivists tend to use language which is less forceful and thus less impactful when it comes to influencing managers and decision-makers. 'By embodying and reinforcing perceptions of the passive archivist, the net effect seems to be that the archives profession does not therefore take a strong stance in defining a unifying, consistent and readily understood value message.'³³⁹ It is suggested by Pearson that 'the opportunity for archivists could be as simple as shifting the lexicon towards communicating research results into readily understood stakeholder outcomes such as *effectiveness, enhancement, impact, implications, improvements, increases, influences, insights or success*'.³⁴⁰

A more sustained effort by the recordkeeping profession in terms of persuasion and advocacy would therefore seem to be appropriate. This applies not only to the traditional

³³⁹ Jennifer Y. Pearson, 'How Archival Studies and Knowledge Management Practitioners Describe the Value of Research: Assessing the "quiet" Archivist Persona', *Archival Science*, 22 (2022), 95–112 (p. 97).

³⁴⁰ Pearson, p. 108.

public service terminology suggested by Pearson, but also in terms of encouraging fellow public servants to adopt the notion of accountability as a virtue via open and effective recordkeeping policies and practices which would have beneficial results in terms of transparency, responsiveness, inclusion, and the re-balancing of interests to accommodate the needs of vulnerable or marginalised stakeholders. Insistence on new legislation, new rules and new penalties for non-compliance can only go so far and must be accompanied by a positive encouragement and nurturing of the value of records and archives.

The NAI could be said to hold a ‘gatekeeper’ role on the part of the public, holding public bodies to account and ensuring that recordkeeping facilitates accountability. In this, it holds a special role and should lead by example, itself demonstrating a culture of openness, transparency and responsiveness. Local authority archivists could be said to have the same role with regard to the recordkeeping of local government. Existing levels of transparency and responsiveness within the recordkeeping community itself, however, appear to be limited at best. This can be most clearly illustrated with reference to one of the key functions of archivists, i.e. the appraisal of records to identify those which warrant long-term preservation.

5.4.2.3 Records Appraisal

Appraisal is one of the core responsibilities of archivists, in that it relates to what survives of the public record and thus provides archivists with significant power and responsibility with regard to what should be remembered and what will be forgotten. According to Scott Cline, archivists

need to be particularly vigilant in appraisal, selection, description, and access to ensure that we are not forgetting records that would serve the public good. Remembering and forgetting necessitate an eye toward justice [...] Our decisions about remembering and forgetting must be informed by an understanding of, and obligation to, civic virtue; personal, professional, and community values; and moral and ethical action.³⁴¹

³⁴¹ Scott Cline, *Archival Virtue: Relationship, Obligation, and the Just Archives* (Chicago: Society of American Archivists, 2021), p. 96.

Decisions such as this should not be taken by individual archivists in the absence of visible criteria and policies, nor without transparency as to how and why the decisions are made, nor without input from and consultation with those stakeholders most affected by such decisions.

A review of annual reports of the Director of the NAI since 2010 shows a limited capacity on the part of the NAI to address records appraisal, due to a shortage of resources. Reports up to 2017 contain very superficial statements regarding the authorisations issued by the NAI for government departments to dispose of records, with minimal detail and no insight into what records were disposed of or on what grounds, leaving stakeholders without information on the nature of the records in question, why they were deemed not to be of ongoing value, or what factors influenced such a decision.³⁴² The NAI established a Current Records Unit in 2018 ‘to cater for the development of a coherent strategy and operational capacity’ and to address a backlog of applications for disposal ‘some of which had been outstanding for a number of years’.³⁴³ This has resulted in greater levels of engagement with government departments, including training and awareness sessions on appraisal, data protection and other issues. More recent annual reports provide an itemised list of applications to dispose of records. These, however, still provide limited information or context about the content of the actual records, and no explanation of the basis on which authorisations to dispose were granted.

Crucially, the annual reports provide information on decisions already taken and possibly already implemented. There is no scope for stakeholder input, review, appeal, feedback or re-consideration based on representations made. A request to view appraisal reports compiled by the NAI, submitted as part of this research, was refused on the basis that ‘It is not standard practice to share internal reports with third parties’.³⁴⁴ A subsequent FOI request resulted in appraisal reports being provided but with heavy redactions, so that the

³⁴² For example, the report of the Director for 2010 (p. 27) states simply: ‘In 2010, three authorisations for the destruction of records were granted in relation to records of the Department of Finance and the Public Appointments Service’. See <<https://www.nationalarchives.ie/wp-content/uploads/2019/03/DirectorsReport2010.pdf>> [accessed 20 June 2024].

³⁴³ *Report of the Director of the National Archives, 2018* (NAI, 2020), p. 26. Available at <https://www.nationalarchives.ie/wp-content/uploads/2021/05/NA_2018-Annual-Report-redux.pdf> [accessed 20 June 2024].

³⁴⁴ Email from NAI, 28th October 2021.

broad nature of the information contained in records, including file series titles, was not visible.³⁴⁵

The same FOI request also established that the NAI has no appraisal policy or criteria on which it makes appraisal decisions and by which its own actions can be assessed and judged. In response to a request for ‘Appraisal policies, appraisal criteria or any rules, procedures, guidelines, interpretations and precedents used or applied by the National Archives in assessing Applications for Disposal of Records under Section 7 of the National Archives Act, 1986’, the official response was ‘there are no records’.³⁴⁶

The absence of such policies or criteria means that questions arise about the disposal of public records. There is no intention here to question the professionalism, ability, or motivations of the NAI personnel involved in these decisions. Nor is it suggested that any specific appraisal decisions are flawed or dubious. Nevertheless, the decisions appear to be made in the absence of any written or defined policy, criteria or guidelines. There is apparently no stakeholder input and only minimal information, i.e. the final outcome, is eventually communicated through an annual report, which is published many months after the decision has been taken. This sort of process would not be considered to be aligned with the concept of accountability as a virtue. There is no openness, no transparency, no facility for sharing, co-operation, responsiveness or learning. There is seemingly no involvement from stakeholders, no element of participatory recordkeeping, no opportunity for review or appeal. The absence of a defined policy means that stakeholders have no opportunity to engage in any of the elements identified by the *GAF* as necessary features of a broad interpretation of accountability, i.e. transparency, participation, evaluation, and complaint and response mechanisms.

Valid questions may be asked of the NAI’s approach to appraisal. For example, who has been consulted about the appraisal strategy, in so far as there is one? In whose interests are appraisal decisions taken? Has there been stakeholder involvement in appraisal decisions, or have relevant stakeholders even been identified? Has there been any regard given to the rights, interests and well-being of marginalised or minority groups who are

³⁴⁵ FOI request TCAGSM-FOI-2022-0004. See Appendix C4.

³⁴⁶ Decision letter in response to FOI request TCAGSM-FOI-2022-0004, 9th March 2022. See Appendix C2.

the subjects of records? Has there been any element of participatory or person-centred recordkeeping as part of the appraisal strategy? In summary, and within the confines of existing legislative provisions, is the NAI responsive to stakeholder concerns and does it approach its appraisal decisions from a position which recognises the concept of accountability as a virtue?

The *GAF* states that ‘A transparent organisation is open about how it makes decisions and how stakeholders can input into these. It discloses outputs from, records of and information that informed its decision-making process’.³⁴⁷ By this measure, the NAI is open to criticism on the grounds that it does not appear to appreciate or embrace accountability as a virtue. This has important potential consequences for users of archives and for the wider public in terms of their ability to access records, understand how and why public agencies make decisions, and hold those agencies to account. If embracing accountability as a virtue, the NAI itself would engage in a responsive learning process in relation to such questions and, in doing so, could show public agencies how a broad concept of accountability can be incorporated into recordkeeping processes.

5.4.2.4 Other Functions

While the focus above has been on the appraisal process, it could be argued that other areas of NAI processes also display limited transparency. For example, in whose interests are departments pursued or not pursued with regard to transfer of records? Does the focus on records relating to Anglo-Irish issues, originating from a very small number of government departments, meet the needs of stakeholders with regard to accountability? The lack of transfers of records from departments such as Health, Education, Finance or Environment, for example, may be said to hinder accountability in areas which impact directly on the rights and interests of citizens (past, present and future). Indeed, have any stakeholders had any meaningful input into decisions regarding where the NAI concentrates its resources and efforts? Overall does the NAI act in a manner which reflects a culture of accountability as identified in the *GAF*?

Equivalent organisations in other jurisdictions, via appropriate legislative provisions, provide a clue as to how accountability as a virtue can be recognised and adopted,

³⁴⁷ Blagescu et al., p. 31.

incorporating work processes which can be more transparent, and including opportunities for stakeholders to participate in and influence decisions. New Zealand's Public Records Act requires that at least 30 days' notice must be given of an intention to authorise the disposal of public records,³⁴⁸ while in the UK, the Advisory Council on National Records and Archives provides an independent assessment of applications to withhold records from public access.³⁴⁹ Such procedures may not operate perfectly, but could provide a useful starting point for considering revised procedures in an Irish context. The lack of any similar provisions for oversight, appeals, exchange of views or responsiveness in Ireland reflects a mindset which appears to be reliant on internal justification, rather than open to discussion, input and influences from relevant stakeholders. As described by Frankie during the interviews conducted for this research, 'I think we as a profession have decided that we know best on certain things and [...] there should be more transparency there. That probably is something we could do right now but the profession isn't particularly interested in doing'.

While the assessment above has focused on certain elements of the NAI responsibilities, similar limitations can be seen in local authority archives. Many local authorities do not have a fully functioning archive service, choosing to manage their archives as part of the local studies division of the county library service. An assessment of local authority websites identifies a lack of publicly accessible policies regarding the remit of local archive services, with limited information available with regard to collecting policies and appraisal strategies. Of twenty-nine such websites examined, seventeen carried no policy statements of any kind, while five carried policies only relating to access rules and regulations for users. Seven websites carried some sort of mission statement and/or statement of collecting or acquisitions policy. All such statements were brief, none of them identified any appraisal strategies or criteria and none identified a role for external stakeholders in influencing appraisal decisions.³⁵⁰ The lack of policies makes it next to impossible for members of the public to assess the basis on which local authority records

³⁴⁸ Public Records Act, 2005, section 20(2). Available at <<https://www.legislation.govt.nz/act/public/2005/0040/latest/DLM345735.html>> [accessed 24 May 2024].

³⁴⁹ See <<https://www.nationalarchives.gov.uk/about/our-role/advisory-council/>> [accessed 24 May 2024]. The Advisory Council is described as representing 'public interest in deciding what records should be open or closed' and it claims to 'regularly challenge government departments on why documents remain classified or other reasons given for not handing them over to The National Archives'.

³⁵⁰ The assessment of local authority websites was carried out on 25–26 August 2022.

and archives are being managed. Only four of the websites identified a role for the archive service in the management of current records within the relevant local authority.

In overall terms, the general absence of visible policies, the lack of stakeholder opportunities to contribute towards or ask questions of core activities and decisions, and the general lack of openness and transparency in archival processes can be said to reflect O'Neill's concerns about 'enclave cultures' where professions operate in a culture of 'we know best' and are limited in their willingness or ability to reflect, respond to or learn from interactions with stakeholders in the outside world.

5.4.3 Summary: Accountability as a Virtue

Accountability as a virtue requires a willingness to be open to scrutiny, to share and explain strategies and policies, to be inclusive of stakeholder needs and concerns and to strive for improvement. As described by Bovens, O'Neill, and others, it places a focus on the behaviour of actors, and the aim is trustworthy public agencies acting to a certain set of ethical norms. Blagescu et al. provide a model for assessing the extent of such trustworthy behaviour by placing an emphasis on the presence of visible policies, developed with stakeholder involvement and with ongoing scrutiny, re-evaluation and improvement.

As has been outlined above, Irish government departments are lacking in terms of visible policies for the management of public records. The policies that do exist are limited in ambition, largely procedural in nature and neglectful of any stakeholder input. It can be said, therefore, that in terms of recordkeeping, Irish public sector agencies display little in the way of meaningful accountability, as it is described by Bovens.

The literature review and the interviews highlighted that recordkeepers are aware of this lack of accountability and want to address it. Yet they often fall short in their efforts to do so and, as noted by several writers and interview participants, have not managed to consistently increase the appreciation of recordkeeping by public servants, nor to successfully explain the positives which will flow for all stakeholders if recordkeeping is addressed in a transparent manner. As explored above, part of the problem may lie with a lack of accountability and transparency within the recordkeeping profession itself.

In the interviews conducted for this research, one archivist strongly encouraged a more positive culture of recordkeeping within the public sector.³⁵¹ If public servants as a whole are to be encouraged to adopt a more positive, affirmative approach such as this, the recordkeeping community itself, through visible and substantive policies, engagement with stakeholders, and a willingness to be accountable, needs to lead by example and to recognise and embrace the concept of accountability as a virtue.

5.5 Conclusion

This chapter has used a dual concept of accountability proposed by Bovens and applied it to Irish public sector recordkeeping. The complementary concepts of accountability as a mechanism and as a virtue recognise that monitoring, reporting and investigating are necessary features of accountability but that the overall objective should be to engender more trustworthy public institutions which act from a set of fundamental values and beliefs. By viewing accountability in the broader sense, public service agencies can become more willing to open themselves to scrutiny, to accommodate stakeholder views and concerns and to become more responsive to the needs of the public.

In assessing accountability as a mechanism in Irish public sector recordkeeping, this chapter has identified shortcomings in the necessary relationships and reporting structures, and has found a limited capacity on the part of the various forums to ask questions of and secure responses from relevant actors. This is in line with Bovens' contention that this type of assessment may discover failings which manifest themselves as deficits in the network of procedures and mechanisms.

With reference to accountability as a virtue, a number of shortcomings have also been identified. The lack of visible and inclusive recordkeeping policies, the lack of recognition of external stakeholders, the absence of participatory recordkeeping, and the minimal retrospective reporting of decisions taken without stakeholder input all suggest a system which is limited in terms of responsiveness and self-improvement. This reflects Bovens' statement that shortcomings in accountability as a virtue may manifest themselves as opaque and unresponsive work practices and working cultures.

³⁵¹ See section 4.3.3.4 above.

The dangers of such a closed and unresponsive outlook are described by Joseph E. Stiglitz:

Often the circle of those involved in decision-making is greatly circumscribed; those who are able to provide valuable insights are out of the discussion. The quality of decision-making is thereby weakened. There is, again, a vicious circle. With more mistakes, public officials become more defensive; to protect themselves, they seek even more secrecy, narrowing the circle still further, eroding still further the quality of decision-making³⁵²

Regardless of the particular perspective, the ultimate aim of accountability is enabling the citizenry to make judgements about the performance of the government and facilitating an improved and more responsive governing authority which protects citizens and acts in the interests of society rather than in the pursuit of narrow objectives which favour selective interests.

If accountability in Irish public sector agencies is to improve, better recordkeeping will play a crucial part. Apart from changes to legislation, procedures, and regulations which address the narrow interpretation of accountability, this will also require a cultural change whereby public servants have a greater appreciation of the value of records and their core role in the lives of citizens, as well as a greater willingness to include stakeholders in decisions regarding records creation, use and appraisal. The recordkeeping profession itself has a central role to play in advocating for such a change in culture, but currently falls short in terms of its own approach, and will need to adopt a demeanour which is more embracing of accountability as a virtue, if it is to act as advocate for greater accountability in the wider public service.

³⁵² Joseph E. Stiglitz, 'On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life', Oxford Amnesty Lecture, 27th January 1999 (p. 14). Available at <https://documents1.worldbank.org/curated/en/436941546609601734/pdf/WP-Stiglitz-right-to-know-OUO-9.pdf> [Accessed 27 May 2024].

Chapter 6

Recordkeeping and the Right to Information as a Human Right

6.1 Introduction

This chapter will address the question of whether current Irish public sector recordkeeping facilitates the protection and upholding of human rights. While acknowledging the relevance of recordkeeping to a wide range of human rights, the chapter will focus on the right to information itself as a human right, linked to human dignity and fulfilment. After a brief consideration of the links that have been identified between recordkeeping and human rights, there follows an outline of how the right to information has moved from being viewed as an ancillary right, important mainly for the enjoyment of other more fundamental rights, to being viewed as an intrinsic right on its own merits, which extends beyond the mere granting of access to records. The chapter then considers a model of the right to information which views it as placing three obligations on government – recognition of public ownership of public records, the creation and maintenance of quality records, and ensuring that records are accessible. The chapter will then assess Irish public sector recordkeeping in the context of how well it aligns with this model.

Recordkeeping has a wide-ranging relevance to human rights. It has frequently been cited as an important aspect of documenting human rights abuses. As referenced in Section 6.2.1 below, oppressive regimes frequently generate significant volumes of records as an essential means of managing and administering practices which deny individuals their rights and freedoms. Recordkeeping also facilitates human rights, and access to information is frequently cited as a vital element in allowing individuals to learn about and avail of their rights; this perspective is discussed further in Section 6.2.2. After a brief discussion of varying views of human rights and recordkeeping, this chapter will then proceed to focus on the right to information as an intrinsic right, linked to human dignity and well-being.

6.2 The Right to Information as a Human Right

6.2.1 Human Rights and Recordkeeping Literature

The literature review in Chapter 3 established that, in recent decades, recordkeepers have consistently identified a link between records and human rights, and the recordkeeping literature increasingly takes the connection to be self-evident. The link is frequently discussed in the context of major injustices and human rights breaches suffered by minorities and marginalised groups, and the role which records and archives may play in uncovering such abuses and bringing perpetrators to justice. The experiences of Indigenous populations are frequently cited in such discussions, as are the abuses perpetrated in the 20th century by the Nazis, the Stasi, the Khmer Rouge and others.³⁵³ The Joinet Orentlicher Principles highlight the key connection between archives and human rights, stating that ‘the right to know implies that archives must be preserved’.³⁵⁴

The recordkeeping literature pays less attention, however, to more prosaic recordkeeping issues which impact on human rights on a more routine basis. While major human rights abuses on the scale of mass murder or genocide understandably attract much attention, recordkeeping can impact on rights and freedoms in a much more regular and seemingly more mundane manner. Failures or shortcomings in – for example – registering births, issuing accurate identity documents, recording ownership of lands, issuing visas or residential permits or documenting employment, welfare or pension rights can all impact directly on individual rights, freedom of movement and many other aspects of daily life. Failure by public agencies to properly and accurately document their decisions and the reasons behind them can inhibit the public in assessing the performance of government, the appropriateness of its actions, the fairness of government policy-making and the extent to which it attempts to protect and uphold the rights and interests of citizens.

In general, the recordkeeping literature assumes a link between recordkeeping and human rights and discusses it via case studies, usually with the intention of showing how access to archives can retrospectively address human rights abuses. While Ketelaar, Pope and others have written of access to information as a human right,³⁵⁵ the recordkeeping

³⁵³ See section 3.3.2.2 above.

³⁵⁴ Orentlicher, Principle 14.

³⁵⁵ See section 3.3.1.4 above.

literature has made limited attempts to provide a detailed assessment of a wider right to information, going beyond the mere right to access.

6.2.2 The Right to Information as an Ancillary Right

The right to information has traditionally been viewed as an ancillary right, i.e. it has been seen as necessary in order to facilitate other rights. Such an approach views the right to information as a practical necessity, rather than a human right which deserves recognition on its own merits. Terminology in the literature relating to the right to information differs, with writers using words such as ancillary,³⁵⁶ procedural,³⁵⁷ derivative³⁵⁸ or instrumental,³⁵⁹ according to their own preference. For consistency, the term ‘ancillary’ is applied throughout this chapter.

Arguments for recognising the right to information as a human right have most commonly been derived from Article 19 of the UDHR of 1948, which states that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.³⁶⁰

The International Covenant on Civil and Political Rights (ICCPR) of 1966 expands on this by referring to a freedom ‘to seek, receive or impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’³⁶¹ It also notes that such a right comes with ‘special duties and responsibilities’ and may be subject to certain restrictions, namely with regard to protecting the privacy of others and with protecting national security, public order, or ‘public health or morals’.³⁶²

³⁵⁶ Cheryl Ann Bishop, *Access to Information as a Human Right* (El Paso: LFB Scholarly Publishing, 2012), pp. 19–20.

³⁵⁷ Bishop, p. 33.

³⁵⁸ Kimberli M. Kelmor, ‘Legal Formulations of a Human Right to Information: Defining a Global Consensus’, *Journal of Information Ethics*, 25:1 (2016), 101–13 (p. 107, 109).

³⁵⁹ Stiglitz, p. 27; McDonagh, p. 26.

³⁶⁰ UDHR, Article 19.

³⁶¹ United Nations, International Covenant on Civil and Political Rights (ICCPR) (New York, 1966), Article 19. Available at <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> [accessed 24 May 2024].

³⁶² ICCPR, Article 19.

In discussing the right to information, C.G. Weeramantry goes beyond Article 19, by contending that almost every human right listed in the UDHR is accompanied by an ancillary right to know. He uses examples of human rights at international, national and individual levels to illustrate his point, stating, for example, that if self-government is a human right (Article 21), then citizens have a right to the information necessary to make informed decisions about their governments. Likewise, at the individual level, if health is a human right (Article 25), access to information about health systems, food safety and environmental damage must also be a human right. His conclusion is that ‘whatever human right one picks out from the vast catalogue of recognised rights, it is clear that it must be accompanied by ancillary rights to the information necessary for the exercise of the right in question.’³⁶³

The International Council on Archives (ICA) has produced a commentary on the UDHR, attempting to identify the types of records and archives which are necessary to uphold the rights enumerated in each of the individual articles, an approach which seems to align with the view of the right to information as an ancillary right.³⁶⁴ Bishop notes that many writers, in addition to Weeramantry, also view the right to information as an ancillary right, necessary for the exercise of other rights, including self-governance and democracy.³⁶⁵

6.2.3 The Right to Information as an Intrinsic Right

An alternative perspective views the right to information as separate from and equal to other human rights, reflecting an increasingly common interpretation which looks beyond viewing the right to information as an ancillary right and treats it as an intrinsic human right which can be justified on its own merits. As with the terminology relating to ancillary rights, a range of wording is deployed by those who take this view, including

³⁶³ C.G. Weeramantry, ‘Access to Information: A New Human Right. The Right to Know’, *Asian Yearbook of International Law*, 4 (1995), 99–125 (p. 102).

³⁶⁴ Trudy Huskamp Peterson, ‘The Universal Declaration of Human Rights: An Archival Commentary’ (International Council on Archives, 2018). Available at <<https://www.ica.org/resource/the-universal-declaration-of-human-rights-an-archival-commentary/>> [Accessed 24 May 2024].

³⁶⁵ Bishop, p. 19.

intrinsic,³⁶⁶ fundamental³⁶⁷ and freestanding³⁶⁸. For consistency, the term intrinsic is applied in this chapter.

McDonagh notes that several legal cases have upheld the right to information as an ancillary right, i.e. on the basis that it is necessary for the enjoyment of other rights – such as the right to life and liberty (Article 3), the right to a fair trial (Article 11) or the right to privacy (Article 12). McDonagh argues that such defences of the right to information are content-dependent and limited, as they apply to specific people in specific circumstances only.³⁶⁹ She advances a view in support of a more broad-based right to information which applies outside of such limits, irrespective of the identity of the requester, the nature of the information sought, or the reasons for which it is sought,³⁷⁰ with restrictions or limitations minimised and invoked only when clearly justifiable.

Supporting the interpretation of the right to information as an intrinsic right, Mathiesen connects it to the concept of human dignity, claiming that the right to information is necessary in order to live a ‘minimally good life’ and that ‘a life deprived of adequate access to information and knowledge is a seriously impoverished life’.³⁷¹ She views access to information as a primary social good. Kelmor takes a similar view, stating that ‘the human right to information can be nothing less than the right to the information a human needs to live completely actualised’.³⁷² Such views link the right to information directly to the concept of human dignity, which is frequently invoked as the foundation and root of human rights. The Preamble to the UDHR, for example, begins with a reference to ‘the inherent dignity [...] of all members of the human family’,³⁷³ while the Preamble to the ICCPR states that human rights ‘derive from the inherent dignity of the human person’.³⁷⁴

³⁶⁶ Kay Mathiesen, ‘Access to Information as a Human Right’ (2008), p. 4. Available at SSRN: <<https://dx.doi.org/10.2139/ssrn.1264666>> [accessed 24 May 2024]; McDonagh, pp. 26–7.

³⁶⁷ Toby Mendel, ‘Freedom of Information as an Internationally Protected Human Right’, p. 1. Available at <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf> [Accessed 24 May 2024]; Mathiesen, 2008, p. 1; McDonagh, p. 27.

³⁶⁸ Kelmor, pp. 109–10.

³⁶⁹ McDonagh, p. 46.

³⁷⁰ McDonagh, p. 47.

³⁷¹ Mathiesen, 2008, p.1.

³⁷² Kelmor, p. 110.

³⁷³ UDHR, Preamble.

³⁷⁴ ICCPR, Preamble.

If, as Kelmor and Mathiesen argue, information is necessary for human dignity and fulfilment, then the right to information becomes an intrinsic right, standing on its own merits and not merely a procedural necessity to facilitate other rights. Limits and restrictions may be necessary in specific circumstances, for example to protect personal privacy or criminal investigations, but the default position must be an assumption of a right to information. If this is not the case, and if the right to information is viewed purely as an ancillary right, valid only in specific scenarios, we limit the scope for individuals to fully appraise their situation, evaluate the performance of governments and public agencies, form opinions, establish goals and decide on appropriate options to rectify shortcomings and assert their rights. As described by Kelmor, approaches which treat the right to information as an ancillary right and attempt to prescribe specific contexts or circumstances in which it should apply ‘are not actually defining the right to information, and are not merely describing the ways the right is created’, but are identifying ways of constraining that right.³⁷⁵

By identifying information as a primary social good and linking it to human dignity and fulfilment, Mathiesen and Kelmor make the case for recognising the right to information as an intrinsic human right, rather than one that is subservient to or lesser than others. Toby Mendel agrees, claiming that ‘the importance of freedom of information as a fundamental human right is beyond question’.³⁷⁶ He identifies access to information as a ‘fundamental underpinning of democracy’,³⁷⁷ a view also reflected by Stiglitz, who says that the right to information is much more important than is implied when viewing it as an ancillary right:

Greater openness can be justified on instrumental grounds, as means to ends [...]
But I also believe that greater openness has an intrinsic value. Citizens have a right to know [...] we have a basic right to know how the powers that have been surrendered to the Collective are being used. This seems to me to be a basic part of the implicit compact between the governed and those that they have selected to temporarily govern them.³⁷⁸

³⁷⁵ Kelmor, p. 109.

³⁷⁶ Mendel, p. 1.

³⁷⁷ Mendel, p. 2

³⁷⁸ Stiglitz, p. 27.

Viewing the right to information as an intrinsic human right does not equate to an insistence that it must apply in all circumstances, regardless of context. Like all rights, there are limits to its application. Most frequently these limits will be designed to protect personal privacy or matters of public safety. As with restrictions on other rights however, such as freedom of expression or freedom of movement, the restrictions should be the exception. Upholding the right should be the default, limiting it should be reserved for specific and clearly justifiable scenarios.

6.2.4 The Right to Information as a Welfare Right

McDonagh claims that Article 19 of the UDHR places the focus on the provider, i.e. the person in possession of the information. While others have a right to seek and receive, there is no obligation on the provider to comply with requests or to actively uphold others' right to information. Recognising an intrinsic right to information that applies beyond the content-specific circumstances recognised by the ancillary approach would, she argues, place the focus on the requester and cover 'not only that which the provider wishes to furnish to the recipient but also information that others, such as the government, do not wish to make available to him or her.'³⁷⁹ An effective right to information, going beyond specific types of information in specific contexts, would therefore place an obligation on the holder of the information to respect and fulfil the rights of the requester, with certain limited exceptions.

This point is taken up by Mathiesen, who uses the model developed by Wesley Hohfeld³⁸⁰ to distinguish between 'liberty rights' which confer a negative duty (i.e. an obligation not to interfere with another's right), and 'welfare rights' which confer a positive duty (i.e. an obligation to assist or accommodate another's rights). Mathiesen claims that 'our interest in access to information and knowledge can only be fully protected by a welfare right that *obligates* others to take steps that will enable us to access the essential information that we need'.³⁸¹ This would suggest that governments and public agencies generally have an obligation to proactively create, manage and provide access to information, rather than taking a passive or reactive approach which considers

³⁷⁹ McDonagh, p. 29.

³⁸⁰ Wesley N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, (New York: Yale University Press, 1919).

³⁸¹ Mathiesen, 2008, p. 14.

information for release in particular scenarios, in response to specific requests which are subject to formal application procedures.

Even a limited interpretation of the right to information as stemming from the right to freedom of expression specified in Article 19, can view it as a welfare right which imposes positive obligations on relevant actors. As noted by Bishop, Article 19 is frequently interpreted as imposing positive duties on governments with regard to freedom of expression, e.g. by establishing public broadcasting services and by regulating private media ownership.³⁸² If access to information stems from Article 19, then it too can be interpreted as implying a positive duty to take steps to ensure that the right can be exercised and protected.

The developing view of information as an intrinsic human right is, therefore, supplemented by an increasing trend towards viewing it as a welfare right which places positive obligations on actors. McDonagh notes an increasing tendency in legal cases and international reports to interpret Article 19 as encompassing such a positive right, referencing the view expressed in 1998 by the UN Special Rapporteur on Freedom of Expression that Article 19 imposes a ‘positive obligation on states to ensure access to information, particularly with regard to information held by governments’.³⁸³ She notes in particular the contribution made by the 2009 European Council Convention on Access to Official Documents, which recognises a general right of access to records held by public bodies and specifies no limitations based on the identity or motivation of the requester.³⁸⁴ McDonagh’s conclusion is that the growing recognition of the right to information at domestic and international levels makes it difficult to resist the argument that the right exists as an intrinsic right with corresponding obligations, and is not merely an ancillary right derived from other more fundamental rights.

Such a viewpoint does not negate the need to respect other rights. The right to information must be balanced against the right to privacy, for example, and conflicts will inevitably arise in balancing a range of rights in specific contexts. Nor should the role of others,

³⁸² Bishop, pp. 23–4.

³⁸³ McDonagh, p. 29. She also references a 2004 Joint Declaration by the UN, the Organisation of American States and the Organisation for Security and Cooperation in Europe (OSCE) and a 2011 UN Human Rights Committee General Comment on Article 19 in this context.

³⁸⁴ McDonagh, p. 47.

apart from governments and public agencies, be neglected. Private companies and individuals have obligations to protect and uphold the right to information in an appropriate manner. As the focus of this research is on public sector recordkeeping, such obligations will not be addressed in detail here.

6.2.5 Summary

The right to information has frequently been viewed as an ancillary right, important in particular circumstances and for particular individuals where access to information is necessary for the enjoyment of other more fundamental rights. As described by McDonagh, there has been an increasing tendency in recent years for legal rulings, texts of human rights declarations, and reports by human rights bodies to interpret the right to information as a stand-alone welfare right which imposes a positive duty on actors, in particular governments, to take active steps to recognise, safeguard and facilitate that right.

The right to information is now widely interpreted as applying regardless of the nature of the information in question, the identity of the requester, or the reason for which the information is sought. As claimed by Kelmor, attempts to prescribe when and in what circumstances the right should apply may, in fact, serve only to constrain the right. Limits should apply in exceptional circumstances only, when deemed necessary by particular circumstances or contexts. The right to information is therefore increasingly seen as an intrinsic human right which is a necessary contribution to human wellbeing and dignity. In the words of Mathiesen, ‘A minimally good human life is not possible without access to a rich array of expressions and to knowledge for both practical ends and intrinsic benefits to the human spirit.’³⁸⁵

6.3 Obligations Arising from the Right to Information

A number of writers, as detailed in the following sections, argue that the right to information gives rise to a number of conditions which are necessary to give effect to the right. These conditions are firstly, that public records are recognised as public property with an associated assumed right of access; secondly, that these public records contain quality information; and thirdly, that individuals are provided with the capabilities to

³⁸⁵ Mathiesen, 2008, p. 11.

access this information. Scholars argue that without these conditions, the right to information can have limited benefits and will operate in a theoretical sense, with members of the public not having the means to avail of the right in a manner which improves their quality of life, or contributes to their goals and aspirations.

The following sections of this chapter examine each of these conditions in turn and argue that they should be viewed as obligations which fall on governments in the context of the right to information. These obligations are seen as necessary but not sufficient, i.e. fulfilling all three obligations is necessary but will not, on its own, be sufficient to guarantee a right to information. Other factors, such as education, literacy levels and access to technology are also relevant but are too numerous to assess in detail here and a full discussion of these lies outside the remit of this thesis.

6.3.1 Public Ownership of Public Information

McDonagh urges a right to information which applies irrespective of the nature of the information which is sought, or the identity or motivation of the requester.³⁸⁶ This is closely related to Weeramantry's view that the 'right to information is not merely a right to such partial or incomplete information as a speaker may choose to communicate but a right to whatever information there is on the topic which is available within the constraints of law and practicality'.³⁸⁷ Bovens makes a similar point, stating that allowing a government agency the discretion to decide what information should be available would mean that the implementation of the right to access would be 'determined by the agency whose power it is meant to curtail'.³⁸⁸ That is to say, if government has full autonomy to decide what information we should and should not see, it may take a restrictive approach, favouring the release of information which reflects positively on its own actions and performance, and limiting access to information which would cast it in a negative light.

Support for an assumed right of access is predicated on the understanding that the information generated and retained by government is public property and that members of the public have an inherent right to access it, unless for very specific reasons. Access

³⁸⁶ McDonagh, p. 47

³⁸⁷ Weeramantry, p. 103.

³⁸⁸ Mark Bovens, 'Information Rights: Citizenship in the Information Society', *The Journal of Political Philosophy*, 10:3 (2002), 317–41 (p. 329).

rights do of course exist in the private sphere also, but Stiglitz says that the public has, in effect (via taxation that funds the operation of public agencies), paid for the gathering of government information and such information is therefore owned by the public.³⁸⁹ Mendel agrees, stating that ‘Information held by public authorities is not acquired for the benefit of officials or politicians but for the public as a whole’.³⁹⁰

As with all rights, limitations to the right to information are necessary, for example for reasons of privacy or national security, but these must be clearly enumerated and justified and must be applied carefully and judiciously, rather than on a blanket basis. In suggesting a wording for a proposed constitutional right to information, designed to codify the intrinsic human right, Bovens advances the following simple formulation: ‘Everyone has a right to access information held by government. This right can be restricted under law’.³⁹¹ A further element of his formulation will be addressed below when discussing accessibility.

On this basis, a denial of the right to information can only be justified in exceptional circumstances. Existing arrangements in most countries, however, are widely seen as inadequate, even where comprehensive FOI legislation has been introduced. Bovens claims that many FOI regimes provide access ‘only on explicit request and often after prolonged legal procedures’,³⁹² while Kelmor says that much of the existing body of legislation is largely an enumeration of negative rights interfering with an individual’s access to information.³⁹³

A recognition of public ownership of information created and maintained by governments requires a move towards an assumed right of access, with well-defined but strictly limited exceptions and minimal obstacles such as formal or complex procedures, fees, restrictive timeframes, delays or narrow interpretations of the right. The public elects and places its trust in government, and relies on services delivered by public agencies. All such services are delivered on behalf of the public, and are funded through taxation paid by members

³⁸⁹ Stiglitz, p. 7.

³⁹⁰ Mendel, p. 1.

³⁹¹ Bovens, 2002, p. 339.

³⁹² Bovens, 2002, p. 330.

³⁹³ Kelmor, p. 102.

of the public. There is thus a valid argument for viewing all records created and maintained by public agencies as public property, with an associated right of access.

There are questions to be asked in relation to what constitutes a public record in the first place. In the current economic model, many public services (for example, waste disposal, construction, or home care) are outsourced to private agencies who are paid by the government on behalf of the public. Should the definition of public records, therefore, extend to records created by private agencies engaged in service delivery on behalf of the government?³⁹⁴ Clarification of such matters is required, but limiting the definition of public records to those actually created by public agencies has the potential to constrain citizens in availing of their right to public information. Recognition of a right to information should involve an acceptance of the widest possible access to the widest possible amount of information, with limitations kept to a minimum.

6.3.2 Quality Information

In addition to establishing the principle that public records belong to the public, there is also an increasing interest in the quality of the information that is generated and made available. Bovens says that for the right to information to have real meaning, the information must be well-organised and comprehensible.³⁹⁵ This implies proper recordkeeping procedures, with information being easy to retrieve and properly contextualised. Mathiesen goes into more detail on this point, stating that there are several dimensions to information quality, including accuracy, completeness, currency and comprehensibility.³⁹⁶ Kelmor reflects some of these dimensions when arguing that quality information encompasses issues such as accuracy, formats, cost, accessibility and literacy, amongst others.³⁹⁷

³⁹⁴ Section 7 of FOI Act, 2014, allows the government to extend the remit of the Act to ‘any other entity, whether financed wholly or partly, or directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government’. This power has not, as yet, been exercised. The Public Records (Scotland) Act of 2011 specifically includes ‘records created by or on behalf of a contractor in carrying out the authority’s functions’ and ‘records created by any other person that have come into the possession of the authority or a contractor in carrying out the authority’s functions’. See <https://www.legislation.gov.uk/asp/2011/12/section/3> [Accessed 24 May 2024].

³⁹⁵ Bovens, 2002, p. 330.

³⁹⁶ Mathiesen, 2008, p. 7.

³⁹⁷ Kelmor, p. 110.

What is at issue here is the degree to which individuals can actually benefit in real terms from their right to information. To identify and understand rights and to identify potential breaches of rights or to hold governments accountable, there is a need not just for access to information, but access to quality information; that is, information which is organised, complete (or as complete as can be) and comprehensible rather than disorganised, partial and incomprehensible. This impacts on questions of how public bodies create, organise, store and maintain records in the first place, the degree to which good recordkeeping policies and practices are in place and the manner in which recordkeeping professionals go about their tasks of accessioning, appraising, preserving, describing and cataloguing records.

In this context, Mathiesen compares the right to information to the right to food, which ‘implies a right to sufficiently nutritious food’.³⁹⁸ The right to information, she argues, would be largely meaningless if it relates to some loose definition or concept of information which excludes considerations of quality. The right to information is not a right to incomplete, misleading, disorganised or inaccurate data or snippets of information; it imposes on government an obligation to provide information which informs and illuminates.

Mathiesen says that a document or record is informative to a person ‘only to the extent that she is able to comprehend the information contained in the document’ and that this necessitates consideration of the most suitable formats for records, in such a manner that will make them accessible to the people who need them.³⁹⁹ As will be noted later in relation to accessibility, this also extends into considerations of giving people the necessary skills to comprehend information provided to them, for example through improved levels of literacy.

The obligation to create and maintain quality information thus incorporates a range of requirements, from recognition of the need to create information in the first place in order to properly and fully document actions and decisions, to processes aimed at ensuring accuracy, adequate storage, organisation and arrangement, protection from unauthorised

³⁹⁸ Mathiesen, 2008, p. 7.

³⁹⁹ Mathiesen, 2008, p. 7.

amendment or deletion, and so on. In the digital context, such questions incorporate questions of software and hardware obsolescence, the need to migrate to newer versions, to review and renew strategies to ensure that records, especially those that warrant long term preservation as archives, remain not only accessible but comprehensible over an extended period.

Considerations such as these relate to common interests of the recordkeeping profession regarding concepts such as the authenticity, reliability, integrity and useability of records.⁴⁰⁰ Such concerns are reflected in an increasing range of standards, guidelines and policies designed to ensure the accuracy and reliability of records and recordkeeping systems. In terms of records that warrant preservation as archives, standards relating to accurate and consistent cataloguing reflect a concern that information be presented in an organised and comprehensible manner, in a consistent and logical structure which facilitates users and makes it as easy as possible to identify information that is relevant to them.⁴⁰¹

The importance of quality information, or nourishing information as Mathiesen describes it, means that accurate and efficient recordkeeping should not be considered a pedantic or petty bureaucratic fixation, but a necessary part of any government's obligation to protect and uphold the rights of citizens.

6.3.3 Accessibility

The first two obligations discussed above would have limited effect if the public records in question are not actually accessible to those who wish to avail of their right to information. Recognition of public ownership of public records and the creation and maintenance of quality information would still leave the right to information as a theoretical and unfulfilled right if steps are not taken to ensure that the right can operate in real terms. In that context, practical issues relating to allocation of resources can have a direct impact on the accessibility of public records, and therefore on the realisation of

⁴⁰⁰ Definitions of these terms are set out in section 5.2.2 of *International Standard ISO 15489-1, Information and Documentation – Records Management – Part 1: Concepts and Principles*, 2nd edition (Geneva: International Standards Organisation, 2016).

⁴⁰¹ *ISAD(G): General International Standard Archival Description, Second Edition* (Ottawa: International Council on Archives, 2000) is the accepted standard for the cataloguing and description of archives.

the right to information. Mathiesen, in particular, frames her argument in this regard in terms of capabilities, addressing issues such as education and literacy.⁴⁰² As noted earlier, such considerations are outside the scope of this thesis, although they are nevertheless areas that need to be addressed by governments in a wider context. The focus here is on the need for adequate resources to be allocated and used in a way that facilitates and maximises access to information for those who wish to avail of it.

Bovens suggests that the right to information exists only in theory if too many citizens lack the actual connections needed to access the information, and asks, for example, whether the level of access is sufficient ‘throughout the entire country, from affluent suburbs to the rural areas?’⁴⁰³ In a similar vein, Mathiesen notes that ‘even when the necessary information is available, in many cases persons will not have the resources necessary to “seek” or receive that information’.⁴⁰⁴ She states that recognition of a right to information requires that ‘resources be devoted to giving people the needed skills to comprehend information, e.g. through efforts to increase literacy’.⁴⁰⁵ In this context, she claims that the establishment and proper resourcing of institutions such as public libraries are an essential obligation for governments in order to fulfil their duties to their citizens.⁴⁰⁶

Kelmor expands on these arguments by stating that acceptance of a human right to information logically requires availability of information to all individuals, not just those privileged enough to have easy and affordable access, and that this has consequences for matters such as record formats, cost, accessibility and literacy. She also identifies a need for changes in legal and societal values relating to information, encompassing recognition of a duty to create and provide information, plus a duty not to obstruct access to information.⁴⁰⁷

⁴⁰² Kay Mathiesen, ‘Informational Justice: A Conceptual Framework for Social Justice in Library and Information Services’, *Library Trends*, 64.2 (2015), 198–225 (p. 212).

⁴⁰³ Bovens, 2002, p. 333.

⁴⁰⁴ Mathiesen, 2008, p. 15.

⁴⁰⁵ Mathiesen, 2008, p. 7.

⁴⁰⁶ Mathiesen, 2008, p. 15.

⁴⁰⁷ Kelmor, pp. 110–11.

According to Mathiesen, ‘mere freedom to access information is an insufficient protection of the right to information’⁴⁰⁸ Acceptance of a right to information must be accompanied by actual accessibility. This has practical implications which relate to how public bodies create and manage records (i.e. issues relating to quality as discussed in the previous section), as well as implications for how governments allocate resources and how the recordkeeping community uses such resources. These practical issues are every bit as important in facilitating a right to information as are concepts relating to human dignity or public ownership of information.

The full formulation of Bovens’ proposed constitutional right to information, referenced above, is as follows: ‘Everyone has a right to access information held by government. This right can be restricted under law. Government shall attend to the accessibility of information held by the government’.⁴⁰⁹ The first part of this, claiming a right to information, would be meaningless without the obligation to address accessibility. Bovens himself refers to physical, financial and intellectual aspects to access. Exclusion of certain parts of the population, either through disability, geographical location, financial constraints or limits to literacy levels all impact on the meaningful realisation of the right to information as a human right.

Bovens identifies a number of issues which impact on accessibility. Firstly, he states that information should be available directly, not in a ‘stodgily limited, passive manner, as demonstrated time and again in practice by many Freedom of Information Acts’, nor in a manner which requires physical visits to a library or civic building.⁴¹⁰ Secondly, he identifies financial restrictions on the right to information, stating that any costs involved ‘should not bar large groups from such access’.⁴¹¹ Thirdly, he refers to the intellectual aspect, by which he means that public information must be well organised and comprehensible, a factor already addressed above in section 6.3.2.

Bovens’ desire for information to be available without the need to visit physical sites such as libraries or civic offices may be admirable, although not fully workable in current

⁴⁰⁸ Mathiesen, 2008, p. 13.

⁴⁰⁹ Bovens, 2002, p. 339.

⁴¹⁰ Bovens, 2002, p. 330.

⁴¹¹ Bovens, 2002, p. 330.

circumstances. Digitisation of information has facilitated a radically wider level of access to information, but two factors impinge on this – the limits on access to the necessary technology for some parts of the population, and the limited capacity on the part of archives services to digitise their collections. Bovens notes that a right to access information is limited if technical infrastructure is unavailable to significant parts of the population, either because of cost or because of lack of investment in rural areas, for example. Even if there were to be universal access to the necessary technology, however, the overall volume of public records that are accessible in digital formats remains very limited. This is due to the costs, resources, timeframes and other challenges associated with digitising hard copy records and archives. Despite the progress that has been made in digitisation, the vast majority of original hard-copy archives remain available in their original formats only and will not be digitised in the foreseeable future.⁴¹²

Physical sites, such as public libraries and archive reading rooms, are therefore a necessary feature if adequate access to information is to be facilitated. This is highlighted by Mathiesen, who states that when arguing for a right to access information, ‘we are committing ourselves to ensuring that persons have access to some technology or institution, which provides access to that information’⁴¹³ and identifies a public library system as an essential institution in that regard. She says that without public libraries, access to information may be blocked by financial, educational or other barriers and she laments the lack of recognition given to the need for professional librarians and archivists in the literature which deals with the right to information.⁴¹⁴

⁴¹² In 2022, the National Archives in the USA stated that it reached a total of 200 million digitised pages in its online catalogue. It estimates that its collections include 13.5 billion pieces of paper, more than 450 million feet of film, 41 million photographs, 40 million aerial images and 10 million maps, charts, and architectural/ engineering drawings. The digitised pages therefore comprise approximately 1.5% of its paper holdings, without reference to photographs, film, maps, etc. See <<https://www.archives.gov/news/articles/catalog-200-million-digitized-pages>> and <<https://www.archives.gov/about/info/national-archives-by-the-numbers>> [both accessed 24 May 2024]. In relation to the Archives of the World Bank, it is stated that ‘With more than 200,000 linear feet of records in all formats and media including textual, cartographic, audio, moving and still images, the Archives’ holdings are too vast to digitize in their entirety’. See <<https://www.worldbank.org/en/archive/aboutus/digitization-program>> [accessed 24 May 2024].

⁴¹³ Mathiesen, 2008, p. 15.

⁴¹⁴ Mathiesen, 2008, pp. 16–17.

6.3.4 Summary

The human right to information, increasingly recognised as a welfare right, has associated obligations which need to be fulfilled if the right is to have real impact and relevance for individual citizens. These obligations, which fall on governments and public agencies acting on behalf of governments, require the creation and maintenance of quality records which are accurate, organised and comprehensible. These public records must be recognised as public property with an assumed right of access. Finally, resources must be appropriately allocated to ensure that public records are accessible to those who wish to avail of their right to information. Factors such as education, literacy and availability of technical infrastructure also impact on the right to information. The three obligations assessed above should therefore be considered necessary but not sufficient obligations for fulfilling the right to information.

6.4 The Right to Information and Irish Public Sector Recordkeeping

To assess whether Irish public sector recordkeeping facilitates the right to information and thus the protection and upholding of human rights, the three obligations discussed above will be applied to current Irish recordkeeping legislation and practice.

6.4.1 Public Ownership and an Assumed Right of Access

This section examines the extent to which relevant Irish legislation and practice recognises public ownership of public records and facilitates an assumed right of access to such records, with limited and clearly enunciated exceptions. While the focus of this thesis is on recordkeeping legislation *per se*, i.e. primarily the NA Act, the question of a right to information cannot be discussed without substantial reference to the FOI Act. This section therefore discusses both Acts in terms of how they reflect the obligation to view public records as public property with an assumed right of access.

6.4.1.1 Ownership and Changing Approaches to Access

In describing the historical development of Ireland's archival institutions and practices, Chapter 2 of this thesis referred to the traditionally very limited scope for those outside the public service to gain access to government records, prior to 1986.⁴¹⁵ The overall perception was that access to public records had to be earned or justified in some way,

⁴¹⁵ See section 2.2. above.

with ownership and control of records lying with a small number of civil servants who had the right, and certainly the authority, to pick-and-choose who could have access. There was little or no perception of these records being ‘public’ in the way that is understood today.

This very restricted approach gradually loosened throughout the 1970s and the eventual introduction of the NA Act in 1986 represented a vast improvement on what had gone before. Debates in the Oireachtas relating to the 1986 Act demonstrate that the concept of public ownership of public records was still limited, however. The NA Act actually makes no mention of a general principle of public ownership of the records of public agencies, nor of the right to information as a general entitlement. It simply states (in Section 10) that all archives in the custody of the NAI shall be available for public inspection, unless they have been withheld under the conditions specified in Section 8(4) of the Act. The decision as to whether to release them for public inspection is left entirely in the hands of civil servants. No appeal or review mechanism is included, apart from a review to be conducted every five years by the same Department that has decided to withhold the records from public inspection in the first place. In short, 30-year-old public records are available to the public unless civil servants decide otherwise, and the public has no recourse. In fact, short of an FOI request, the public has no way even of knowing which records have been withheld.

By 1997, expectations surrounding access to public sector information had moved on to the extent that the Oireachtas passed the FOI Act. Introduced in Ireland as part of a worldwide trend towards legislating for access to information,⁴¹⁶ the bedding-in of FOI in an Irish context was not smooth; amendments introduced in 2003 were widely perceived as an attempt to restrict the right of access in the light of political and administrative unease at how the legislation was operating up to that point.⁴¹⁷ Further

⁴¹⁶ McDonagh identifies ‘a huge upsurge in the number of states adopting Freedom of Information laws’ since the early 1990s (McDonagh, p. 25). A UNESCO report in 2019 identified 125 countries with FOI laws (sometimes referred to as Right to Information or Access to Information laws). See ‘Powering Sustainable Development with Access to Information: Highlights from the 2019 UNESCO Monitoring and Reporting SDG Indicator 16.10.2’, (UNESCO, 2019). Available at <https://unesdoc.unesco.org/ark:/48223/pf0000369160> [accessed 24 May 2024].

⁴¹⁷ According to one writer, the 2003 changes ‘gutted’ the original legislation and introduced ‘many damaging changes’. See Ken Foxe, ‘FOI Guide’, 2024. Available at <https://www.kenfoxe.com/foi-guide/> [accessed 24 May 2024].

changes in 2014 were, in turn, presented as an attempt to remove these restrictions and return to the original spirit of FOI.⁴¹⁸

The concept of public ownership of public records, with an assumed right of access has, therefore, had a somewhat uneven progress in an Irish context. As it currently stands,⁴¹⁹ the FOI Act of 2014 establishes that ‘every person has a right to and shall, on request therefor, be offered access to any record held by an FOI body’.⁴²⁰ It also states that, in considering requests for access to information, public bodies must have regard to:

the need to achieve greater openness in the activities of FOI bodies and to promote adherence by them to the principle of transparency in government and public affairs; the need to strengthen accountability and improve the quality of decision-making of FOI bodies; and the need to inform scrutiny, discussion, comment, and review by the public of the activities of FOI bodies.⁴²¹

While other legislation, such as copyright law, offers valid reasons to restrict access to certain information, the FOI Act seems to align itself with interpretations of the right to information which assume a public right of access. Such an assessment, however, offers a limited interpretation of the Act’s features.

6.4.1.2 Limits to the Right to Access

The FOI Act also includes a range of restrictions and exemptions which call into question its core commitment to viewing public records as public property with an assumed right of access. Some such restrictions can be agreed as reasonable and necessary – for example, the right to access takes second place to the right to privacy, thus ensuring that the personal data of individual citizens will not be released to anyone but themselves.⁴²² Other restrictions specified in the legislation, such as those relating to commercially sensitive information or information obtained in confidence, are open to interpretation, and the Act includes detailed provisions for public servants to apply when considering

⁴¹⁸ Foxe, 2024.

⁴¹⁹ DPER is currently undertaking a consultative exercise with a view to introducing further changes to the Act.

⁴²⁰ FOI Act, 2014, Section 11(1).

⁴²¹ FOI Act, 2014, Section 11(3).

⁴²² The right to privacy is protected by Section 35 of the FOI Act, 2014.

whether to grant access to records.⁴²³ Apart from such restrictions relating to the nature or content of records, the Act also has provision for requests to be refused on practical grounds, based on the number of records requested and the workload involved in finding, assessing and copying them.⁴²⁴

Furthermore, the FOI Act of 2014, while applying to many more public bodies than the NA Act, is still restricted in its remit. Certain public bodies are excluded altogether and certain others are partially exempt, in that only certain types of their records are covered by the Act's provisions. Exempt bodies include a range of commercial semi-State companies, port authorities and North-South Bodies established under the Good Friday Agreement.⁴²⁵ Bodies which are partially exempt are typically subject to the legislation with regard to administrative records or records relating to financial management, but excluded when it comes to core operational records.⁴²⁶

Despite these limits, the remit of the FOI Act is far more extensive than that of the NA Act, which, as detailed in the previous chapter, has significant flaws in terms of facilitating a right to information. These flaws stem from two main areas – the very limited list of public bodies to which the NA Act applies, and the very limited levels of compliance by those bodies that are covered. The omission of so many public bodies from the terms of the legislation means that, even when records of these bodies reach the 20 or 30-year threshold (assuming they still exist at that stage), there is no requirement of any kind to make them available for public inspection. Meanwhile, the lack of regular transfers by those bodies that are subject to the Act means that the public is denied access even to records which the Act accepts should be available. This is far removed from any

⁴²³ Set out in Sections 28–41 of the Act, these restrictions relate to records that deal with meetings of the government; deliberations of public bodies; functions and negotiations of public bodies; parliamentary, court and certain other matters; law enforcement and public safety; security, defence and international relations; information obtained in confidence; commercially sensitive information; personal information; research and natural resources; financial and economic interests of the State; and other legislation or legal regulations relating to non-disclosure of information. For a detailed consideration of Ireland's FOI Legislation, including exemptions, see Maura Adshead and Tom Felle, *Ireland and the Freedom of Information Act* (Manchester: Manchester University Press, 2015).

⁴²⁴ FOI Act, 2014, Section 15.

⁴²⁵ Examples include the Electricity Supply Board, Dublin Airport Authority, Waterways Ireland and the National Oil Reserves Agency. See FOI Act, 2014, Schedule 1, Part 2.

⁴²⁶ For example, the Central Bank of Ireland, An Garda Síochána, the Director of Corporate Enforcement, the Labour Court and Eirgrid. See FOI Act, 2014, Schedule 1, Part 1.

meaningful concept of public ownership of public records and an assumed right of access.

6.4.1.3 Appeal and Review

FOI legislation allows for a decision to refuse access to be reviewed internally, i.e. within the same public body, by a person at a higher grade than the original decision-maker. A fee and particular time limits apply if a requester seeks such a review. If the requester is unhappy with the outcome of the review, an appeal may be lodged with the Office of the Information Commissioner, with a further fee being paid.⁴²⁷ Beyond that, the requester has the right to appeal a decision to the High Court. Such procedures, while facilitating a right of review and appeal, seem to fit well with Bovens' criticism of FOI systems whereby 'information is provided only on explicit request and often after prolonged legal procedures'.⁴²⁸

In contrast, the NA Act features no review or appeal procedures of any kind if 30-year-old records have not been transferred to the NAI, or if permission has been granted to withhold them from public access. Indeed, there is no requirement for the public to be informed in any manner about decisions to withhold records, and knowledge of such decisions can only be gained through FOI requests (which may or may not be granted). If records are withheld, the only review mechanism is for the originating Department, which requested the withholding in the first place, to reconsider the matter at five-year intervals. Permission to withhold records is granted by the Department of the Taoiseach; there is no public right to know, nor any right of appeal or review.

The opaque nature of the procedures set out in the NA Act, and the absence of any scope for the public to assess or appeal the outcome of such procedures, appear at odds with any meaningful interpretation of public ownership of public records, even thirty years after the records ceased to be active within government departments.

6.4.1.4 The Mixed Impact of Current Legislation on the Right to Information

Table 6.1. below compares the FOI Act and the NA Act under a number of headings related to how they address the right to access public records.

⁴²⁷ FOI Act, Sections 21 and 22.

⁴²⁸ Bovens, 2002, p. 330.

	<i>National Archives Act</i>	<i>Freedom of Information Act</i>
Recognises public ownership of public records	No	Indirectly, via right to access and the principles of transparency and scrutiny
References principles of transparency and right of access	No	Yes
When records become accessible	30 years after closure of the record; 20 years for ‘relevant records’ under 2018 Amendment	Immediately, with time limits in specific cases.
Remit	Government Departments, Courts and bodies listed in the Schedule to the Act.	All public bodies unless specifically excluded or partly-excluded.
Application procedures	None, apart from application for reader’s ticket	Formal written request with stipulations regarding level of detail provided
Fees and charges	None, except for potential copying fees	None for initial request; potential copying fees; fees for review or appeal
Appeal against non-release or withholding of records	None	Internal review followed by potential appeal to Information Commissioner and then to High Court. Time limits apply.

Table 6.1: Access and limits to access, National Archives Acts and Freedom of Information Act.

On the basis of the assessment in the previous sections, as summarised in Table 6.1, it can be said that the NA Act does not meet the first of the three obligations arising from the right to information, i.e. recognition of public ownership of public records, with an assumed right of access. FOI legislation meets the obligation in a limited way, establishing a right of access but imposing formal procedures, deadlines, potential fees and a considerable number of limits and exemptions with the effect of significantly compromising the concept of assumed access to public records.

The introduction of FOI legislation has had a positive impact in many respects on access to information, transparency and openness in Irish public life. A positive feature of the Act is the encouragement to proactively publish routine information, so that it is available without the need to make a formal request. Facilitated by technological advances and

widespread internet access, FOI has resulted not only in media reports relating to the conduct of public service bodies, but also an increased trend towards routine publication of certain types of information, including procurement policies, diaries of Ministers and senior officials, and minutes of the meetings of certain bodies (albeit in a minimalist format which tends to record formal decisions without information regarding discussions or opinions expressed).

Other legislation and regulations relating to access to information have also been introduced in recent years, which complement the FOI Act and reflect the increasing public expectation around rights to information, and an increased political willingness to meet such expectations. Data Protection Acts and the EU General Data Protection Regulation⁴²⁹ are widely known, at least in their broad terms, and provide for access by individuals to their own personal data, while allowing for protections relating to the collection, use, storage, sharing and retention of such data. Meanwhile, specific regulations relating to environmental information – Access to Information on the Environment Regulations (AIE) – mirror FOI processes in many ways, especially with regard to request procedures, response times, appeals and the potential payment of fees.⁴³⁰ Regulations regarding the re-use of public sector information are designed to facilitate the sharing and re-use of information without the need for fees or the infringement of copyright or intellectual property rights,⁴³¹ while the open data initiative encourages public bodies to routinely share data sets and original statistics.⁴³²

Despite these positive developments, however, the suite of legislation and regulations highlighted above falls well short of an assumed right of access to public information. Actual implementation of the FOI legislation is demanding on public service organisations in terms of allocating the necessary resources to meet deadlines, and in many cases there continues to be a conservative or narrow interpretation of the legislation, with a tendency to find reasons to refuse requests rather than actively facilitate access. While an appeals process is built into the legislation, it normally

⁴²⁹ European Union, General Data Protection Regulation, 2016, available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679>> [Accessed 24 May 2024].

⁴³⁰ See <<https://www.ocei.ie/>> [accessed 24 May 2024].

⁴³¹ See <<https://www.oic.ie/re-use-of-public-sector-i/>> [accessed 24 May 2024].

⁴³² See <<https://data.gov.ie/>> [accessed 24 May 2024].

requires the payment of a fee and necessitates persistence and resilience on the part of a requester. Ultimate recourse, after internal reviews and appeals to the Information Commissioner have been exhausted, is to the High Court, an avenue open to few people, due to the resources required.

Individuals wishing to access environmental information may also face significant barriers. In his annual review of AIE Regulations for 2022, the Commissioner for Environmental Information noted that of the appeals submitted to his office (in cases where access had been denied), 93% of decisions had been annulled, meaning that in these cases ‘we did not agree with any part of the public authority’s decision’.⁴³³

While representing a significant advance on what was previously in place, FOI legislation and other access to information regulations fall somewhat short of fully recognising public records as public property with an assumed right of access. In line with criticisms levelled by Bovens and Kelmor (see 6.3.1 above), current FOI arrangements in Ireland facilitate access to information but simultaneously complicate such access and offer a multitude of possibilities for limiting the right to information.

In contrast, once records have been transferred to the NAI and made available for public inspection, access is automatic, the only requirement being possession of a valid reader’s ticket and physical attendance at the NAI premises in Dublin (along with pre-ordering in some cases to facilitate retrieval of records). Records may be withheld, however, thus keeping them from public inspection without any requirement to publicly state which records are withheld or why, and without any scope for public appeal or review. The facility to withhold records without public knowledge (other than retrospective FOI applications) and without recourse to appeal or review runs contrary to acknowledging the public’s right to access public sector records without undue restrictions or limitations.

Provisions regarding access to local authority records and archives, meanwhile, are very limited. The Local Government Act of 2001 states that ‘it is a function of a local authority to make arrangements for the proper management, custody, care and conservation of local

⁴³³ Office of the Commissioner for Environmental Information, *Annual Review 2022*, (Dublin: Office of the Commissioner for Environmental Information, 2023), p. 3. Available at <https://ocei.ie/en/organisation-information/4821e-annual-reports/?referrer=https://www.ocei.ie/en/publication/a3986-annual-reports/#annual-review-2022> [Accessed 24 May 2024].

records and local archives and for inspection by the public of local archives’.⁴³⁴ While this is a legal requirement, it is vague enough to result in only about half of local authorities having an archivist on their payroll.⁴³⁵ The legislation allows for regulations to be issued regarding the management of local authority records and archives, including arrangements regarding access and restrictions on access, but no regulations exist.

The impact of all of this on human rights is mixed. While the FOI Act refers to a right of access, it places a number of obstacles in the way of individuals who wish to exercise that right. The NA Act does not refer to issues of rights, transparency, scrutiny or any similar principles, but merely grants access to thirty-year old records which have not been withheld by civil servants. Local authority legislation can be described as well-intentioned but cursory and vague, with severely limited resources resulting in a great variation in terms of access from one local authority to another.

Limits on the right of access have knock-on effects on other human rights. Limits on the ability to access current information about government decisions place restrictions on the public’s ability to scrutinise government actions that affect rights in areas such as education, health, housing, the environment, security, and so on. Meanwhile, limits on access to historical records via National Archives legislation restricts the ability to retrospectively assess and judge government actions in these same areas, to highlight and analyse past abuses of rights and to pursue remedies based on lessons documented in public records and archives.

If the right to information gives rise to an obligation to recognise public ownership of public records with an assumed right of access, existing Irish legislation can be said to fulfil that obligation in a very limited manner. It falls short in a number of respects which have been explored above, and fails to adequately uphold the right to information.

⁴³⁴ Local Government Act, 2001, Section 80.

⁴³⁵ As of 24 May 2024, it is estimated that 17 county and city councils in Ireland employ archivists, from a total of 31 such councils.

6.4.2 Quality Information

6.4.2.1 Quality of Recordkeeping in the Irish Public Sector

The long history of poor recordkeeping in an Irish public sector context has been reflected in Chapter 2 and in the interviews assessed in Chapter 4. Interview participants highlighted concerns about the lack of awareness in Irish public sector environments of matters relating to quality recordkeeping. The acceptance and recognition of the need for quality recordkeeping, addressing matters such as completeness, authenticity, reliability and integrity, as outlined in section 6.3.2, within the public sector as a whole is limited. Records are often seen as a bureaucratic imposition and are frequently neglected after they are no longer required for day-to-day work purposes. In a digital work environment, the accumulation of options for how to create, name, store, edit and delete records leads to a plurality of personal habits and practices (e.g. use of personal folders, shared folders, email accounts including personal accounts not connected to work networks, mobile devices, USB sticks and cloud storage) and presents a major challenge to the accuracy, completeness, consistency and security of public sector records.

The NA Act and the FOI Act both allow for regulations for the proper management of public records but, as noted in earlier chapters, neither of these provisions has ever been acted upon, meaning that there are no standard regulations in place relating to the quality required of recordkeeping in public service organisations. Opinions expressed in the interviews in Chapter 4, and supported by the observations of this writer as a recordkeeping professional, indicate that government departments and public sector agencies lack policies, procedures or guidelines which address the need for quality recordkeeping. The lack of consistent regulations results in a wide range of practices based on personal preference, short-term need or administrative convenience, rather than an appreciation of the value of quality information or an awareness of the rights of individuals with regard to access to information. As highlighted in Chapter 5, eight out of sixteen government departments had no records management policy as of September 2022. Technological advances and changes in the way people communicate with each other, for example through applications such as What's App and Microsoft Teams Chat, present new challenges in terms of identifying business records, securing them and ensuring that they form part of an accurate public record which can be made accessible.

While recognising the challenges and shortcomings, the NAI is severely restricted in its ability to address the question of quality recordkeeping because it has no legal responsibility in this regard. Almost uniquely amongst similar bodies in Europe, it has no role with regard to public sector records until such records are 30-years old (or 20-years old in some cases), except with regard to applications to dispose of records.⁴³⁶ The power to issue recordkeeping regulations under Section 19 of the NA Act and Section 8 of the FOI Act lies with the Minister for PER, not with the NAI. The NAI itself states it will give guidance on recordkeeping but cannot issue regulations or directives, as ‘statutory responsibility for records management in the civil service rests with the Department of Public Expenditure and Reform’.⁴³⁷

In the Annual Report for 2021, the Director of the NAI notes that ‘One notable failing of the Irish public service has been the poor quality of its records and information management’ and calls for the Minister for PER to exercise the powers available to him to ‘make statutory regulations on records management to allow the National Archives to issue obligatory records management guidelines’.⁴³⁸ The Director also notes the low level of importance attached to recordkeeping in the public sector, stating that ‘there continues to be a perception that information management requires no specialist knowledge or skills’⁴³⁹ and warning that ‘without obligatory standards for the management of official governmental records and data, the public record will continue to be at risk of loss and the State liable for failure to protect the interests of stakeholders and citizens’.⁴⁴⁰

6.4.2.2 Impact of Low-Quality Recordkeeping on the Right to Information

The lack of consideration given to recordkeeping policies, procedures and guidelines inevitably risks a lack of quality in public sector records. This is evident from the recordkeeping literature, from examples and concerns highlighted in the interviews conducted for this research, in examples and case studies highlighted by numerous

⁴³⁶ Report of the Director of the National Archives, 2021, p. 36. Available at <<https://www.nationalarchives.ie/wp-content/uploads/2023/02/NAI-Annual-Report-2021-English-and-Gaeilge.pdf>> [accessed 20 June 2024].

⁴³⁷ See <<https://www.nationalarchives.ie/services-to-government-and-courts/records-management-guidelines/>> [Accessed 17 May 2024].

⁴³⁸ Report of the Director, 2021, p. 15.

⁴³⁹ Report of the Director, 2021, p. 38.

⁴⁴⁰ Report of the Director, 2021, p. 35.

tribunals, investigations and commissions of inquiry, in reports of the Director of the NAI, and in reports of the Information Commissioner.

Failure to create records means there is an incomplete and potentially misleading public record; failure to adequately store, protect, organise and index records means there is a danger of loss, unauthorised access, accidental deletion or other events which potentially impact on the integrity and reliability of the record. All of these problems mean that, even if a well-functioning and fully transparent access system is in place, issues arise regarding the quality of the information available to citizens. Access to incomplete, disorganised and incomprehensible records does not meet the needs of those who seek to establish and uphold their rights or to accurately and reliably assess the actions and decisions of government. Incomplete and inaccurate records are not informative or nourishing and have severe defects in terms of fulfilling a right to information.

6.4.3 Accessibility

6.4.3.1 Physical Access and Digitisation

Accessibility of public information depends on a number of factors, as detailed in Section 6.3.3. These include the format in which the information exists, the need to travel to specific locations to view records, and wider considerations such as levels of literacy in the community.

In Ireland, as elsewhere, progress has been made in digitising archives, including public sector archive collections. Nobody claims that this can serve as the only means of access, and the majority of archival collections remain accessible in their original formats only, thus necessitating a visit to a physical location in order to access such records. The NAI has one public reading room, located in Dublin city centre. This is an unavoidable necessity and it would not be possible, in an Irish context, to justify satellite locations, given the costs, resources and logistics involved. Nevertheless, those members of the public living outside the immediate Dublin area are at an automatic, if largely unavoidable, disadvantage if they wish to consult public records which have been transferred to the NAI. Opening hours of the NAI reading room do nothing to ameliorate this situation.⁴⁴¹ All of these arrangements are limiting in terms of how they impact

⁴⁴¹ See <<https://www.nationalarchives.ie/visit-us/using-the-reading-room/>> [Accessed 24 May 2024].

people living outside of Dublin, those who work or have other commitments during the day, and so on. In a very basic sense, therefore, much of the population is severely restricted in availing of the right to information.

A sample of local authority archive services, meanwhile, indicates a range of limited and restrictive opening hours, making it difficult for individuals to exercise their right to access public records and archives.⁴⁴² None of this means that the individual archivists who run these services (and in the case of local authorities, they are almost all individuals, operating one-person services) are not committed to providing access to the collections they hold. What it does mean is that insufficient resources are devoted to archival services, resulting in staffing and levels of service which tend to restrict access and lead to constraints on the ability of members of the public to avail of the right to information. If digitisation is seen as a means to increased accessibility, then the lack of resources in this regard also limits access, because digitisation is costly, time-intensive and labour intensive, and requires financial, staffing and technical resources which are beyond the reach of many public archive services.

6.4.3.2 Access Rules and Regulations

Apart from opening hours, accessibility may also be impacted by some of the conditions attached to access in a number of archival institutions. Formal rules and regulations can be intimidating and discouraging, especially to people not accustomed to using archive services. There are good reasons to place certain limits on how people use and interact with archives, for example to limit physical handling of fragile items and to reduce the risk of theft or damage. A preponderance of rules and regulations, however, with application forms, declarations, legal undertakings and requirements around the production of identification documents prior to being granted access, risks placing a barrier between individual citizens and public records. Individuals may easily be discouraged or intimidated by questions about the specific nature of their academic

⁴⁴² For examples, see <[https://corkarchives.ie/research_room_access/research-room-opening-hours-by-appointment-only-/](https://corkarchives.ie/research_room_access/research-room-opening-hours-by-appointment-only/)>; <<https://www.limerick.ie/archives>> and <<https://www.dublincity.ie/residential/libraries/find-library/dublin-city-library-and-archive>> [all accessed 24 May 2024]. Limerick City and County Archives has no information on its website about its opening hours.

research, their institutional affiliation or ‘qualifications, expertise, publications, and membership of organisations’⁴⁴³ relevant to their research.

Such regulations and requirements may be well-intentioned and reflect a concern to make good use of severely limited resources. They also, however, risk the creation of an unwelcoming or even intimidating environment, especially for potential users without an academic background or those unaccustomed to dealing with bureaucratic processes or formal application procedures. As such, this kind of approach represents a potential barrier to some individuals and groups in availing of their right to information. It is likely to have a disproportionate impact on groups which have been traditionally marginalised and under-represented, i.e. those same groups who may have most to gain from exercising their right to information.

Writing of the intimidating atmosphere which can be projected even by the design and layout of archival buildings, Ketelaar describes such facilities as ‘temples shielding an idol from the gaze of the uninitiated’⁴⁴⁴ and describes how those who wish to enter are subjected to a range of policing and security measures and associated regulations and restrictions. The imposition of such regulations is not required by legislation. While certain checks and restrictions are necessary, the potentially unwelcoming and intimidating atmosphere presented by such regulations is an example of how the recordkeeping profession itself may influence public perceptions, and may negatively impact those wishing to avail of their rights, separately from legislative provisions or regulatory necessities.

6.4.3.3. The Impact of Limited Accessibility on the Right to Information

Archivists do their best to facilitate access in the face of severe resource limitations. All the resources in the world, however – in terms of more staff, more storage space, increased opening hours and so on – would still be insufficient to properly facilitate the right to information in the face of persistent non-compliance with existing legislative requirements relating to recordkeeping. As has been detailed in previous chapters, most

⁴⁴³ See <<https://corkarchives.ie/media/2021/reader-application-form-electronic-version-ccca.pdf>> Similar examples of forms, declarations and undertakings requested of potential users are available at <<https://www.galway.ie/en/services/more/archives/downloads/>> [both accessed 28 May 2024].

⁴⁴⁴ Eric Ketelaar, ‘Archival Temples, Archival Prisons: Modes of Power and Protection’, *Archival Science*, 2 (2002), 221–38 (p. 234).

government departments and scheduled bodies fall well short of their legal obligations to transfer records to the NAI, and some (impossible to quantify) have disposed of records without authorisation. Many others are not even subject to the legislation in the first place. This places an obstacle in the way of access at the most fundamental level. A right to information may be recognised and codified in legislation, but if government does not recognise it as a right worth upholding and protecting, citizens will have that right in theory only. An imaginary world in which governments and local authorities devoted abundant resources to physical storage, digitisation projects, a network of geographically-dispersed reading rooms and round-the-clock opening hours would still see the population denied the right to information if records and archives are not properly managed in the first place and if the obligation to transfer to the NAI is not fulfilled.

6.5 Conclusion

This chapter has outlined the increasing trend towards viewing the right to information as a human right, valuable on its own merits for facilitating human dignity and fulfilment, rather than simply as an ancillary right or as a means to an end. The relevant literature suggests that recognition of the right to information gives rise to three obligations, namely: recognition of public ownership of public records, with an assumed right of access; the creation and maintenance of quality information; and ensuring that measures are in place to make public information accessible. This chapter has treated these obligations as necessary but not sufficient in terms of upholding the right to information, and has assessed them in the context of Irish public sector recordkeeping.

An increasing emphasis on accountability and transparency in public life has led to improvements in access through the FOI Act and other legislation and regulations. Despite such improvements, it should be noted that FOI is a legal process and that arrangements for securing access can be cumbersome and inefficient, with many types of information remaining inaccessible. The quality of recordkeeping in the public service remains inconsistent, with ongoing problems relating to completeness, accuracy and organisation, all of which are exacerbated in the digital environment. Meanwhile, archivists struggle to provide comprehensive access in the face of inadequate resourcing, and attempts to deal with this can sometimes result in bureaucratic application processes and regulations which can be unwelcoming and intimidating. The ability of many people

to avail of their right to information is therefore limited, despite the right being codified to some extent in several legislative provisions.

All of this highlights the fact that when discussing recordkeeping and human rights, matters of practical resourcing are of vital importance, and are a necessary complement to any laws, constitutional provisions or declarations of rights. As noted at the beginning of this chapter, discussions of recordkeeping and human rights often focus on notorious cases of human rights abuses and are primarily concerned with the retrospective use of archives to facilitate justice, neglecting the routine day-to-day nature of how individual rights are impacted by recordkeeping. Jens Boel et al. describe this as a blinkered approach which obscures the need for robust and long-term archival policy:

It is too easy to forget that public sector agencies require robust records management policies and an archival system synonymous with open, transparent societies respectful of human rights. A strong national archival system is essential to ensure that records important for the promotion and protection of human rights are preserved.⁴⁴⁵

The analysis conducted in this chapter demonstrates that while progress has been made in some respects, Irish recordkeeping legislation and practice has a variety of shortcomings in relation to upholding the right to information, with a knock-on effect on the ability of individuals to inform themselves and avail themselves of other human rights.

⁴⁴⁵ Jens Boel, Perrine Canavaggio and Antonio González Quintana (eds.), *Archives and Human Rights* (London: Routledge, 2021), p. 42.

Chapter 7

Recordkeeping, Social Justice and Navigational Agency

7.1 Introduction

This chapter addresses two related questions regarding recordkeeping and social justice: firstly, whether Irish public sector recordkeeping contributes to social justice in society and secondly, whether it is in itself a socially just practice. These questions will be addressed using a model of agency-based social justice developed by Rutger Claassen, which views society as consisting of a variety of social practices, in which individuals participate according to agreed rules and conventions. He argues that while most people have participational agency, in that they can participate in a range of social practices, fewer have navigational agency, or the freedom to navigate their way within and between social practices according to their own goals and preferences. Claassen views navigational agency as the key to social justice. He also describes some social practices as optional while others are mandatory, in that they are essential to the equitable functioning of society.

Using Claassen's model, this chapter makes the argument that recordkeeping is a mandatory social practice, essential for empowering individuals in their roles within society as a whole, and uses relevant examples to illustrate how poor recordkeeping practices can deny agency to individuals. Using Claassen's model as a basis for analysis, the chapter examines whether Irish public sector recordkeeping, as a social practice, displays characteristics of social justice, given the extent to which it facilitates navigational agency for its various stakeholders and reflects modern theories of community archiving and participatory recordkeeping.

7.2 Claassen's Agency-Based Theory of Social Justice

7.2.1 Claassen's Alternative to Sen and Nussbaum

Claassen offers his agency-based capability theory of justice as an alternative to the capability theories of Amartya Sen and Martha Nussbaum. In developing a capabilities-based approach, both Sen and Nussbaum were reacting to perceived shortcomings in John Rawls' theory of justice as fairness.⁴⁴⁶ Sen's focus in addressing social justice is on the

⁴⁴⁶ John Rawls, *A Theory of Justice*, revised edn. (Oxford: Oxford University Press, 1999).

actual capabilities of individuals within a society to benefit from relevant resources, rather than simply on the distribution of resources.⁴⁴⁷ He argues that even if goods or resources are distributed equally throughout society, this would still result in unacceptable levels of inequality, because not all individuals have the capability to avail of those goods or resources in the same way.

For example, if a government decided to address concerns about climate change and traffic congestion by giving every citizen a free bicycle, this could be presented as an equal distribution of goods or resources, treating each citizen equally. However, the very young, the very old, or those with disabilities would still be at a disadvantage, even though they have been given an equal share of the relevant goods. Even those who are physically fit and healthy but who live in rural areas with long distances to cycle between facilities such as work, shops, hospitals and so on, could be disadvantaged compared to those in urban areas with short distances to cycle. Equal distribution of goods can therefore result in continued inequalities. Sen claims that because not all people are the same, the focus should shift ‘from goods to what goods do to human beings’.⁴⁴⁸ Capability theory therefore relates not simply to equal distribution of goods or resources, but the actual capabilities which individuals have to avail of such goods and resources.

Sen opted not to specify a list of such capabilities, claiming that such a task is better left to individual societies or political systems. In contrast, Nussbaum claims that a specific list is necessary if capability theory is to be translated into meaningful practice.⁴⁴⁹ Claassen is critical of both approaches, stating that Sen’s approach is too vague and non-committal, while Nussbaum’s is too prescriptive and that any system falling short of full compliance with her list is deemed to be a failure. Claassen aims for a capability theory of social justice which is ‘substantive but not perfectionist’.⁴⁵⁰ To achieve this, he bases his theory on individual agency, which he divides into participational agency (the capability to participate freely *within* social practices) and navigational agency (the

⁴⁴⁷ Amartya Sen, ‘Equality of What?’ in *The Tanner Lectures on Human Values*, ed. by Sterling M. McMurrin (Cambridge: Cambridge University Press, 1980), 195–220.

⁴⁴⁸ Sen, p. 219.

⁴⁴⁹ Martha Nussbaum, ‘Capabilities as Fundamental Entitlements: Sen and Social Justice’, *Feminist Economic*, 9.2–3 (2003), 33–59. Nussbaum’s list consists of ten central human capabilities, namely: Life; Bodily Health; Bodily Integrity; Senses, Imagination and Thought; Emotions; Practical Reason; Affiliation; Other Species; Play; Control over One’s Environment.

⁴⁵⁰ Rutger Claassen, ‘An Agency-Based Capability Theory of Justice’, *European Journal of Philosophy*, 25.4 (2016), 1279–1304 (p. 1280).

capability to move freely *between* social practices). He argues that while all agents have participational agency to some extent, not all have navigational agency. It is this lack of navigational agency which creates injustice.

7.2.2 Social Practices and Capabilities

Claassen defines a social practice as ‘a structure of actions held together by a set of common institutions, in which several agents co-operate to reach their ends’.⁴⁵¹ Each practice follows more-or-less recognisable and stable patterns, facilitated by rules or norms that qualify actions within the practice as legitimate or desirable. Such norms define the roles of the various participants within the practice in terms of the rights and duties they accept in order to participate. So, for example, agents participating in the social practice of sport (or a particular form of sport) are aware of and agree to observe a series of norms according to their specific roles as players, coaches, referees, administrators or supporters.

Capabilities to participate in a social practice can be divided into internal capabilities and external capabilities. Internal capabilities relate to physical, intellectual or emotional characteristics; external capabilities enable the making of decisions freely and without external constraint.⁴⁵² For example, a person has the necessary internal capabilities to play in a particular position on a football team if she possesses the necessary mix of skills, speed, strength and quickness of thought which are relevant to that particular position (e.g. goalkeeper, defender or forward). The same player, however, may lack the external capabilities necessary for participation if she is constrained or even prohibited from participation by membership fees set at such a level that she cannot afford to join a club, or if her team coach holds a prejudice against her on grounds of race or nationality. Claassen relates his argument to the concepts of autonomy and freedom: a person may have the autonomy to use her internal capabilities to set herself goals and objectives, but may lack the freedom to achieve them if she is denied relevant external capabilities.

The footballer in our example, therefore, has autonomy but not freedom. Most people have autonomy, but it should be recognised that there are some, for example those who

⁴⁵¹ Rutger Claassen, *Capabilities in a Just Society: A Theory of Navigational Agency* (Cambridge: Cambridge University Press, 2018), p.56.

⁴⁵² Claassen, 2018, p.50.

are incapacitated for whatever reason, either permanently or temporarily, who do not have the internal capabilities to deliberate and set themselves goals. For those who do have such capabilities, some (not all) are also free agents in that they have the necessary options available to them to achieve their goals, as summarised in Table 7.1 below. Claassen goes on to elaborate on these distinctions by developing his model of navigational agency, which is explored in the following section.

	<i>Autonomy</i>	<i>Freedom</i>
Internal capabilities (relate to the capacity to do something)	I can deliberate and rationalise, make assessments and set goals.	I have the capacities to realise my goals.
Examples:	I want to be a professional footballer.	I can run fast and can shoot accurately with both feet
External capabilities (relate to options to do something)	I can make myself aware of options without manipulation by others.	I can avail of those options I've identified without interference by others.
Examples:	I can access sources which give me accurate information about how to become a professional footballer.	I can join a club that does not discriminate against people of my race or religion.

*Table 7.1: An autonomous and free agent*⁴⁵³

7.2.3 Navigational Agency

According to Claassen, any society consists of a multiplicity of social practices and agents are, therefore, faced with questions or decisions about which practices to participate in, and how to resolve potential conflicts between such practices. Navigational agents, like participational agents, have the necessary internal capacities to take part in their preferred practices – sport, politics, education, etc. – but they also have the freedom (i.e. they are not subject to external constraints) to exercise their capacities on terms which they consider to be acceptable. They can navigate between roles within a social practice (e.g. move from being a player to being a coach) and they can navigate from one social practice to another (e.g. give up football altogether and become an architect). This

⁴⁵³ Adapted from Claassen, 2018, p.50.

does not mean that everything is ideal for them, but that they are, on balance, content with their role and status within the rules of the various practices they participate in. Claassen says that not all agents have this freedom; while participational agency is a necessary feature of human life, in that every person participates in some social practices, navigational agency is frequently denied to individuals. As described by Claassen, ‘not every participational agent necessarily also is a navigational agent [...] conflicts between practice-based commitments may be resolved by other persons or institutions instead of by our own choices.’⁴⁵⁴ He describes navigational agents as ‘not passive subjects but agents of change, innovation and transformation’.⁴⁵⁵

It is important to note that Claassen does not talk of strict equality as a necessary element of social justice. He states that inequalities in agency are to be found everywhere in social life, citing the example of employment contracts which specify rights and duties, and assign varying levels of authorisation to make certain decisions.⁴⁵⁶ Many other examples can be found in everyday life, from landlord-tenant relationships to teacher-student relationships and so on. Thus, some inequalities, up to a certain threshold, may be acceptable and even necessary within social practices. Inequalities can be accepted as long as individuals have control over their subjection to such inequalities, by either having options to reform the relevant social practice or – if the disadvantages to participation outweigh the advantages to a sufficient degree – to exit it altogether. As described by Claassen, ‘the powers of a navigational agent, her real opportunities to enter and exit practices, reform existing or create new ones, is what ensures that if she participates, she does so (sufficiently) freely and autonomously’.⁴⁵⁷ Each participant in a practice should have access to the capabilities needed for navigational agency, which guarantee that there are options available to enter and exit social practices. So inequalities within social practices may be acceptable, but social justice demands equality between agents in terms of navigational agency.⁴⁵⁸

A tenant, for example, may consider that the benefits of having somewhere warm and secure to live, close to work and family, are worth the high rent charged by her landlord.

⁴⁵⁴ Claassen, 2018, p. 61.

⁴⁵⁵ Claassen, 2018, p. 63.

⁴⁵⁶ Claassen, 2018, p. 67

⁴⁵⁷ Claassen, 2018, p. 67.

⁴⁵⁸ Claassen, 2018, p. 62.

If the landlord fails to maintain the property to a satisfactory level, however (so, for example, the roof leaks and the heating does not work), then the high rent becomes an unfair burden in the context of the benefits received. In such a scenario the tenant – rather than being coerced into continued participation on terms she finds unacceptable – should have the capability to improve her living conditions (by persuading the landlord to undertake repairs), or find alternative accommodation which meets her needs. If those options are not open to her, she does not have navigational agency because she cannot reform the practice, establish a new alternative practice or exit the practice altogether. In such circumstances, the social practice of housing can be said to lack social justice.

While society as a whole does not set specific rents or dictate the precise quality of the accommodation provided, it has a role in ensuring that the tenant and the landlord have options if they wish to amend the terms of their participation, e.g. by finding alternative accommodation or alternative tenants, negotiating improvements to the property or negotiating a change in the level of rent charged. For Claassen, therefore, social justice ‘is a matter of using public power to save citizens from private practices of oppression and coercion, so that they can function as autonomous choosers of their own lives’.⁴⁵⁹

7.2.4 Mandatory and Optional Social Practices

Claassen identifies two categories of social practice – mandatory and optional. Mandatory social practices are defined as those which have a special function, in that:

they serve to create and sustain our general capabilities for navigational agency. The existence of these practices cannot be left to the spontaneous agency of individuals volunteering to create them, but is a social and political concern if there is to be navigational agency at all.⁴⁶⁰

Claassen says that mandatory practices are ‘positively necessary’ to develop the required capabilities for navigational agency (which, as a pre-requisite, include the capabilities necessary for participational agency). Social practices of education and healthcare, for example, are seen as mandatory because they are ‘necessary to build up the required

⁴⁵⁹ Claassen, 2018, p. 69.

⁴⁶⁰ Claassen, 2018, p. 65.

mental and physical capacities (internal capabilities) which enable citizens to navigate their societies'.⁴⁶¹ Other practices are mandatory because they safeguard citizens against coercion and manipulation, and prevent external interference with the exercise of their agency; police and court systems are therefore mandatory practices. In effect, non-participation in these practices is not a valid option for any individual wishing to navigate their way in any society. In contrast, other practices can be viewed as optional, in that there is no positive obligation on society to facilitate them, nor on individuals to participate in them. These include many of the practices which people participate in on a day-to-day basis, including various professional, artistic, sporting, cultural or other activities. They are, as described by Claassen, optional lifestyle choices.⁴⁶²

Governments, as the mandated authorities in functioning societies, are not obliged to establish, operate or manage optional social practices, but there is still a negative obligation not to interfere with the right to take part in them – for example, if I decide I want to play football, I should not be unfairly constrained from doing so. Regarding mandatory social practices, however, there is a positive obligation on governments to establish and manage them in such a way that will enable individuals to develop and use their capabilities to achieve their goals. For example, lack of adequate educational or healthcare systems will inhibit individuals in developing the capabilities they require to navigate their way through life as autonomous and free agents.

7.3 Capabilities and Recordkeeping

Having outlined Claassen's theory of agency-based social justice and explained his concepts of participational agency, navigational agency, mandatory social practices and optional social practices, this chapter will now establish the link between recordkeeping and capabilities and will argue that recordkeeping should be viewed as a mandatory social practice, necessary both to enable individuals to develop the internal capabilities necessary for participational agency and to limit the scope for external constraints being placed on their navigational agency.

⁴⁶¹ Claassen, 2018, p. 64.

⁴⁶² Claassen, 2018, p.65.

7.3.1 Information and Capabilities

Claassen does not specifically address capabilities in the context of a right to information but several writers, as discussed below, have identified, directly or indirectly, the importance of information with regard to capabilities and social justice. In the list of basic capabilities described by Nussbaum, several can be said to be relevant to accessing and processing information. The capability relating to ‘senses, imagination and thought’ includes, according to Nussbaum, the ability to imagine, think and reason in an informed manner cultivated by an adequate education and basic literacy.⁴⁶³ ‘Control over one’s environment’ is described as including the ability to participate effectively in political choices and having the right of political participation, and the protections of free speech and association.⁴⁶⁴ Access to adequate records, and an ability to interpret and act upon the content of such records, is thus an implied part of Nussbaum’s list of basic capabilities.

Johannes Britz et al. develop the link between recordkeeping and capabilities, claiming that:

access to essential information and the ability to benefit from this information is one of the fundamental sets of capabilities needed to achieve human wellbeing [...] not only is information essential to human well-being, but it is instrumental to our freedom to make choices and to create opportunities to achieve this well-being.⁴⁶⁵

Mathiesen describes access to information as a capability sensitive resource, i.e. genuine access depends not just on the existence and availability of information, but on the actual capability of persons to find and use it effectively in line with their own requirements.⁴⁶⁶ This aligns with Sen’s approach, that the focus of social justice should not be on the goods themselves (in this case, information) but rather on what the goods do to human beings. If actual capabilities are not in place to avail of the information, the right to information

⁴⁶³ Nussbaum, p. 41.

⁴⁶⁴ Nussbaum, p. 42.

⁴⁶⁵ Johannes Britz et al., ‘On Considering the Application of Amartya Sen’s Capability Approach to an Information-Based Rights Framework’, *Information Development*, 29.2 (2012), 106–13 (p. 111).

⁴⁶⁶ Mathiesen, ‘Informational Justice’, p. 212.

will have limited benefit. Digitised records, for example, may be said to be widely available but they are not actually accessible to individuals who cannot afford a computer, smartphone or internet access, nor even to those who can afford it but who live in areas where technical infrastructure is lacking. In more traditional contexts, archives can be preserved, securely stored and protected against fire and theft, but are not actually accessible if they are not catalogued, if severe restrictions are placed on access, or if the archive service does not have the resources to open to the public during hours which are convenient for potential users.

Using Claassen's approach, we can say that individuals firstly need the internal capabilities to avail of and benefit from the information that is relevant to them, i.e. literacy and interpretative skills. They also need the external capabilities to avail of the right to information, free of constraints such as the absence of suitable technology, limited opening hours, prohibitive access fees, or restrictive rules and regulations. If such constraints are too stringent, access to information is theoretical, or is restricted to certain categories of individual, and many potential users are denied the actual capabilities to avail themselves of an important resource. Such potential users can be said to have the autonomy to access records and archives, but not the freedom to do so.

Social justice, therefore, is not adequately addressed simply by codifying a right to information or by legislating for access to records if there is a lack of follow-through in terms of ensuring that sufficient capabilities are actually in place. This may include matters such as general literacy, IT and communications infrastructure, or other considerations which have a societal relevance beyond recordkeeping. It also includes questions of resources to catalogue and preserve archives, to facilitate opening hours which allow members of the public to access archive services at convenient times, for equipment to digitise records, and for actual enforcement of legislative provisions for the retention and transfer of government records to relevant archive services. Without addressing issues such as this, the capabilities to access information remain limited and are available, if at all, to selected members of society.

7.3.2 Recordkeeping as a Mandatory Social Practice

Depending as it does on the involvement of a diverse range of agents and on the existence of relevant institutions and associated legislation, policies and procedures, recordkeeping

is a social practice as defined by Claassen. In line with his description, recordkeeping includes several agents who co-operate together, following more-or-less recognisable and stable patterns, with formal and informal rules which identify actions as legitimate or otherwise. The roles of participants are defined in terms of the rights and duties they hold, deriving from their participation in the practice.

Agents in public sector recordkeeping include records creators (e.g. public servants doing their work on a day-to-basis), records users (e.g. other public servants who use and access the records for work purposes), IT specialists who provide relevant technical and communications infrastructure, records managers who provide specialist advice about how records should be organised, protected, retained or disposed of, archivists who carry out a range of tasks relating to records of long-term value, and researchers who access and use records for scientific, cultural or other purposes.

The most important agents in recordkeeping, however, are those most directly impacted by the records and archives, i.e. those to whom the records relate. This view has driven much of the recent writing in the recordkeeping literature with regard to participatory recordkeeping, as assessed in Chapter 3. Relevant agents include people whose dealings with the State are seen through a variety of records such as birth certificates, passports, public service cards, taxation records, health records, property ownership records and so on. It also includes individuals whose interactions with the State are less routine, e.g. those who are subject to the justice system (such as suspects and prisoners) or those who have been the victims of injustice perpetrated by the State or others, such as survivors of abuse in institutional settings or victims of flawed prosecutions. More widely, agents in recordkeeping include all members of the public, because everyone is affected by decisions taken by government, such as those relating to taxation rates, public spending, allocation of resources, health, education, environmental policy or any other area of government activity.

The list of agents in the social practice of recordkeeping is, therefore, almost endless. Given the impossibility of living in any modern society without a reliance on records of some sort, recordkeeping falls into the category which Claassen describes as mandatory social practices. This can be stated for a number of reasons, relating to both internal and external capabilities.

Firstly, for a person to develop the internal capabilities to facilitate navigational agency, they must be able to assess their situation, deliberate on their goals and objectives and decide on a course of action by which these may be achieved. Claassen suggests that education and healthcare are mandatory practices if such internal capabilities are to be developed. Yet the ability to read, understand, assess and analyse information would be useless if the information did not exist and was not available in accessible formats in the first place, i.e. if the other agents in the social practice of recordkeeping did not create, organise, protect, catalogue and make available relevant information. The existence and accessibility of information and records is therefore essential to the development of internal capabilities to set goals and objectives.

Secondly, Claassen's stipulation that others should not interfere with an agent's internal process of setting goals is of particular relevance to recordkeeping. The agent must be fully aware of what their options are and what routes are available towards fulfilling them.⁴⁶⁷ This requires not just access to information, but the creation and management of quality information, as discussed in Chapter 6. Such information must be accurate and reliable, as complete as possible and accessible to the greatest possible extent, with restrictions minimised and clearly justified. As will be illustrated later in this chapter through two case studies, limits on the existence and/or availability of such information restricts the individual's capacity to assess circumstances, identify options, and set and pursue goals. Recordkeeping must therefore be seen as a mandatory social practice in enabling internal capabilities on the part of agents in a range of other social practices.

Furthermore, recordkeeping is also mandatory in relation to external capabilities, in that it allows autonomous agents to become free agents by having available options to act on their goals and objectives, to reform practices or to exit them, as appropriate. Claassen identifies the policing and courts systems as examples of mandatory practices, because they are necessary to prevent coercion and obstruction. Indeed, such mandatory practices themselves rely on recordkeeping in order to function adequately. Recordkeeping falls into the same category of mandatory social practice, firstly because we cannot establish if coercion is taking place without relevant information, and secondly because a denial of

⁴⁶⁷ Claassen, 2018, p. 50.

information is itself a form of coercion because it denies individuals the opportunity to fully assess a situation, evaluate options and take informed decisions.

The creation, proper management, safeguarding, cataloguing and appropriate release of a range of public information is, therefore, essential to the agency of actors in all social practices which involve interaction between State and citizen. The various institutions of recordkeeping as a social practice must be fit-for-purpose in terms of contributing to societal well-being and providing citizens with the capabilities to achieve their objectives. Society is positively obliged to facilitate a fair and just participation in recordkeeping in order to ensure navigational capabilities throughout the population. Extending from fundamental issues related to identity (birth certificates and passports) through the full range of interactions with state agencies (via healthcare, education, environment, justice, and so on), an effective and socially just recordkeeping system is essential to social justice and the State-citizen relationship.

7.4 Social Justice in Public Sector Recordkeeping in Ireland

This chapter has so far established a link between recordkeeping and capabilities, and argued that recordkeeping should be viewed as a mandatory social practice in line with Claassen's definition. There now follows an assessment of these matters in a specifically Irish context. There will be an examination of whether the practice of public sector recordkeeping in Ireland currently facilitates navigational capabilities in the population as a whole, thus contributing to social justice. The chapter will then examine whether Irish public sector recordkeeping itself is a socially just practice in the sense that it facilitates equitable participation and reflects modern theories of person-centred archiving and representation.

7.4.1 Facilitating Navigational Capabilities

Previous chapters have addressed concerns about several aspects of Irish public service recordkeeping. This section will assess these concerns in the context of Claassen's concept of navigational agency by considering the extent to which current Irish public sector recordkeeping facilitates navigational agency amongst the population as a whole. Case studies will be used to assess the potential impact that lack of information has had in real-life scenarios.

Claassen states that the main aim of his theory of navigational agency is to argue for the empowerment of individuals, by which he means the ability not just to participate in social practices, but to influence and to have a voice in the governance of those practices. Empowerment relates to ‘the ability to change one’s location in an existing structure or to change the institutions of the social practices in which one participates’.⁴⁶⁸ Claassen also writes about adaptive preferences, i.e. the phenomenon whereby ‘people suffering from various forms of oppression come to accept their social circumstances and abandon any wishes for improving their lot’.⁴⁶⁹ From a social justice perspective, this is a concern in cases where people have a right to an alternative to their existing circumstances, but are deprived of that right. If a person is autonomous and free, she would critically reflect on her status and her rights in an informed manner, assess her situation within particular social practices, draw conclusions about whether her situation is fair or acceptable and, if necessary, plan for changes and improvements. According to Claassen, ‘such a reflection cannot take place under conditions which distort one’s reasoning, for otherwise one’s reasoning process would not count as one’s own, but as manipulated by others’.⁴⁷⁰

The role of accurate and reliable information is clear in such a scenario. Claassen states that the most direct form of manipulation ‘is where a person withholds information or exerts pressure on another person so as to make the person believe something she or he wouldn’t otherwise believe’.⁴⁷¹ Individuals can thus be manipulated to believe that certain conditions or certain states of affairs are natural, or at least necessary, while others are potentially dangerous, unacceptable or even immoral. For example, a government may state that supports for disabled people cannot be increased because it would require a reduction in funding for pension payments, which would be unfair on elderly people. Individuals living with disabilities, their families, or people in general may thus adapt their preferences and expectations, and operate and make decisions within a limited and potentially unjust set of societal norms. Certain conditions (for example, long waiting lists for medical treatment or the lack of special education for children with additional needs) can become normalised and accepted as a natural feature of society. The key

⁴⁶⁸ Claassen, 2018, p. 137.

⁴⁶⁹ Claassen, 2018, p. 142.

⁴⁷⁰ Claassen, 2018, p. 146.

⁴⁷¹ Claassen, 2018, p. 149.

question, according to Claassen, is whether an individual would endorse their existing situation ‘if she or he reflected on it under conditions of non-manipulation?’⁴⁷²

7.4.1.1 Case Studies

Some examples from Irish public life can serve to illustrate the impact which recordkeeping and issues of selective use of information can have on the ability of individuals to exercise their navigational agency.

In February 2023, public controversy arose when it was reported that the Irish government actively contested claims from people who had been forced to avail of private nursing home care due to a lack of places in public nursing homes. While legislation granted certain people a right to be reimbursed for the cost of private care, the government actively contested claims for reimbursement, up to the point where individuals incurred large legal bills in attempting to validate their rights. The government would then settle cases out of court at the last minute, in an apparently deliberate strategy to prevent knowledge of the cases becoming public, for fear that others, with similar entitlements, would seek to exercise their rights. According to the Chief Justice, the individuals most affected by such a strategy:

are, for the most part, old or very old; they are, in many cases, mentally or physically disabled; they are also, very largely, in poor financial circumstances. They are most unlikely to have been aware of the provisions of the health Acts or their rights to services or the terms on which they are provided.⁴⁷³

In this case, the government argued that its strategy was legally justified. Regardless of the legal rights and wrongs, however, there can be no doubt that the lack of information about the rights in the first place left certain individuals at a disadvantage with regard to their position within the community and their rights within the social practice of healthcare provision. The legal strategy of contesting cases for as long as possible but then settling them before any publicity arose via a court hearing also appears deliberately

⁴⁷² Claassen, 2018, p. 149.

⁴⁷³ Quoted by Mary Carolan in ‘Law, Money and Morality at Issue in Nursing Home Charges Legal Strategy’, *The Irish Times*, 1st February 2023. Available at <<https://www.irishtimes.com/crime-law/2023/02/01/law-money-and-morality-at-issue-in-nursing-home-charges-legal-strategy/>> [Accessed 27 May 2024].

contrived to deny the public at large access to information which allows them to assess the merits of the healthcare system and their place within it. Individuals were thus denied the empowerment which Claassen sees as essential for navigational agency and social justice; they may have adapted their expectations and preferences due to a form of what Claassen sees as manipulation, which denied them knowledge of their rights and denied or at least reduced their ability to assess the fairness of a social practice and their role within it.

In a separate example, a report issued by the Ombudsman in April 2023 assessed a number of schemes whereby individuals are entitled to reimbursement for the costs of medical treatment received abroad. The relevant schemes allow for people to travel abroad to receive necessary care if waiting lists in Ireland prevent them from receiving the required care in a timely fashion. The necessity for such schemes to exist in the first place raises questions regarding the adequacy of the Irish healthcare system, which are beyond the immediate concerns of this thesis. The operation of the schemes, however, raises relevant questions regarding the role of information in facilitating navigational agency. Noting that many of the people who avail of these schemes are in vulnerable groups due to age, illness, disability or low income, the Ombudsman found a number of shortcomings with regard to the approach of the Health Service Executive (HSE) to records and information sharing. He noted that applicants for the schemes ‘expressed absolute dismay’ and ‘felt a sense of being misled’ as a result of inaccurate or inaccessible information.⁴⁷⁴

The Ombudsman found that the HSE ‘has a responsibility to provide information to patients’ but ‘is not fulfilling its duty in relation to this issue’.⁴⁷⁵ In specific cases, he stated that the HSE was imposing unreasonable demands on patients with regard to their (the patients’) recordkeeping, while subsequently failing to provide adequate levels of information to empower patients to properly assess their entitlements and understand the workings of the various schemes. The HSE ‘does not sufficiently explain the purpose or impact of some of the questions asked [...] and this can lead to patients not fully

⁴⁷⁴ Office of the Ombudsman, *In Sickness and In Debt* (Dublin, 2023), p.7. Available at <<https://www.ombudsman.ie/publications/reports/in-sickness-and-in-debt/InSicknessandInDebt-2023-FINAL.pdf>> [Accessed 27 May 2024].

⁴⁷⁵ Office of the Ombudsman, p. 9.

understanding that they need to consider their entitlement, or possibly lack of entitlement’ under the relevant schemes.⁴⁷⁶ He also states that ‘the HSE cannot continue to punish patients for errors which are entirely outside of the patient’s control’⁴⁷⁷ and that it should ‘expand the level of provision of information to patients about their rights and entitlements’.⁴⁷⁸

The Ombudsman’s findings in this investigation highlight the core importance of information in empowering individuals and facilitating navigational agency. By pinpointing examples of incomplete, inaccurate and potentially misleading information, the Ombudsman identifies the practical impact which such shortcomings have on the rights and wellbeing of vulnerable individuals. People use their internal capabilities to assess their situation and their options and to set themselves goals but their freedom to act upon these assessments can be constrained due to lack of accurate and reliable information; their decisions are not fully informed or — if they have correctly assessed their rights and entitlements — they are met with demanding procedures and excessive administrative obstacles which can frustrate their goals and have a negative impact on their wellbeing.

7.4.1.2 Wider Shortcomings in an Irish Context

Manipulation in the form of denial of reliable and relevant information extends beyond issues of access and encompasses poor practice regarding the creation of records in the first place and neglect with regard to storage, accuracy, retention, disposal and all other aspects of seemingly routine day-to-day practices. While the focus is often on access or denial of access, this is merely the last link in the chain of recordkeeping responsibilities for public sector agencies. If issues of accuracy, completeness, storage, preservation and disposal have not been adequately addressed, full access may still result in injustice. Access to incomplete, inaccurate and potentially misleading information has the potential to manipulate individuals, distort their understanding and inhibit their navigational agency.

⁴⁷⁶ Office of the Ombudsman, p. 11.

⁴⁷⁷ Office of the Ombudsman, p. 11.

⁴⁷⁸ Office of the Ombudsman, p. 14.

Poor quality recordkeeping, therefore, has a direct negative impact on the ability of people to make informed judgements about their own place in society, about the options open to them for changing or improving their own position or the position of others, and about the justness of government decisions and actions. Issues relating to poor quality recordkeeping have been highlighted as a concern on a global scale, as described in the literature review in Chapter 3. The interviews which were assessed in Chapter 4 raised these concerns and assessed them in a specific Irish context. The long-standing nature of such concerns was highlighted in Chapter 2, which provided several other examples of ingrained neglect of recordkeeping within the Irish public sector, which highlight recordkeeping shortcomings in scenarios which impact upon the citizen-state relationship and provide real-life examples of poor recordkeeping and its consequences in terms of potentially restricting the navigational agency of individuals.

7.4.1.3 Summary

Taking Claassen's perspective on empowerment, we can establish that information is a crucial element in facilitating navigational agency and thus social justice. This means not just access to information but the creation and proper management of quality information, with access being the final link in the chain. If an individual is to assess his role in any social practice, he will need records and information which inform him of how the practice operates and how his role in it impacts upon him and on the practice in general. Regardless of the social practice, quality information and access to it is a pre-requisite for empowerment and navigational agency.

Individuals, particularly vulnerable individuals, may accept what they are told about their rights and opportunities and will try to do their best within the range of options that have been presented to them. If they are given limited information, their choices will be restricted – not because other options are not available, but because they are unaware of them or are manipulated into accepting their existing situation as the normal state of affairs. Their lack of knowledge regarding rights and opportunities may lead them into a situation of adaptive preferences as described by Claassen, i.e. they adapt their expectations and accept the limitations which have been placed upon them.

Better recordkeeping would allow all individuals not just knowledge of what rights and opportunities are available to them, but knowledge of the basis on which government has decided to grant those rights and not others. The case studies above demonstrate instances

where the government granted rights but then proceeded to deny individuals knowledge of and access to those rights. In assessing their place within a range of social practices, individuals may have many questions regarding the adequacy or the fairness of government actions and decisions. How, for example, are individuals assessed with regard to entitlements to welfare payments, and on what basis were such criteria introduced? Why are certain road and infrastructure projects prioritised over others? Why do certain types of investments attract generous tax breaks and others do not? Who has lobbied government with regard to grants for sports facilities or cultural institutions? To all of these legitimate questions, there can be a range of legitimate answers. Policy decisions can be advocated and defended from a certain perspective, supported by available evidence and information; they relate to the type of everyday decisions by which governments are judged. Individuals may form positive judgements or negative judgements, but they cannot come to informed judgements in the absence of records which demonstrate the basis on which decisions are made.

Minutes of meetings, registers of submissions received, texts of policy papers or the content of an email can all shed light on the degree to which government acts in the best interests of its citizens. While government is not obliged to pay everyone an equal wage, or to provide everyone with free transport, it is obliged to facilitate navigational agency by ensuring that people have options to influence the practices in which they participate. One significant way to do this is through the creation, maintenance and proper management of quality records and the provision of access to those records, with limited and clearly justifiable exceptions. Irish public sector recordkeeping appears to have a number of shortcomings in this respect which impact negatively on navigational agency and social justice across society as a whole.

7.4.2 Irish Public Sector Recordkeeping as a Social Practice

There now follows an assessment of the social practice of recordkeeping in an Irish context, with reference to Claassen's ideas of navigational agency and empowerment.

The literature review in Chapter 3 identified an increasing focus on the core role of recordkeeping with regard to human rights and social justice, and the development of theories relating to person-centred or participatory recordkeeping. Such theories align with Claassen's points regarding the empowerment of individuals by giving them a voice

in the governance of the social practices in which they are involved. In Chapter 4, however, it was suggested that interview participants from the recordkeeping profession in Ireland took a somewhat limited view of the improvements needed to address existing shortcomings in Irish public sector recordkeeping. It was noted that there is a tendency to focus on strengthening legislation and regulations, with a limited exploration of the desirability to change work practices and for recordkeepers to become more proactive in encouraging and adopting the sort of changes that would facilitate greater participation by a wider range of stakeholders.

While theories of participatory record-keeping abound, progress has been relatively slow when it comes to implementing them in practice, as has been acknowledged by several writers who espouse such theories.⁴⁷⁹ In recent years, steps have been taken to address this gap between theory and practice, with examples such as the MIRRA project in the United Kingdom⁴⁸⁰ and the Setting the Record Straight for the Rights of the Child Initiative in Australia.⁴⁸¹ Most of these attempts focus on childcare records and records relating to other forms of institutionalised care, with efforts also to address the interests of Indigenous populations in North America and Australia.⁴⁸²

In an Irish context, there are limited signs of such efforts, and fewer indications that recordkeepers have fully engaged with the role of recordkeeping in a social justice context. The question therefore arises as to whether recordkeeping as a social practice in an Irish context demonstrates characteristics of social justice in that it empowers participants and facilitates navigational agency.

7.4.2.1 Entry into the Profession

Entry to the archival profession in Ireland is through a postgraduate degree programme. Currently, the only such programme offered is the MA in Archives and Records Management at University College Dublin (UCD).⁴⁸³ This is accredited by the Archives and Records Association (ARA) and is a requirement for most professional roles. UCD

⁴⁷⁹ For example, Rolan, 2017, and Gilliland and McKemmish, 2014.

⁴⁸⁰ See <<https://blogs.ucl.ac.uk/mirra/about/>> [Accessed 17 May 2024].

⁴⁸¹ See <<https://rights-records.it.monash.edu/>> [Accessed 27 May 2024].

⁴⁸² For example, see <<https://library-archives.canada.ca/eng/corporate/about-us/strategies-initiatives/indigenous-documentary-heritage-initiatives/pages/actionplan.aspx>> [Accessed 17 May 2024].

⁴⁸³ See <https://www.ucd.ie/history/study/postgraduateprogrammes/ma_archives/> [Accessed 8 April 2024].

also offers certificate courses at undergraduate level, for those already working in recordkeeping without a professional qualification.⁴⁸⁴ In the United Kingdom, efforts to diversify the profession have led to the introduction of an apprenticeship route to accredited qualifications, but this option has not been followed in Ireland to date.⁴⁸⁵

As they require access to third level education, these qualifications, in particular the accredited MA, are subject to the general criticism that can be levelled against third level education, i.e. that it is available to a limited cohort of the population. According to a recent study, ‘educational disadvantage is a deep-seated and multi-faceted problem [...] with a lack of recognition and response at a policy level of its fundamental, deep-seated relationship with wider economic inequalities across Irish society’.⁴⁸⁶ Carolin Kreber notes that ‘access to higher education and, by extension, the professions is a primary social good which continues to be distributed unequally in society’.⁴⁸⁷ In line with a Rawlsian approach to social justice, Kreber claims that such privileges should only be tolerated if they result in the least favoured in society being better off than would otherwise be the case; she thus says that professionals have a responsibility ‘to contribute to the well-being of the least advantaged in society.’⁴⁸⁸ In terms of the recordkeeping profession, this aligns with a responsibility to facilitate participatory recordkeeping models which empower the various stakeholders, primarily those individuals to whom the records relate.

While the certificate options in UCD may be seen as an effort to widen access, membership of the recordkeeping profession is still largely drawn from those privileged enough to avail of third level education and to proceed to additional postgraduate study after their initial degree. This, on its own, limits participation in the social practice of recordkeeping and is a hindrance in terms of the navigational agency of those who are

⁴⁸⁴ See <https://www.ucd.ie/history/study/postgraduateprogrammes/cert_archives/> [Accessed 8 April 2024].

⁴⁸⁵ The Institute for Apprenticeships and Technical Education in England runs an apprenticeship for Library, Information and Archive Service Assistants, and for Archivists and Records Managers. See <<https://www.instituteforapprenticeships.org/apprenticeship-standards/library-information-and-archive-services-assistant-v1-0>> and <<https://www.instituteforapprenticeships.org/apprenticeship-standards/archivist-and-records-manager>> [both accessed 27 May 2024].

⁴⁸⁶ Brian Fleming and Judith Harford, ‘The DEIS Programme as a Policy Aimed at Combating Educational Disadvantage: Fit for Purpose?’, *Irish Educational Studies*, 42.3 (2023), 381–99 (p. 395).

⁴⁸⁷ Carolin Kreber, ‘The Idea of a “Decent Profession”: Implications for Professional Education’, *Studies in Higher Education*, 44.4 (2019), 696–707 (p. 700).

⁴⁸⁸ Kreber, p. 700.

restricted in accessing third level education and are thus prevented from adopting certain roles within the practice of recordkeeping.

7.4.2.2 Engagement with Participatory Recordkeeping

In discussing the role of professionals in the context of capability theories, Melanie Walker and Monica McLean state that professionals should have ‘other-regarding’ goals and be ‘aware of their obligation to enhance human development, democratic value, and social justice’. Professionals should ask questions such as ‘What are my clients or the communities I work with actually able to do and to be? What opportunities do they have to be and do what they value?’⁴⁸⁹

Considerations such as these are linked to the increasing focus in the recordkeeping literature on participatory recordkeeping, allowing individuals to become co-governors of the practice of recordkeeping. The role of the professional archivist in such scenarios becomes more of a facilitative one, working with communities and taking a view which places the needs and the stories of communities at the centre of the recordkeeping endeavour. This is reflective of the approach encouraged by many prominent writers in modern recordkeeping literature, including Flinn, Cook, Caswell and others.⁴⁹⁰

Although such issues are prominent in the recordkeeping literature, most participants who were interviewed for this research, as assessed in Chapter 4, stated that they had limited or no involvement in or familiarity with social justice issues in their professional activities.⁴⁹¹ During the interviews, one participant gave the example of the Traveller community, stating:

I don’t think there’s a single record relating to Travellers in the National Archives, except stuff to do with government commissions of inquiry [...] it’s all very well to have the government’s view on this, what about the views of the groups themselves who were involved in campaigns for social justice?⁴⁹²

⁴⁸⁹ Melanie Walker and Monica McLean, ‘Professionals and Public-Good Capabilities’, *Critical Studies in Teaching and Learning*, 3.2 (2015), 60–82 (p. 63).

⁴⁹⁰ For examples, see Flinn, 2007; Cook, 2013; Caswell, 2014.

⁴⁹¹ See section 4.3.2.5 above.

⁴⁹² Interview with Ger, June 2021. For full context, the current author was engaged in 2023 by Pavee Point, the Traveller and Roma Centre, to assist in establishing an archive which reflects the heritage and experiences of the Traveller community in Ireland.

This can perhaps be explained in terms of the remit laid down for the NAI and its primary role to acquire, preserve and make accessible the official records of the State. The legislation does, nevertheless, allow the NAI to acquire records from private sources and the NAI website contains some references to a small number of collections which could be said to relate to issues of marginalisation or social justice, mostly presented under the broad heading ‘Sources for Women’s History’.⁴⁹³ Other potentially relevant references on the NAI website include information on ‘Dublin City Council Culture Company, a Dublin City Council initiative established in 2018 to engage local communities with cultural institutions and activities in their area and to promote culture across the city’.⁴⁹⁴ These, however, appear to be isolated references rather than evidence of consistent and meaningful engagement with a community archive perspective or with a participatory recordkeeping approach. It could validly be argued that such an approach is beyond the remit of the NAI and, in any case, is currently beyond its reach in terms of available resources. Nevertheless, Holland’s observation regarding the NAI in 2006 still appears valid: ‘there does not appear to have been [...] targeting of substitute sources to address gaps in our imperfect archival memory, or to devise collecting policies which reflect the rapidly changing ethnic profile of the country’.⁴⁹⁵

Meanwhile, other public service organisations also appear to have taken limited steps with regard to participatory recordkeeping which could be said to empower individuals or communities, or facilitate navigational agency. The Irish Community Archive Network (ICAN) was established in 2008 by the National Museum of Ireland, with the stated aim ‘to encourage and support communities to collect and share their local history and heritage online’.⁴⁹⁶ As of April 2024, the ICAN website contains links to content uploaded by 33 local community or heritage groups, consisting largely of photographs of local landmarks, personalities and events. It represents a potentially rich and useful record of small communities, especially in a rural context, and allows local groups to document their own histories and experiences. However, it appears to have limited relevance in terms of empowering communities, and few if any of those represented would have a

⁴⁹³ See <<https://www.nationalarchives.ie/article/sources-for-womens-history/>> [Accessed 27 May 2024].

⁴⁹⁴ See <<https://www.nationalarchives.ie/article/dublin-culture-connects-national-neighbourhood-project/>> [Accessed 27 May 2024].

⁴⁹⁵ Holland, p. 141.

⁴⁹⁶ See <<https://www.museum.ie/en-IE/Learning/Irish-Community-Archive-Network>> [Accessed 27 May 2024].

strong claim to being identified as marginalised or oppressed. It certainly represents a form of community or participatory archiving, albeit not one which has a strong relevance to facilitating navigational agency in the context of potential imbalances within social practices.

Other occasional examples may be cited of minority groups or traditionally unrepresented voices being supported through the preservation and safeguarding of relevant records and archives. The Irish Labour History Society, established in 1973, aims to ‘promote the knowledge of Irish labour and of Irish people in labour history abroad and labour history in general’.⁴⁹⁷ Even this, however, represents an ‘official’ or institutional effort, as it holds collections from trade unions and labour associations, rather than being a genuinely participatory archive. Meanwhile, a perusal of the Irish Archive Resource uncovers very few collections that could be said to relate to marginalised or under-represented voices.⁴⁹⁸ Some of the collections certainly relate to little-known groups, but not of the kind that would traditionally be considered lacking in empowerment or agency. For example, under ‘Private Clubs and Societies’ the list includes collections from the Cork Shakespearian Society, Dublin Biological Club and the Ulster Unionist Council.⁴⁹⁹ The overall impression is of a set of records and archives which document and reflect traditional institutions and centres of power and influence, with occasional hints at a more diverse representation.

Websites such as ‘Archiving Reproductive Health’ hosted by the Digital Repository of Ireland (DRI) contain digitised collections relating to the 8th Amendment to the Constitution and its subsequent repeal in 2018.⁵⁰⁰ Apart from photographs of campaigning posters and a sweep of Twitter posts, all of the collections represent the pro-

⁴⁹⁷ <<https://www.irishlabourhistorysociety.com/>> [Accessed 27 May 2024].

⁴⁹⁸ The Irish Archives Resource (IAR) describes itself as ‘an online database which contains searchable archival descriptions held in Irish Archive Services. It does not hold any archives or records but provides a means to search archival descriptions from various contributing institutions’. See <<https://iar.ie/frequently-asked-questions-irish-archives-resource/>> [Accessed 27 May 2024].

⁴⁹⁹ The other categories displayed on the website relate to Archaeology; Art; Business; Central Government; Folklore; Health and Hospital; Landed Estate Papers; Legal Records; Literary Papers; Local Government; Military; Music; Other/Not Specified; Personal and Family Papers; Photographic; Political; Religious Institutions; School Records; Scientific; Theatre; Trades Unions; and University and Higher Education. See <<https://iar.ie/explore-all-archives-new/>> [Accessed 27 May 2024].

⁵⁰⁰ See ‘Archiving Reproductive Health: Guide to Collections’, <<https://repository.dri.ie/catalog/0r96mx74r>> [Accessed 28 May 2024].

choice view of the debate, i.e. the successful campaign in the 2018 referendum.⁵⁰¹ Such a representation appears to justify the view expressed by Frankie in an interview conducted for this research, that archivists follow rather than lead when addressing social justice issues, i.e. steps are really only taken to document previously-marginalised groups or communities after they have received some element of official acceptance or legitimacy.⁵⁰² Although one-third of those voting in the 2018 referendum on the 8th Amendment opposed the change, their views appear to be almost entirely absent from recordkeeping and archival projects relating to the campaign. This may be partly due to a reluctance by such groups or individuals to engage with projects which they may view as State-supported, but it does raise questions about the inclusiveness of current approaches to recordkeeping practice. The current focus on documenting the successful campaign to repeal the 8th Amendment, and the relative lack of effort relating to records and archives of the minority views in the 2018 referendum, suggests an ongoing tendency to focus on the dominant narrative.

In a similar example, the National Library of Ireland made the welcome announcement in April 2023 that it had acquired the archives of a group known as Cherish, which represented single-parent families in Ireland from the 1970s.⁵⁰³ Undoubtedly a valuable acquisition of an important collection, this could nevertheless be seen as an example of retrospective support for marginalised groups, long after society in general had moved on and after any perceived stigma attached to the group had been erased.

The recordkeeping profession in Ireland could thus be seen as being reactive, rather than being proactively committed to addressing inequities and marginalisation. While recent recordkeeping theory places an emphasis on empathy, inclusion of marginalised groups and endeavouring to highlight inequities, practice in Ireland suggests that some sort of social legitimacy or official recognition is required before archivists will actively or visibly document certain views and groups.

⁵⁰¹ The proposal to delete the 8th Amendment to the Constitution, i.e. to overturn the constitutional ban on abortion, was carried by 66.4% to 33.6%. See <<https://www.irishtimes.com/news/social-affairs/ireland-s-abortion-referendum-result-in-five-charts-1.3509845>> [Accessed 27 May 2024].

⁵⁰² See section 4.3.2.5 above.

⁵⁰³ See <<https://www.nli.ie/news-stories/cherish-archive>> [Accessed 27 May 2024].

The syllabus for the only accredited qualification for archivists in Ireland, at UCD, addresses recent recordkeeping approaches relating to social justice, including ‘an increasing emphasis on community engagement, user participation, and “person-centred” approaches’⁵⁰⁴ and deals with other concepts impacting on participatory recordkeeping. The follow-through in terms of implementation (for which UCD has no responsibility) appears to be limited to date, with public archive services continuing to operate according to more traditional interpretations of the archivist’s role. The interviews assessed in Chapter 4 suggest a few possible reasons for this, including the fear of alienating those who make decisions about allocation of funds. Participatory efforts are not entirely absent, as evidenced by the work of the Tuam Oral History Project, for example.⁵⁰⁵ As recent recordkeeping theories gain traction and are absorbed by an increasing number of new professionals through their professional training, the number of such efforts may increase and the foundations laid by ICAN, DRI and others may be built upon.

7.4.2.3 Limits to Engagement

If the key to navigational agency is empowerment, and the capability for individuals to influence or co-govern social practices in which they participate, then recordkeeping as a social practice in Ireland appears to have some shortcomings. The previous section outlines individual examples of what might be termed retrospective engagement between recordkeeping professionals and community groups or interests. Digitisation projects, exhibitions or seminars funded, organised or hosted by publicly-funded bodies tend to come after previously-marginalised groups have gained some measure of public and/or official acceptance and recognition. Other engagements with community groups, for example the ICAN, tend to focus on non-controversial areas such as local history and heritage, rather than facilitating communities which have suffered significant marginalisation or injustice.

In terms of actual participatory recordkeeping, it is difficult to find examples in an Irish context which compare to some of the projects which have been established internationally. For the moment, communities who continue to experience marginalisation and alienation continue to receive limited recognition and support from

⁵⁰⁴See UCD School of History, *Prospectus for MA Archives and Records Management 2024/25*, <https://www.ucd.ie/history/t4media/MA%20Prospectus%202024_2025%20Archives%20and%20Records%20Management.pdf> [Accessed 8 April 2024].

⁵⁰⁵ See <<https://www.universityofgalway.ie/tuam-oral-history/>> [Accessed 27 May 2024].

the professional recordkeeping community. As evidenced by examples such as Asylum Archive⁵⁰⁶ and Cork LGBT Archive,⁵⁰⁷ groups or individuals who wish to document their experiences or tell their story tend to do so independently of the professional recordkeeping community. Such groups sometimes receive subsequent support from State agencies via grants for digitisation or other aspects of their activities⁵⁰⁸ but they are the exception rather than the rule.

The NA Act is almost 40 years old and is due for review. As has been established, however, legislation and regulations can only go so far, whether that be in terms of facilitating or hindering inclusivity and equitable behaviours. Within the confines of any legislative or regulatory framework much can be done by adopting a culture, mindset or *modus operandi* which facilitates agency, allows for empowerment and grants recognition to groups who have been or continue to be marginalised in society. The continuing limited acceptance of inclusive and transparent approaches can be seen by reference to two examples – the report of the Mother and Baby Homes Commission, and the conservative approach of the NAI regarding the transparency of some of its operations.

The report of the Mother and Baby Homes Commission, published in 2021, provoked widespread criticism for the manner in which it treated the testimonies and the experiences of the women who suffered in those institutions. The Commission's description of some of the testimony as 'contaminated' led to widespread upset and caused survivors to feel 'infantilised and insulted all over again'.⁵⁰⁹ Such an approach was widely seen as reflecting a traditional paternalistic interpretation, with weight and credence given to official accounts, while the views, opinions, lived experiences and testimonies of the participants were marginalised and dismissed. The report appears to reflect a traditional acceptance of official accounts or perspectives, and a corresponding distrust or even dismissal of personal accounts and experiences. In response to the criticisms, the Government undertook a series of initiatives, including a redress

⁵⁰⁶ See <<https://www.asylumarchive.com/>> [Accessed 27 May 2024].

⁵⁰⁷ See <<https://corklgbtarchive.com/about>> [Accessed 27 May 2024].

⁵⁰⁸ See <<https://www.dri.ie/dri-community-archive-scheme>> [Accessed 27 May 2024].

⁵⁰⁹ Órla Ryan, 'Mother and Baby Homes: Some Consequences – Like Testimonies – Are More Important than Others', *The Journal*, 8th October 2022. Available at <<https://www.thejournal.ie/mother-and-baby-homes-report-and-redress-5884641-Oct2022/>> [Accessed 27 May 2024].

scheme,⁵¹⁰ new legislation addressing access to birth records⁵¹¹ and the establishment of a National Centre for Research and Remembrance, to be located on the site of the country's last active Magdalene Laundry. Described as 'a site of conscience', the proposed Centre will, amongst things, host 'a research centre and repository of records related to institutional trauma in the 20th century' and the Government has undertaken that its development will be 'directly informed by those most centrally involved, their families and representatives'.⁵¹²

Undertakings such as this, to include stakeholders and adopt an inclusive and participatory approach, will be an important part of any move towards person-centred recordkeeping in Ireland. Follow-through will require a concerted effort on behalf of several interested parties, not least the recordkeeping profession itself, including the NAI, under whose auspices the proposed research centre and records repository will operate. As has been suggested in earlier chapters of this thesis, the NAI has not always adopted a proactive stance in terms of implementation of existing legislation, and can be somewhat reticent when it comes to explaining its own procedures and decisions. This is further illustrated by responses to an FOI request submitted to several government departments in January 2023, which sought copies of certificates issued under Section 8 of the NA Act, i.e. requests from government departments to withhold 30-year-old records from public inspection.⁵¹³

Of those asked, only two departments had sought such certificates. Both of them provided copies of the certificates as requested, with sensitive information appropriately redacted. The NAI, however, which holds copies of all such certificates, refused to release them. It first claimed (contrary to a previous decision of the Information Commissioner) that the

⁵¹⁰ See <<https://www.gov.ie/en/publication/0c637-mother-and-baby-institutions-payment-scheme/>> [Accessed 27 May 2024].

⁵¹¹ See <<https://www.gov.ie/en/publication/2664a-access-to-information/>> [Accessed 27 May 2024].

⁵¹² See <<https://www.gov.ie/en/publication/01c8c-memorialisation/>> [Accessed 27 May 2024].

⁵¹³ The FOI request was submitted to 14 government departments on 24 February 2023, requesting relevant certificates for the years 2020, 2021 and 2022. Twelve departments stated that they had applied for no such certificates. The Department of Defence (FOI/0028/2023) had applied for a certificate relating to files dealing with refugees from Northern Ireland. The Department of Children, Equality, Disability, Integration and Youth (FOI-0083-2023) applied for certificates relating to a number of files, mostly dealing with contested adoptions or the detention of children in industrial schools. All certificates were released by the two departments in question, with appropriate redactions. The NAI (FOI-2023-0026) refused to release the same certificates.

certificates were exempt from FOI; on appeal, it reversed this decision but then stated that the certificates were received in confidence from the government departments concerned and thus could not be released. It also claimed that releasing the certificates would cause government departments to refuse to co-operate with the NAI in future. This argument appears flawed, given the government departments themselves had willingly released the certificates as requested, without query or reservation. What is most surprising about the approach taken is that the NAI, responsible for facilitating the release of government records for public inspection, appears much more resistant to openness, at least in some cases, than the government departments which come under its remit. If there is to be a transition to inclusivity in the social practice of recordkeeping, those professional recordkeepers with a central role to play will have a particular responsibility in facilitating a greater level of participation and a greater openness to outside inspection and assessment. Regardless of the legislation, regulations or procedures in place, the culture, mindset and working practices of those involved will be of greater importance.

7.5 Conclusion

This chapter has used Claassen's agency-based capability theory of justice to explore public sector recordkeeping in Ireland. According to Claassen, autonomous agents need internal capabilities to assess situations and identify options, while free agents need to be able to avail of those options without external interference or manipulation. Most people are participational agents in social practices, but many are denied the opportunity to be navigational agents, because of external constraints or manipulation.

An individual within a social practice will assess the rules of the practice, the structures, the policies and procedures to which they will be subject, the rights and responsibilities of the role they propose to adopt, and so on. They will assess whether they have the necessary internal capabilities (which vary from one practice to another) to fulfil their preferred role and how their role relates to others within the practice. All of these judgements and assessments depend on access to reliable and useful information in one form or another. If denied access to relevant information, their navigational capabilities will be hindered and they will feel restricted in their role and their ambition. They may be manipulated into adaptive preferences, i.e. accepting the status quo as a natural state of affairs; they may adapt their expectations and, through lack of information, be denied opportunities for navigational agency.

This chapter has provided some case studies in an Irish context which illustrate how lack of information impinges on the navigational agency of individuals, using the social practice of healthcare as an example. The chapter has also argued that the social practice of recordkeeping itself has shortcomings in terms of empowering individuals to become co-governors of the practice and to achieve navigational agency. Access to the recordkeeping profession is restricted and the profession has made limited progress in terms of actively embracing participatory recordkeeping theories which are so heavily reflected in the modern literature and which have been implemented, albeit on a limited and trial basis, in other jurisdictions. It is suggested that the recordkeeping profession in Ireland, while aware of social justice issues, has been reactive in dealing with communities that are marginalised and silenced. Recordkeeping in Ireland is still largely focused on official or institutional requirements and perspectives and the recordkeeping profession has shown limited willingness to open itself up to greater participation by relevant stakeholders, or greater scrutiny of how it operates. There has undoubtedly been engagement but it has, to date, been on a limited and unambitious scale. That may change as more professionals are exposed to modern recordkeeping theory via their professional training, and as those professionals have an opportunity to implement their ideas more widely in professional practice.

Chapter 8

Addressing Shortcomings in Irish Public Sector Recordkeeping.

8.1 Introduction

This chapter will propose a range of measures which can address the various shortcomings in Irish public sector recordkeeping legislation and practice which have been identified in the preceding chapters. The literature review, interviews and normative assessments have identified issues regarding how Irish public sector recordkeeping addresses relevant accountability relationships, the rights and welfare of citizens and associated modern approaches such as person-centred recordkeeping. Each of the shortcomings will be mapped to one or more specific recommendations, incorporating both legislative solutions and wider issues of recordkeeping culture and practice. In recommending legislative changes, reference will be made to legislation in a number of other countries, which can provide a precedent or act as a basis for proposed changes in Ireland. It will be emphasised, however, that while changes to legislation, rules and regulations are important and necessary, issues relating to recordkeeping culture and practice are of equal importance in facilitating the desired changes in public sector recordkeeping.

The recommendations detailed below have two primary audiences. Legislative changes must be considered by policy-makers, civil servants and politicians, who have the powers and authority to draft and introduce revised legislation. Recommendations regarding practice and working cultures, meanwhile, are aimed primarily at the recordkeeping profession itself, and call for various changes in how the profession operates. The recordkeeping profession, however, also has an important overarching role, relevant to all of the recommendations in this chapter. Recordkeepers have a crucial advocacy role, ensuring that policy-makers understand and appreciate to a greater extent the importance of the changes they are being asked to legislate for. The recordkeeping community, therefore, has a core responsibility to identify and formulate the changes that are required and to communicate these clearly and convincingly to those who are in a position to introduce the necessary changes.

8.2 Shortcomings

A brief summary is provided here of the shortcomings in Irish public sector recordkeeping that have been identified in the preceding chapters.

8.2.1 Shortcomings with Regard to Accountability

Using the model of accountability suggested by Bovens, Chapter 5 identified a number of shortcomings in Irish public sector recordkeeping. With regard to accountability as a mechanism, faults were identified in the reporting relationships involving the various actors and agents, including public sector agencies, the NAI, the NAAC, and the public. With regard to accountability as a virtue, it was found that a broad lack of appreciation of the importance of recordkeeping, a lack of visible policies relating to recordkeeping within the public sector and an overall lack of transparency relating to recordkeeping practices, have a negative impact on accountability and the ability of the public to scrutinise and assess the actions and performance of public sector agencies.

The following table links each of these shortcomings to specific recommendations which are addressed in section 8.3 below.

<i>Shortcomings with regard to Accountability</i>	<i>Relevant Recommendations</i>
Lack of accountability – public sector agencies	L4, L5, L6
Lack of accountability - NAI	L6, L7, L8
Limited role of NAAC	L7
Lack of appreciation of recordkeeping	L1, P3, P4
Lack of visible recordkeeping policies and procedures	L5
Lack of transparency in recordkeeping practices	L6, L7, L8, P2

Table 8.1: Shortcomings with regard to accountability, and relevant recommendations

8.2.2 Shortcomings with Regard to Human Rights

Chapter 6 identified a number of issues in Irish public sector recordkeeping in relation to human rights. These relate firstly to the lack of explicit recognition or acknowledgement of the public ownership of public records, with an assumed right of access. Linked to this is the lack of policies and procedures in place to ensure the creation and maintenance of *quality* records, which can act as an accurate and reliable source of information for individuals. In terms of work practices, it was also suggested that excessive rules and regulations regarding access, and lack of investment in resources such as staffing and digitisation can inhibit access and thus have a negative impact on the rights of individuals.

The following table links each of these shortcomings to specific recommendations which are addressed in section 8.3 below.

<i>Shortcomings with regard to Human Rights</i>	<i>Relevant Recommendations</i>
Lack of recognition of public ownership of public records	L1, L2, P2
Lack of recognition of assumed right of access	L2
Lack of recognition of importance of quality records	L1, L5, P3, P4
Excessive restrictions on access	L2, L3, P2
Lack of resources which impact on access	L1, L2, P2

Table 8.2: Shortcomings with regard to human rights, and relevant recommendations

8.2.3 Shortcomings with Regard to Social Justice

The role of recordkeeping in facilitating social justice through navigational agency was assessed in Chapter 7. Issues of poor-quality recordkeeping and restrictions on access were highlighted as having a negative impact on social justice in this context. An emphasis on recordkeeping cultures and practices identified shortcomings with the recordkeeping profession itself and highlighted issues regarding restricted access to membership of the profession, limited engagement by the profession with external stakeholders and with models of participatory recordkeeping, all resulting in negative consequences in terms of fulfilling recordkeeping's potential in relation to social justice.

The following table links each of these shortcomings to specific recommendations which are addressed in section 8.3 below.

<i>Shortcomings with regard to Social Justice</i>	<i>Relevant Recommendations</i>
Poor quality recordkeeping	L1, L5
Restrictions on access	L2
Restricted access to the recordkeeping profession	P1
Limited engagement with stakeholders	L3, L8, L10
Limited engagement with participatory recordkeeping	L3, L8, L10

Table 8.3: Shortcomings with regard to social justice, and relevant recommendations

8.3 Recommendations

The recommendations in this chapter are designed to address the shortcomings identified in the preceding normative chapters, and summarised briefly above, in relation to accountability, human rights and social justice in Irish public sector recordkeeping. Recommendations have been developed based on the literature review in Chapter 3, the

assessment of the interviews as detailed in Chapter 4, the normative assessments conducted in Chapters 5–7, and on professional knowledge and experience of Irish public sector recordkeeping accumulated by the author over a period of 30 years as a practitioner.

8.3.1 Recordkeeping Legislation

The following sections recommend a range of legislative changes which are designed to address the shortcomings that have been identified in the preceding chapters. A number of these changes relate to the perception of archives and records, and recognition of their importance in societal terms. Others have a more practical remit in that they relate to structures and mechanisms designed to improve effectiveness and allow for greater levels of compliance with relevant legislation. They are all related to issues of accountability, human rights and social justice and to specific shortcomings identified in the earlier normative assessments. Other potential changes, unrelated to these matters, may be deemed desirable or necessary in any revised legislation but are not addressed here.

8.3.1.1 Specific Recommendations Relating to Recordkeeping Legislation

Recommendations for specific legislative change are numbered L1 – L8, and are explained below.

Recommendation L1: Explicitly Recognise the Value of Records and Archives

This recommendation addresses the lack of appreciation of the overall value and importance of recordkeeping, and the lack of priority given to the creation of quality records within the public sector. The recordkeeping community has persistently urged governments, administrators and society at large to recognise the core value of records and archives. Increasingly in recent decades, in an international context, this has been done with reference to accountability, human rights and social justice, with a focus on how recordkeeping impacts directly on the rights and livelihoods of individuals, the relationship between the citizen and the State and the potential of records and archives to give a voice to marginalised groups and to expose incidents of injustice. A constant theme of the literature review in Chapter 3 and the interviews assessed in Chapter 4 is the need for advocacy in relation to the value and importance of records and archives, given the need for a wider understanding and appreciation of the core importance of records to the wellbeing of individuals and the successful operation of democratic systems.

Existing Irish recordkeeping legislation makes no reference to the core value or importance of records or recordkeeping. As noted in Chapter 6, the NA Act merely states that 30-year-old records are to be transferred to the NAI and made available for public inspection, except in cases where exemptions have been granted or the records have been disposed of. There is no reference to the fundamental reasons as to why accurate and reliable records are needed in the first place, nor any reference to principles of accountability, human rights or social justice in a recordkeeping context.

The first requirement, therefore, for any revised recordkeeping legislation is to clearly and explicitly set out a basis for recognising the fundamental value of records and archives in terms of the rights of individuals and their ability to scrutinise the actions and behaviours of State agencies. The NAI's own Strategic Plan for 2021-25 highlights the need for revised legislation, points to the 'primacy of the public record as a public good' and states that it (the NAI) wants 'to ensure the preservation of the public record as a force for good, for research, for debate and for discovery'.⁵¹⁴ Statements such as this can form a good starting point for a clear enunciation of the value of records and archives, and the benefits of effective recordkeeping in any revised legislation.

The Universal Declaration on Archives also contains terminology which can be used and adapted in order to provide a solid legislative recognition of the core value and importance of archives. Its references to the unique quality of archives, their vital necessity for efficiency, accountability, the protection of rights and the establishment of individual and collective memory provide the type of foundation that can underpin revised recordkeeping legislation and provide a solid basis on which to build practical structures and processes which can meet the needs of society.

Recommendation L2: Explicitly Recognise the Right to Information

This recommendation addresses the lack of recognition afforded to public ownership of public records and the associated lack of recognition of an assumed right of access to such records. Chapter 6 of this thesis assessed the right to information as a human right, and the effect which access to information has on the ability of individuals to avail of other rights. In addition to a clear recognition of the core importance of recordkeeping,

⁵¹⁴ NAI, *Shaping Our Future*, p. 6.

therefore, any new legislation must explicitly recognise the right to access and commit to upholding and facilitating it to the greatest extent possible.

The existing NA Act makes no explicit reference to a right to information or the role which access to information has in the lives of citizens and their relationship with government. In contrast, the FOI Act of 2014 makes explicit reference to the public interest which exists in allowing access to information.⁵¹⁵ It also requires public bodies to take into account, when responding to requests for information, the need to achieve greater openness in the activities of public bodies and to promote adherence by them to the principle of transparency in government and public affairs; the need to strengthen the accountability and improve the quality of decision-making of public bodies, and the need to inform scrutiny, discussion, comment and review by the public of the activities of public bodies.⁵¹⁶

Whatever criticisms may be levelled at the manner in which the FOI Act has been implemented, it does at least demonstrate a recognition and clear statement of the principles of openness, transparency and accountability, and clearly identifies the central role of access to information in upholding such principles. Likewise, the EU's *Directive on Access to Environmental Information* makes explicit reference to the basic principle of access to information and the benefits that derive from it.⁵¹⁷ The Statutory Instruments issued in Ireland to give effect to that Directive also make specific reference to the quality and accuracy of the information created and maintained by public bodies.⁵¹⁸ There are thus several precedents for the inclusion of general statements of principle and good practice when it comes to access to quality information, in existing legislation and regulations.

⁵¹⁵ FOI Act, 2014, Section 8(5).

⁵¹⁶ FOI Act, 2014, section 11(3).

⁵¹⁷ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003. Available at <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF>> [Accessed 27 May 2024].

⁵¹⁸ SI No. 662/2011 – European Communities (Access to Information on the Environment) (Amendment) regulations 2011. Available at <<https://www.irishstatutebook.ie/eli/2011/si/662/made/en/print>> [Accessed 27 May 2024].

The Director's Annual Report for 2016 states that 'the act of making archives publically [sic] available reinforces democracy and the link of the citizen to the State'.⁵¹⁹ Such statements represent an awareness and commitment on the part of the NAI to a right of access. They represent a useful foundation for drafting a contextual statement which can give formal recognition to the right to information and provide a legislative basis to principles of access to public records and archives. A clear recognition of a right to information and a commitment to uphold and facilitate that right to the greatest extent possible should be a fundamental element of any revised legislation.

Furthermore, a move to allowing access after 20 years on a consistent basis, rather than 30 years, would bring Irish legislation more in line with archival legislation in other jurisdictions. The partial application of a 20-year rule introduced via the 2018 Amendment Act should be removed, as should the political involvement and the subjective assessments relating to fair and balanced reporting which were introduced in that Act. The repeal of the 2018 Amendment Act would facilitate equitable access on a consistent basis, covering the records of all government departments and all public bodies which are included in the remit of revised legislation.

Recommendation L3: Explicitly Recognise Inclusive and Participatory Recordkeeping

This recommendation addresses existing shortcomings relating to engagement with stakeholders and participatory recordkeeping approaches. In recognising a right to information for all individuals, revised legislation would have scope to afford particular recognition to groups or individuals that have traditionally been excluded under long-standing recordkeeping practices.

Some precedents exist in other jurisdictions which can provide a useful basis for suitable terminology relating to participatory recordkeeping, which can be incorporated in new legislation for Ireland. For example, South Africa's national archival legislation stipulates that one of the functions of the National Archives is to collect records 'with due regard to the need to document aspects of the nation's experience neglected by archives

⁵¹⁹ Report of the Director of the National Archives 2016, p. 4. Available at <<https://www.nationalarchives.ie/wp-content/uploads/2019/03/National-Interactive-Archives-Report.pdf>> [accessed 20 June 2024].

repositories in the past'.⁵²⁰ It also highlights functions of the National Archives to be carried out 'with special emphasis on activities designed to reach out to less privileged sectors of society'.⁵²¹

In New Zealand, the Public Records Act of 2005 stipulates that in carrying out any of his or her functions, 'the Chief Archivist must ensure that processes are in place for consulting with Māori'.⁵²² It also requires that at least two members (from a total of seven) of the Archives Council must have knowledge of tikanga Māori (that is, Māori language and customs)⁵²³ and that the Council can advise the Minister on recordkeeping and archive matters to which tikanga Māori is relevant.⁵²⁴

There are thus examples available of national archival legislation which make direct reference to consideration of minorities and marginalised groups, communities who have traditionally been sidelined or entirely excluded from archival processes in the past. Such legislative provisions in an Irish context could assist in aligning Irish legislation with modern archival theories relating to inclusion and social justice, and reducing the emphasis on official histories and traditional power structures. While efforts have been made, for example by the DRI, to encourage and support community archiving endeavours, a legislative basis to such provisions would underpin and provide greater weight to such approaches, and would facilitate a re-focusing of efforts which would better reflect modern recordkeeping theories and uphold the rights and interests of traditionally vulnerable groups and individuals. In historical terms, this could have related to women, members of the Traveller community, those in residential care institutions or mental health facilities, and those from disadvantaged socio-economic groups whose voices are rarely heard in archives. In more recent years, it could apply to many of the same groups but also to the increasingly diverse communities which make up Irish society in the 21st century.

⁵²⁰ National Archives of South Africa Act, 1996, Section 3(d). Available at <https://www.gov.za/sites/default/files/gcis_document/201409/act43of1996.pdf> [Accessed 27 May 2024].

⁵²¹ National Archives of South Africa Act, 1996, Section 5 (c).

⁵²² Public Records Act, 2005, Section 11(3). Available at <http://www.nzlii.org/nz/legis/consol_act/prs2005153/> [Accessed 24 May 2024].

⁵²³ Public Records Act, 2005, Section 14(3)(b).

⁵²⁴ Public Records Act, 2005, Section 15(1)(a)(i).

Joanne Evans et al., in addressing records of childcare in Australia, note that ‘government and corporate recordkeeping privileges the needs of the singular creator of the records and information elites, and that recordkeeping processes are driven by and designed for the operational needs of government agencies’.⁵²⁵ They argue that information governance frameworks should embed principles such as prioritising the recordkeeping requirements of those who have been the victims of human rights abuse and social injustice and designing flexible, rights-based and person-centred recordkeeping.⁵²⁶

Recommendation L4: Extend the Remit of the National Archives Act

This recommendation addresses gaps in accountability which result from the limited remit of the existing legislation.

As has been repeatedly highlighted throughout this thesis, the NA Act has a very limited remit, resulting in major gaps in accountability. Between 1986 and the time interviews for this research were conducted in 2021, no amendments had been made to the list of bodies covered by the legislation. Three additional bodies have since been added, namely the Adoption Authority of Ireland,⁵²⁷ the Courts Service⁵²⁸ and An Bord Pleanála.⁵²⁹ Chapter 5 of this thesis listed examples of the very prominent and important public agencies omitted from the legislation, and thus free of any accountability requirements in terms of how they manage and retain their records or archives.

The obvious solution to these shortcomings is to expand the remit of the NAI to facilitate greater accountability throughout the public service. The interview conducted with the civil service representative for this research suggested a reluctance to accept a widespread extension of the legislation’s remit, preferring instead a piecemeal extension to individual agencies if a need could be identified. This appears to be the approach currently being

⁵²⁵ Evans et al., 2019, p. 189.

⁵²⁶ Evans et al., 2019, p. 190.

⁵²⁷ Birth Information and Tracing Act 2022, Section 71. Available at <<https://www.irishstatutebook.ie/eli/2022/act/14/section/71/enacted/en/html#sec71>> [Accessed 27 May 2024].

⁵²⁸ SI No 216/2023, National Archives Act, 1986, (Section 1(2)(D)) Order, 2023. Available at <<https://www.irishstatutebook.ie/eli/2023/si/216/made/en/print?q=national+archives>> [Accessed 27 May 2024].

⁵²⁹ SI 359/2022, National Archives Act 1986 (Section 1(2)(D) Order, 2022. Available at <<https://www.irishstatutebook.ie/eli/2022/si/359/made/en/print?q=national+archives>> [Accessed 27 May 2024].

adopted and while the addition of the three bodies mentioned above is welcome, it represents a very limited and unambitious extension of the Act's remit.

A much more comprehensive remit is required if the NAI is to play a full role in facilitating public sector accountability. All interview participants, in their contributions to this research, identified the need for a comprehensive extension of the remit of legislation. Some highlighted specific sectors that needed to be included, such as hospitals and healthcare in general, along with semi-state bodies. Some also addressed the need to include private organisations which are involved in providing services on behalf of the State, often with public funds, most especially religious institutions and others involved in healthcare and residential care. Again, there are precedents which can provide guidance on how this might be achieved. Although never implemented, there is provision within the FOI Act of 2014 for its remit to be extended to private sector bodies.⁵³⁰ Meanwhile, Scotland's Public Records Act of 2011 defines public records as including records 'created by or on behalf of a contractor' in carrying out duties on behalf of a public body and 'records created by any other person that have come into the possession' of a public body or a contractor.⁵³¹

The NAI itself recognises the need for its remit to be extended and has, in recent years, highlighted existing shortcomings with the Schedule and noted the need for change. Resources are, of course, an issue and an extension of the remit will have little impact on its own, given that the NAI already struggles to adequately meet the demands of its existing remit. Nevertheless, accountability requirements, if clearly explained and justified by the NAI and the wider recordkeeping community, could justify the additional resources required to meet a comprehensive extension of the remit.

The only truly meaningful manner in which the remit of the legislation can meet accountability requirements is to adopt an approach more akin to that of the FOI Act, 2014, i.e. that all public bodies are by default subject to the NA Act, unless specific exemptions or limitations are warranted and clearly enunciated in the legislation. Simply

⁵³⁰ FOI Act, Section 7(6).

⁵³¹ Public Records (Scotland) Act 2011, Section 3.

extending the remit in this manner, however, no matter how desirable it may be, cannot on its own address the shortcomings that exist.

Recommendation L5: Address Records Management in the Public Service

This recommendation addresses issues relating to poor recordkeeping practices within the public sector, including the lack of clear and accessible recordkeeping policies, and the consequent impact on accountability, human rights and social justice.

The role of the NAI needs to be addressed in terms of its involvement in the management of records within government departments and public agencies. As detailed in previous chapters, there are great variations in records management practices across government departments. The result is the absence of coherent and consistent recordkeeping practices across the public service. Recent years have finally seen efforts to address this inconsistency. The NAI has issued guidelines for the retention and disposal of common record types, while emphasising that it can only offer advice and guidance, as it is not empowered to issue regulations and instructions.⁵³²

Again, legislation in New Zealand may offer a starting point with regard to how a requirement for public bodies to meet adequate recordkeeping standards may be addressed. The New Zealand Act requires each public body to ‘create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice’.⁵³³ The Model Records Plan drawn up to aid compliance with the current Scottish legislation, meanwhile, requires all public bodies to document how they create and manage ‘authentic, reliable and useable records, capable of supporting business functions and activities for as long as they are required’.⁵³⁴

The NAI recognises the risk associated with the lack of consistent recordkeeping requirements for the civil service, and has called for changes to be made within the existing legislative provisions.⁵³⁵ Such change would see the Minister for PER issue

⁵³² See <<https://www.nationalarchives.ie/services-to-government-and-courts/records-management-guidelines/retention-schedule/>> [Accessed 17 May 2024]. In the interests of clarity, it should be noted that the current author, in his professional capacity, contributed to the early development of this guidance.

⁵³³ Public Records Act, 2005, Section 17.

⁵³⁴ National Records of Scotland, *Model Records Management Plan*, Element 3. Available at <<https://www.nrscotland.gov.uk/record-keeping/public-records-scotland-act-2011/resources/model-records-management-plan>> [Accessed 27 May 2024].

⁵³⁵ For example, see the Report of the Director of the NAI for 2021, p. 15.

recordkeeping regulations, as permitted under both the NA and the FOI Acts. In the longer term, however, any new legislation requires a direct responsibility for the NAI itself regarding the management of current records within public bodies. This is particularly important in the digital age, where waiting for thirty years to elapse before archivists can be involved in the assessment of records is untenable. Issues of format, metadata, storage, access and digital preservation need to be addressed at an early stage, in line with a records continuum model of recordkeeping. National archival institutions across the globe have responsibility for current recordkeeping within government, and the NAI remains an outlier in this regard. If it is to adequately address recordkeeping in a digital age, it needs the authority to do so and such authority can only come about via new provisions in a revised NA Act.

Recommendation L6: Allow for Specific Reporting Mechanisms and Relationships

This recommendation addresses the lack of reporting mechanisms in the existing relationships between the various agents and forums in public sector recordkeeping.

Chapter 5 looked at issues of accountability as a mechanism and established that in relation to Bovens' model encompassing a series of reporting relationships, existing legislation falls down on a number of fronts. Departments and scheduled bodies which are subject to the current legislation have no responsibility to explain or justify their decisions or actions; the NAI has no power to ask questions and pass judgement, and the public has no facility for assessing, influencing or interrogating the actions and decisions of any public body under the terms of the existing legislation, including the NAI itself.

The Public Records (Scotland) Act of 2011 provides a potentially useful model in this respect. Under what is described as a 'light touch' legislative response to shortcomings identified in Scottish public sector recordkeeping, this Act requires each public agency to prepare a Records Management Plan and submit it to the Keeper of the Records of Scotland. Where agencies fail in their duties in this respect, the Keeper has the power to conduct an assessment and to issue action notices for improvement. To assist in this

process, the Keeper has prepared and issued a Model Records Plan for use by public sector agencies.⁵³⁶

According to National Records Scotland, implementation of the 2011 legislation can ‘help authorities to better monitor public services, maintain accurate records of the circumstances and experiences of individuals, and safeguard the records of vulnerable people’.⁵³⁷ The 2011 Act reflects a concern with stakeholder involvement, requiring the Keeper to consult with relevant agencies and any other person they consider appropriate and to ‘have regard to any views expressed’ in response to such consultation.⁵³⁸

Stemming as it did from a review of recordkeeping relating to abuse in residential institutions and children’s homes, the origins of the Scottish legislation lie in issues which have a resonance in an Irish context. With a population similar to that of Ireland, and shared issues of recordkeeping shortcomings, the Scottish model may offer a good foundation on which the NAI can become involved in the creation and management of current records in public service organisations, and have some effective role as a forum in an accountability relationship, i.e. it can ask questions, pass judgements and ensure that the various actors face some sort of consequences.

A system of records management plans, with oversight powers available to the NAI, could allow for more consistent implementation of the relevant legislative provisions across all public bodies.

Recommendation L7: Allow for a Revamped Oversight Council

This recommendation also addresses shortcoming in reporting mechanisms, in particular the lack of any independent body which can pose questions or pass judgement regarding the actions of the NAI itself.

⁵³⁶ The Model Plan has fifteen elements, addressing areas such as senior management responsibility, policy statements, retention and disposal of records, archiving and transfer arrangements, staff training and public records created by third parties.

⁵³⁷ <<https://www.nrscotland.gov.uk/record-keeping/public-records-scotland-act-2011>> [Accessed 24 May 2024].

⁵³⁸ For examples of the several clauses requiring such consultation, see Public Records (Scotland) Act 2011, Sections 8(2)(b) and 9(3)(b).

As the NAI has responsibilities relating to public records, which the organisation itself describes as a public good,⁵³⁹ it is crucial that the decisions, actions and operations of the NAI are accountable and transparent. The role of the NAAC was identified in Chapter 5 as having shortcomings in this respect, at least in the manner in which it is currently being fulfilled. The giving of advice to the Minister is interpreted in a very narrow manner by recent incarnations of the NAAC, the focus being on supporting, encouraging and providing advocacy for the NAI. The assessment of the interviews in Chapter 4 highlighted a number of frustrations with the ability of the NAAC to have a meaningful impact, such frustrations being expressed both by members, former members and non-members alike.

The term of the last NAAC expired in July 2022 and, as of June 2024, no new Council had been appointed; this does not suggest that the Council is viewed as a priority for government, or that it has an important or influential role to play. The last report of the Council, covering an eighteen-month period up to June 2022, notes ‘in particular the excellent work of the Director of the National Archives and the implementation of her planned strategy’⁵⁴⁰ while welcoming staffing improvements, increased capacity and the enhancement of the public role of the NAI. There have indeed been important steps forward by the NAI in recent years, particularly on staffing numbers and in efforts to increase the visibility of and awareness of the organisation. Such positive developments are welcome but do not negate the need for appropriate levels of oversight and accountability. Earlier chapters of this thesis suggested a symbiotic relationship between the NAI and the NAAC, with no questioning or holding to account.

Any new Council should, therefore, be assigned more than an advisory role, with some element of oversight and a capacity to ask questions and pass comment on how the NAI and the bodies that fall within its remit carry out their duties. The membership of the Council should also be widened, to include representation from beyond the academic field and embrace community or stakeholder involvement. At the time of its appointment in 2017, the most recent Council comprised a judge of the Court of Appeal (as Chairman),

⁵³⁹ NAI, *Shaping our Future*, p. 6.

⁵⁴⁰ NAAC, Annual Report 2021 – June 2022, p.1. Available at <<https://www.nationalarchives.ie/wp-content/uploads/2023/02/NAAC-Annual-Report-2021-June-2022.pdf>> [accessed 14 May 2024].

five archivists (at least two are required by law), a professional genealogist, three lecturers/professors from third level institutions, a senior research scientist and the Director of Digital Repository Ireland.⁵⁴¹

Rather than operating merely as an advisory or advocacy body, any revamped or reconstituted Council should have a revised membership and a wider remit and should have the scope to adopt a more vocal approach. It could also facilitate accountability if it is given responsibility for issues identified in the following section, i.e. independent oversight of applications to dispose of records and of applications to withhold records from public viewing.

Recommendation L8: Facilitate Transparency and Public Oversight

This recommendation addresses the lack of public awareness of, involvement in and oversight of important recordkeeping decisions, including those identified in earlier chapters relating to the withholding of records from public inspection and applications to dispose of records. It also addresses shortcomings relating to participatory recordkeeping.

In terms of withholding public records from view after they reach the 30-year threshold (or 20-year threshold in some cases under the 2018 Amendment Act), the NAI has no role to play under the existing arrangements. Applications are made by the relevant Department to the Department of the Taoiseach, and the NAI merely receives a copy of the certificate authorising the withholding of the records. More importantly, there is no public element to this process, and no external oversight. Members of the public have no way of knowing what records have been withheld or why, apart from submitting an FOI request.

This is in contrast to the situation in the UK, where applications to withhold access to public records are subject to review by the Advisory Council on National Records and Archives. This independent body is described as being guided by the principle that information should be made public, except when there are clear grounds for not doing so: ‘The Advisory Council regularly challenges government departments to provide evidence

⁵⁴¹ See <https://merrionstreet.ie/en/news-room/releases/minister_humphreys_announces_appointments_to_the_national_archives_advisory_council.html> [Accessed 27 May 2024].

to justify requests for permission to retain documents or for them to remain closed'.⁵⁴² Such a model provides independent oversight of applications to withhold records from public view, and allows for an element of transparency while maintaining the confidentiality of the records in question. It is a role that could be considered in an Irish context to address some of the flawed processes currently in place, and could form part of the duties of a revamped oversight body to replace the NAAC.

Separately, legislation in place in New Zealand allows for advance public knowledge of an intention to destroy public records.⁵⁴³ The Chief Archivist is required to publish a notice of an intention to dispose of records, and to allow a period of 30 days during which members of the public can submit comments, which the Chief Archivist is required to take into account before issuing an authorisation for the disposal to proceed.⁵⁴⁴ Detailed appraisal reports and records retention schedules are published on the Archives New Zealand website as part of this consultation, along with a form to facilitate comments by interested parties. Such a process allows for stakeholder involvement and represents an element of participatory recordkeeping in that it gives a voice to those potentially affected by the records in question, and by issues relating to their retention or disposal. It provides a stark contrast to the procedures currently followed by the NAI.⁵⁴⁵

Improved public awareness, and a potential for stakeholder involvement in important recordkeeping procedures, could be facilitated by revised recordkeeping legislation. The models in place in the UK with regard to withholding of records and in New Zealand regarding proposed disposal of records, while not perfect, provide ready-made precedents which could be adapted for Irish purposes. Such changes would bring greater transparency and give stakeholders a role in important recordkeeping decisions which may have a direct impact on them. They would also facilitate greater accountability on the part of the NAI in how it conducts its significant responsibilities with regard to public records.

⁵⁴² See <<https://www.nationalarchives.gov.uk/about/our-role/advisory-council/principles-of-the-advisory-council/>> [Accessed 24 May 2024].

⁵⁴³ Public Records Act 2005, Section 20.

⁵⁴⁴ See <<https://www.archives.govt.nz/manage-information/how-we-regulate/intentions-to-dispose>> [Accessed 14 May 2024].

⁵⁴⁵ See section 5.4.2.3 above.

8.3.1.2 Summary – Recordkeeping Legislation

This chapter has so far recommended a number of specific changes which can address the issues that have been identified with regard to Irish recordkeeping legislation. While improvements in the implementation of existing legislation may address some of the shortcomings, it is clear that significant improvement requires changes to the legislation. Such changes relate to issues of principle such as the importance of records and archives to the State and everyone who lives in it, the right of access to public records and the need for an inclusive approach to recordkeeping, in line with modern recordkeeping theory. In addition, the recommended changes also relate to practical matters such as the remit of the legislation and reporting and oversight structures, including the need for greater transparency and stakeholder involvement in important decisions relating to access to information and disposal of public records.

It is suggested that these recommendations, if implemented, would address many of the issues identified throughout this thesis and elsewhere in relation to Irish public sector recordkeeping. Laws, rules and regulations, however, cannot have the desired effect in the absence of suitable practices and working cultures. The following sections of this chapter will make recommendations regarding recordkeeping practice which will be necessary to supplement the legislative changes described above.

8.3.2 Recordkeeping Practice

The legislative changes suggested in the preceding sections have the potential to facilitate a more accountable, more just, more transparent and more accessible recordkeeping regime in the Irish public sector. As has previously been stated throughout this thesis, however, legislative provisions alone will not be enough to bring about the desired improvements. The 1986 NA Act represented a significant advance on what had previously been in place, but the manner of implementation has proven to be just as important as the content of the legislation. As assessed in previous chapters, the 1986 Act quickly fell victim to a series of flaws in its implementation. Several interview participants described how measures introduced in 1986 have simply been ignored on an ongoing basis, ranging from government failure to appoint members to the NAAC and failure to provide sufficient resources, to failure by government departments and scheduled bodies to transfer records to the NAI.

There is, therefore, a risk that new legislation could also be undermined if measures are not taken to facilitate compliance. Chapter 5 noted the importance of varying recordkeeping cultures, as highlighted by Oliver and Foscarini, and how these carry equal or even greater weight than legislative and regulatory provisions when influencing public servants in their recordkeeping activities.⁵⁴⁶ The following sections of this chapter identify changes in practice, working cultures and mindsets, which must go hand-in-hand with revisions to legislation if adequate changes are to become a reality.

8.3.2.1 The Importance of Stakeholder Inclusion

Drawing on MIRRA, Lomas et al. identify a requirement for up-to-date policies and plans ‘that embed person-centred principles’, including processes relating to record storage, indexing, retention and disposal. In relation to access, they urge access by design, through simple and understandable processes and clear protocols regarding redactions or restrictions. Recordkeeping, they say, ‘should be subject to review, reflection, change, and audit by the critical stakeholders’.⁵⁴⁷

This places person-centred recordkeeping very much in the context of a broad interpretation of accountability, an interpretation which is focused on meeting the needs of stakeholders. The example of MIRRA is in a specific context, that of childcare, but similar research has been conducted in other areas, for example the recordkeeping needs of refugees, asylum seekers and displaced persons.⁵⁴⁸ How might these approaches be applied on a wider scale in the context of Irish public sector recordkeeping in general?

Section 8.3.1.1 above refers to clauses in archival legislation in South Africa and New Zealand which allow for the inclusion of marginalised and minority communities and stakeholders. Such clauses indicate that stakeholder interests and participatory recordkeeping elements can be reflected in legislative provisions. What is then required is that there is a culture in place which facilitates the successful implementation of those legislative provisions. Such a culture requires awareness, understanding, appreciation of and commitment to the role of recordkeeping in meeting the needs of individuals and communities. It has been suggested already in this thesis that the recordkeeping

⁵⁴⁶ See section 5.4.2.1 above.

⁵⁴⁷ Elizabeth Lomas et al., ‘A Framework for Person-Centred Recordkeeping Drawn through the Lens of Out-of-Home Child-Care Contexts’, *Archivaria*, 94 (2022), 64–93 (p. 82).

⁵⁴⁸ For example, see Carbone et al.

profession itself, if committed to person-centred theories and practice and to valuing the role of records as they relate to human rights and social justice, has a core role to play in this and must take a leading part in facilitating the cultural changes that are required. The changes require the recordkeeping profession to commit itself to improved practices while simultaneously advocating for greater appreciation of records and archives in the wider public service.

8.3.2.2 Specific Recommendations Relating to Recordkeeping Practice

Recommendations for changes to recordkeeping practice are numbered P1 – P8, and are explained below.

Recommendation P1: Facilitate More Diverse Pathways into the Profession

This recommendation addresses shortcomings related to inclusion and participatory recordkeeping. A crucial step in this regard may lie diversifying the membership of the profession itself.

Wider access to third level education is not something that the recordkeeping profession itself is directly responsible for, but the prospect of including marginalised or minority groups in the profession is hindered by the fact that access is via third-level qualifications which may remain inaccessible to many members of society due to socio-economic or other factors. In the interviews conducted for this research, one participant noted that ‘there’s so many barriers of someone getting to the point of a Masters level education in Ireland [...] it’s so self-selecting [...] there’s very little diversity, particularly in terms of socio-economic background’.⁵⁴⁹

The first step for the recordkeeping profession in Ireland, therefore, is to address its own composition and routes into the profession. Consideration should be given to alternative pathways into the recordkeeping profession, perhaps by emulating the apprenticeship model being adopted in the UK. Such an approach would align with Irish government policy which encourages apprenticeships as an alternative to third level degrees and which is the focus of significant effort and resources by the relevant government

⁵⁴⁹ Interview conducted 18th June 2021.

departments.⁵⁵⁰ The profession also needs to address options for those with disadvantages other than socio-economic – for example, those with physical disabilities, linguistic limitations or other challenges which impact on the way they learn and which may preclude them from progressing through a system which is measured in terms of academic grades.⁵⁵¹

As of yet, there are limited signs that the recordkeeping profession is engaging with a process which would open it up and make it more diverse, but facilitating a wider range of pathways into the profession for a wider range of individuals would appear to be a logical step towards a more participatory and inclusive culture within the profession. Such changes would also align with official Government policy regarding access to further education, as stated in the *National Access Plan 2022 – 2028*, which sets priorities under headings of flexibility within higher education, diversity across programmes and levels, access and participation for priority groups, and student success and engagement.⁵⁵²

In conjunction with facilitating wider access to the profession, other relevant questions should be asked, including whether professionally-qualified archivists should be more welcoming of those without professionally-accredited qualifications. In terms of dealing with such issues in practical terms, the issue of engagement arises – firstly, the profession needs to recognise its own shortcomings in terms of inclusion and diversity and then address those shortcomings by building links to stakeholders and representative bodies who wish to participate. As noted by Nicky when interviewed for this research, this will involve ‘working on the relationship between professional archivists and community archivists and community activist groups, so that people who can’t work around the barriers or surmount the barriers in one way, are nevertheless facilitated in recording their own history, by the people who have been able to do it’.⁵⁵³

⁵⁵⁰ See Department of Further and Higher Education, <<https://www.gov.ie/en/press-release/194f4-ministers-harris-and-donohoe-launch-public-service-apprenticeship-plan/>> [Accessed 28 May 2024].

⁵⁵¹ See Brian Mooney, ‘Alternatives to the Degree Route for School Leavers’, *Irish Times*, 11 May 2021, <<https://www.irishtimes.com/news/education/alternatives-to-the-degree-route-for-school-leavers-1.4547623>> [Accessed 28 May 2024].

⁵⁵² Department of Further and Higher Education, *National Access Plan: A Strategic Action Plan for Equity of Access, Participation and Success in Higher Education, 2022 – 2028* (Dublin: 2022), p. 24. Available at <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/233024/9771358b-667a-4172-867f-371d7e314f46.pdf#page=null>> [Accessed 28 May 2024].

⁵⁵³ Interview conducted 18th June 2021.

Recommendation P2: Adopt More Open Work Practices

This recommendation addresses existing shortcomings in the degree to which the recordkeeping profession adopts transparent practices in implementing some of its important responsibilities.

Once enrolled in accredited professional courses, student archivists are exposed to the latest research and theories relating to human rights, social justice, person-centred recordkeeping and community archives. In most cases, they then go on to employment in the standard environments, i.e. government departments, national cultural institutions, local authorities, religious institutions or business archives, where there may be limited opportunities and little motivation/enticement to put such theories into practice. This reflects the fact that the legislation governing recordkeeping is still focused on traditional archival models, is institution-centred rather than person-centred and does not reflect modern theory and approaches to recordkeeping. Thus, archivists who wish to implement more person-centred recordkeeping approaches may be restricted in terms of relevant opportunities and career choices.

Thirty years' experience as a practitioner on the part of this author, together with comments made by interview participants as part of this research, and the outcome of FOI requests submitted as part of this research, all suggest that the recordkeeping profession, in practical day-to-day terms, still works to more traditional methods and has some resistance to implementing a more transparent, responsive and accountable approach to its own activities.

The recordkeeping profession therefore needs to become more transparent in its own procedures and operations. It needs to explain its actions, provide background and context and generally be more open to its various stakeholders. This is not to say that any existing actions or decisions – for example regarding acquisitions, appraisal, withholding of sensitive material or allocation of resources – are necessarily wrong or inappropriate, merely that the rationale and basis for them should be known to the public. By adopting principles of transparency and openness, the NAI and other public archival institutions can become more responsive, more accountable and more trustworthy. This would seem particularly apt for a profession which sees facilitating access to information as one of its core tenets.

A suite of clearly-enunciated policies and procedures, together with a willingness to explain decisions and actions, would allow the profession to align itself more closely with principles of accountability and transparency. Such an approach would not only reflect modern archival theory regarding accountability as reflected in the relevant literature, but also the Code of Ethics of the ARA, which states that it is ‘important that record-keepers themselves work transparently and are accountable in their actions’ and ‘should ensure that their decisions and the justifications for those decisions are transparent’.⁵⁵⁴

Recommendation P3: Improve on Advocacy for Records and Archives

This recommendation relates to the lack of awareness of the core value and importance of recordkeeping in the lives of individuals and the State.

Chapter 4 of this thesis highlighted a recognition from within the recordkeeping profession itself that it has traditionally been lacking in making itself heard, or in advocating for more resources and, in a wider sense, greater recognition and appreciation of the value of records and archives. This viewpoint was shared by most interviewees, who lamented the shortcomings of recordkeepers in making their voices heard and in persuading others of the importance of records and archives.

The traditionally poor recordkeeping culture in Ireland makes it essential that recordkeepers become better at making their voices heard. The absence of up-to-date records management policies in most government departments, and the lack of implementation of those policies that do exist, suggests an ongoing lack of priority with regard to good recordkeeping practices, with consequences in terms of access and other rights. There is a widespread acceptance that awareness is lacking of the importance of recordkeeping and of the core value which it holds for the lives of individuals and for society at large. In their interview for this research, Leslie stated ‘there isn’t enough awareness about the importance of civil servants and public servants being able to manage their records’.⁵⁵⁵

⁵⁵⁴ Archives and Records Association, *Code of Ethics* (March 2024), p. 5-6. Available at <<https://static1.squarespace.com/static/60773266d31a1f2f300e02ef/t/65faf4edbd99af36bca36494/1710945517680/Code+Of+Ethics+March+2024.pdf>> [Accessed 28 May 2024].

⁵⁵⁵ Interview conducted 17th June 2021.

Tying in with Pearson's assessment of the 'passive archivist' stereotype, as noted in Chapter 5,⁵⁵⁶ all of this suggests that recordkeepers in an Irish context need to become more assertive. Renewed legislative authority for the NAI will help to achieve this, i.e. giving the NAI actual powers with regard to records management within government departments, as suggested earlier in this chapter. As ever, such powers must be accompanied by a willingness on the part of recordkeepers to make their voices heard – not just that, but make their voices heard in a manner that will make a difference to managers and administrators.

Guidelines and policies, training and awareness programmes, and annual reports all have a role to play, but can only go so far. A more active approach is probably needed, and earlier chapters have noted efforts to utilise social media in this regard, along with publicity campaigns centred on events such as Heritage Week⁵⁵⁷ and Explore Your Archives.⁵⁵⁸ There is also evidence of efforts to engage via podcasts⁵⁵⁹ and social media accounts. Such endeavours will have to continue and expand, and will be an essential complement to new legislation if recordkeepers are to succeed in spreading the word regarding the value of records and archives, and to secure buy-in from public servants and the public at large.

Recommendation P4: Change the Focus of Advocacy Efforts

This recommendation relates to the need to increase awareness of records and archives as central to issues of accountability, human rights and social justice, rather than purely being items with a curiosity value.

In very recent years, the NAI has been more proactive in its media relations, attempting to increase its profile through a series of lectures, exhibitions, and other events.⁵⁶⁰ These are important in increasing the level of awareness of the organisation and its work, although no statistics or measurements are publicly available to provide actual measures of their effectiveness. Nevertheless, it is notable that they remain focused largely on the

⁵⁵⁶ See section 5.4.2.2 above.

⁵⁵⁷ See <<https://www.heritageweek.ie/event-listings?q=archives#listings>> [Accessed 28 May 2024].

⁵⁵⁸ See <<https://www.araireland.ie/explore-your-archives>> [Accessed 28 May 2024].

⁵⁵⁹ See Cécile Gordon and Niamh Ní Charra, 'Archive Nation', available at <<https://open.spotify.com/show/1j4XYJDOy2UxsKgJySuHsv>> [Accessed 28 May 2024].

⁵⁶⁰ NAI, 'Latest News', <<https://www.nationalarchives.ie/latest-news/>> [Accessed 28 May 2024].

heritage aspect of archives, with little attention paid to issues of human rights, social justice or accountability in the citizen-State relationship.

Events focused on heritage, historical personalities and similar topics are important in their own sense, and illustrate the rich variety of archives held by institutions such as the NAI and the potential they hold for nuanced and multi-disciplinary historical research. Archivists have attempted to increase appreciation of their work through highlighting such interesting and varied items over many decades. As the professional literature increasingly emphasises human rights and social justice, however, the focus in Ireland seems to remain largely on the interesting but less-than-essential value of archives – local history, family history, curiosities, etc. This may well feed into the persistent perception that archives are in the ‘nice to have’ category but that they are not essential and can be dispensed with if funding limits are an issue.

As previously noted, Pearson writes of the potential of changing the language around archives, by using words relating to effectiveness and impact. One way to achieve this would be to switch the focus to accountability, rights and justice. Instead of Micheal Collins’s schoolboy essays (interesting but peripheral to daily lives), why not highlight how records relating to institutional abuse can inform our understanding of such issues today, or how records documenting negotiations about EU treaties and directives affect the way people’s rights are understood and defended? Access to and awareness of public records relating to housing, pandemic controls, economic management and environmental planning can continue to inform and enlighten into the future, provide members of the public with an understanding of the way in which government conducts itself, and facilitate individuals in making judgements – positive or negative – about their relationship with their government and their place in society.

A campaign launched in 2023 by the ARA and the IRMS aims to highlight the need for better records management in public life and calls for proper investment to provide ‘the essential records and evidence that the public need to rebuild and maintain trust in government and diminish the threat to representative democracy’.⁵⁶¹ Although the ARA is the professional recordkeeping body for the UK and Ireland, all references on the

⁵⁶¹ Campaign for Records, <<https://www.campaignforrecords.org/>> [Accessed 4 June 2024].

campaign's website, as of June 2024, are UK references, with no input from an Irish perspective. A greater level of engagement with campaigns such as this could serve Irish recordkeeping well by more closely reflecting modern recordkeeping theories and priorities, i.e. by placing the emphasis less on the curiosity value of recordkeeping and giving greater prominence to accountability, human rights and social justice.

As noted by Frankie in their interview for this thesis, 'Fundamentally our problem is we have not educated the public as to why this matters or why it's a good thing and maybe that twins back into our failings and there's going to be no political pressure'.⁵⁶² A change in focus may have a more direct impact on policy-makers, public servants and the general public alike.

8.3.2.3 Summary – Recordkeeping Practice

This chapter has recommended a number of improvements to recordkeeping practice and working cultures in Ireland. These relate to the desirability of widening access to the recordkeeping profession to make it more representative, and for the profession to become more open and transparent in how it explains its operations and decisions. Trends towards greater engagement with those outside the profession should be amplified, and greater focus should be placed on the core role of recordkeeping in relation to accountability, human rights and social justice. Such changes to work practices and cultures have the potential to advance the aims of public sector recordkeeping in Ireland and to align it with modern trends.

All of the recommendations detailed above are listed separately in Table 8.4 below for ease of reference.

8.4 Conclusion

Onora O'Neill states that, for true accountability, it is not sufficient to introduce legislation, regulations and reporting mechanisms; these need the support of ethical, trustworthy and effective work cultures.⁵⁶³ In the specific recordkeeping context, Oliver and Foscarini identify the need to recognise working cultures and the impact they have in influencing the extent to which laws, regulations and procedures will be accepted and implemented.

⁵⁶² Interview conducted 8th June 2021.

⁵⁶³ O'Neill, 2017, p. 411.

<i>Recommendations for Changes to Legislation</i>	
L1	Explicitly Recognise the Value of Records and Archives
L2	Explicitly Recognise the Right to Information
L3	Explicitly Recognise Inclusive and Participatory Recordkeeping
L4	Extend the Remit of the National Archives Act
L5	Address Records Management in the Public Service
L6	Allow for Specific Reporting Mechanisms and Relationships
L7	Allow for a Revamped Oversight Council
L8	Facilitate Transparency and Public Oversight
<i>Recommendations for Changes to Practice</i>	
P1	Facilitate More Diverse Pathways into the Profession
P2	Adopt More Open Work Practices
P3	Improve on Advocacy for Records and Archives
P4	Change the Focus of Advocacy Efforts

Table 8.4: Summary of Recommendations

This chapter has addressed the shortcomings in both recordkeeping legislation and practice in Ireland. It has identified a range of legislative changes which can address the shortcomings that have been identified in the existing laws. The legislative changes recommended here are not prescriptive, in that the specific detail and the language used will need careful planning and consideration. Given the nature of the political system, considerable time will also be required before legislation is drafted, debated and implemented. Even when implemented, however, legislative changes will not be sufficient on their own to address the problems with Irish public sector recordkeeping which have been assessed throughout this thesis. A series of changes to recordkeeping practice have, therefore, also been recommended. Such changes would impact on pathways into the recordkeeping profession and the manner in which the profession operates, resulting in greater levels of transparency and more active engagement with the ethical issues which dominate the modern recordkeeping literature and theory, i.e. accountability, human rights and social justice.

While legislative changes are primarily the responsibility of politicians, their advisers and the civil servants who support them in their work, the recordkeeping profession has a core role in increasing awareness, spreading knowledge and facilitating a wider and deeper appreciation of the value of records and archives in everyday lives. Only then will policy-makers and legislators be committed to making the kind of changes that this thesis has identified as necessary. The working culture and the mindset of the recordkeeping profession are, therefore, crucial. An inclusive and co-operative approach will be required

to successfully deliver change, incorporating not only legislators and regulators but also recordkeepers and their representative bodies such as the ARA. Legislation and practice must go hand-in-hand as dual aspects of the recordkeeping endeavour.

Chapter 9

Conclusion

9.1 Summary

The findings and recommendations of this research are summarised here in relation to the research questions that have been addressed by this thesis. The principal question asked by this research was: to what extent is Irish public sector recordkeeping legislation and practice aligned with contemporary scholarship regarding the role of recordkeeping in relation to accountability, human rights and social justice?

To address this main question, five sub-questions were examined:

1. What are the principal features of current Irish public sector recordkeeping legislation and practice, and what shortcomings can be identified with regard to accountability, human rights and social justice?
2. What is the current state of recordkeeping scholarship about the issues of accountability, human rights and social justice?
3. How do stakeholders think about and experience issues of accountability, human rights and social justice in an Irish recordkeeping context?
4. What models can be used to provide a basis for fulfilling recordkeeping's role with regard to accountability, human rights and social justice, and what does a normative analysis based on these models say about the state of Irish recordkeeping legislation and practice?
5. What recommendations should be made to ensure that Irish legislation and practice can bridge the gap between the current situation and contemporary recordkeeping scholarship relating to accountability, human rights and social justice?

9.1.1 Current Legislation and Practice

An assessment of existing Irish public sector recordkeeping legislation and practice was presented in Chapter 2. This described the principal features of the NA Act of 1986 and the Amendment Act of 2018, in so far as they relate to the subject matter of this thesis. It was noted that the 1986 Act, as the first piece of dedicated recordkeeping legislation

introduced by the Irish State, represented a significant step forward in terms of making provision for the preservation and availability of public records.

Despite the positive changes introduced by the 1986 Act, this thesis established that there are several shortcomings both in the content of the legislation and the manner of its implementation. The very limited number of public bodies which come within the remit of the legislation means that there are significant gaps in accountability, with many important public agencies having no obligations to the public in terms of preservation of or access to their records. The lack of effective reporting channels and forums means that, as acknowledged by successive reports of the NAAC and the Director of the NAI, non-compliance is widespread and the public is frequently deprived of access to records which, under the terms of the legislation, should be freely accessible. Such problems are exacerbated by an apparent under-appreciation amongst policy-makers of the value and importance of effective recordkeeping, resulting in a low level of priority being afforded to recordkeeping in the public service and lack of resources for the NAI, thus adding to the difficulties in securing better levels of compliance. The Amendment Act of 2018 introduced a process which allows for subjective judgements, potentially influenced by political considerations, in relation to which records should be released to the public and when.

The difficulties highlighted in Chapter 2 relate to a lack of accountability and a widespread lack of understanding and awareness in policy-making circles with regard to the role of recordkeeping in documenting and upholding the rights of individuals, facilitating fair and equitable access to public services, and enabling the public to hold governments accountable.

9.1.2 Current Recordkeeping Scholarship Regarding Accountability, Human Rights and Social Justice

The literature review in Chapter 3 identified the manner in which perceptions of recordkeeping have evolved to reflect the increasing focus on issues of accountability, human rights and social justice. The move away from viewing records and archives as objective holders of truth has been complemented by a more nuanced interpretation of the role of archivists, who are no longer seen as passive inheritors of records. While great importance is still attached to accountability and how it can be facilitated through

accurate, reliable and authentic evidence, discussions of memory, identity and multiple competing viewpoints now receive much attention in the literature.

Such changes are reflected in calls for revised approaches to recordkeeping, with entreaties for postmodernism, critical race theory, feminism, postcolonialism, empathy and other influences to play a role. With multiple voices urging such alternative approaches, the literature frequently reflects a lack of clarity, with an ongoing failure to clearly define accountability, human rights and social justice and to enunciate the role of recordkeeping in relation to them. Nevertheless, the literature does reflect a consensus with regard to the core value of recordkeeping in the lives and wellbeing of individuals and in facilitating balance in the relationship between individuals and the State. Increasing awareness of the importance of access is supplemented by a move towards a participatory or person-centred approach to recordkeeping, where individuals are seen as having rights not simply to access the end-product but to contribute towards creating, shaping and managing records and recordkeeping from the outset.

9.1.3 Stakeholder Experiences and Perceptions

The literature review was supplemented by an assessment in Chapter 4 of a number of interviews with relevant stakeholders. These interviews analysed lived experiences of the issues identified in the literature review and how these have been reflected in Irish legislation and practice. By analysing these interviews in the context of the researcher's own practical experience as a recordkeeping practitioner, this thesis has undertaken a multi-pronged assessment of how existing public sector recordkeeping in Ireland perceives, experiences and addresses the issues of accountability, human rights and social justice.

The interviews were assessed in relation to three principal themes, described as 1) 'The (Restricted) View from Without', 2) 'The (Conflicted) View from Within', and 3) 'The (Limited) View of the Future'.

9.1.4 Models to Provide a Basis for Fulfilling Recordkeeping's Role

Despite the consensus relating to the core value of recordkeeping in the lives of individuals, the lack of clarity relating to key concepts and definitions in the literature results in inconsistencies of approach and a lack of agreement regarding the manner in

which recordkeeping can best fulfil its role in relation to accountability, human rights and social justice. Chapters 5–7 of this thesis, therefore, presented normative assessments of accountability, human rights and social justice, and suggested models which could be used to bring greater clarity to recordkeeping's role.

Based on a model suggested by Bovens, accountability was presented in Chapter 5 as both a mechanism and a virtue. As a mechanism, it features a series of reporting relationships, whereby accountability forums can pose questions and make judgements, and actors may face consequences. As a virtue, accountability places a focus on ethical behaviour, whereby public bodies act in an open and responsive manner, are willing to react to stakeholder involvement and feedback, and strive for constant improvement in a relationship which makes them deserving of trust.

Chapter 6 described the increasing tendency to view the right to information as a welfare right, which places obligations on governments and has an important role to play in allowing individuals to gain knowledge about and avail of other rights. To function effectively as a human right, the right to information must encompass a recognition of public ownership of public records and must also address the quality of the information created and the accessibility of the records which hold that information.

The issue of social justice was addressed in Chapter 7. Rather than a partisan political agenda, social justice was treated as a means to facilitate navigational agency on the part of individuals, as per a model suggested by Claassen. Recordkeeping was presented as a mandatory social practice, necessary for individuals to assess their role within society and to avail of opportunities to move within and between a range of other social practices. This kind of approach to social justice can facilitate a greater level of consensus and clarity than has hitherto been the case in the recordkeeping literature.

9.1.5 Recommendations to Bridge the Gap

Having identified models of accountability, human rights and social justice which are relevant to the role of recordkeeping, this thesis proceeded to recommend a series of specific changes with a view to addressing shortcomings in Irish public sector recordkeeping and to bridging the gap between the current situation and the models that

have been identified. The recommendations relate to both legislative provisions and to recordkeeping culture and practices.

In legislative terms, issues of human rights and social justice were addressed by recommendations which urged explicit recognition of a number of basic principles regarding recordkeeping, namely 1) the core value and importance of effective recordkeeping, 2) the principle of public ownership of public records with an associated right of access, and 3) the importance of stakeholder involvement and participatory input into recordkeeping. With regard to accountability, recommendations for legislative change related to reporting structures and mechanisms, and identified a need for visible policies and procedures to give greater prominence and a greater level of transparency to recordkeeping within the public sector. Recommendations also addressed public oversight and stakeholder input into important decisions such as the withholding of records from public access and questions of records retention and disposal.

In terms of recordkeeping cultures and work practices, the recommendations urged a set of adjustments, largely on the part of the recordkeeping profession itself. These included facilitating more diverse pathways into the profession so that it can better reflect, represent and work with marginalised and under-represented communities. In addition, the profession is urged to adopt a more transparent set of practices in relation to important functions such as records appraisal, and demonstrate a greater willingness to explain and provide a basis for its actions and decisions. Finally, in advocating more actively for records and archives, the profession in Ireland is urged to more closely reflect international trends which highlight and emphasise the core role and value of recordkeeping with regard to accountability, human rights and social justice.

Holland, in 2006, stated that shortcomings in recordkeeping can easily be attributed to lack of resources, poor political vision and the absence of intelligent policies, but that recordkeepers ‘must also be regarded as an equally important catalyst in archival development’.⁵⁶⁴ Her call for improved legislation and policies to be supplemented by a greater professional engagement with modern approaches to recordkeeping is underpinned by this thesis, and the various recommendations detailed above provide a

⁵⁶⁴ Holland, p. 142.

means of achieving this engagement and allowing recordkeeping in Ireland to realise its potential in facilitating accountability, human rights and social justice.

The findings and recommendations of this research have the potential to significantly impact public sector recordkeeping in Ireland and in other contexts. The normative models can bring clarity to core concepts which, although widely referenced and frequently considered fundamental to modern recordkeeping, have previously been poorly defined and inconsistently understood. With a focus on openness, transparency and inclusiveness, all three normative models are strongly suited to recordkeeping, which has such concepts at its core. By offering these models of accountability, human rights and social justice, this thesis offers a basis, which can be further adapted and developed, on which to advocate more widely and more consistently for the central role which recordkeeping must play in a successful society which operates in the best interests of individuals and communities.

9.2 Researcher Reflections and Positionality

Conducting this research has afforded the author the opportunity to reflect on and develop his own outlook and interpretations. Primarily a practitioner focused on day-to-day work activities, the author had nevertheless accumulated a knowledge of contemporary recordkeeping theory prior to undertaking this research, due to roles in teaching and training.

The author's perspective of limited realism remains intact, but his appreciation and understanding of the issues addressed by this research have been broadened and deepened. The importance of multiple perspectives and interpretations has been underlined, but the author has a greater insight into the core role of person-centred approaches which strengthen the link between recordkeeping and individual and community memory and identity. In this context, the author has also developed a greater appreciation for the value of oral histories, lived experiences and personal objects and artefacts in providing an essential context which complements the version of the truth which is told through traditional records and archives.

The findings and recommendations of this research reflect the author's increased appreciation of the core importance of culture and practice, as distinct from legislative and regulatory factors.

9.3 Limitations

This thesis has addressed recordkeeping and issues of accountability, human rights and social justice, and has identified a set of recommendations for overcoming related shortcomings in Irish legislation and practice. The research has a number of limitations, three of which are noted here.

- 1) Specific record types and formats, and issues relating to them, have not been assessed in this thesis. For example, issues relating to the collection, management and use of personal data have become increasingly important in recent years and there are important ethical aspects to this. This thesis, however, was more concerned with recordkeeping practices rather than particular record types, so it did not give detailed consideration to personal data *per se*. For the same reason, issues relating to specific formats, in particular digital records, have not been addressed. A number of references have been made in the thesis to the challenges presented by digital records and to the difficulties which the NAI has faced in dealing with them, but the ethical issues addressed by this thesis are relevant regardless of format.
- 2) The literature review conducted for this research was confined to English-language sources. While some sources from South America and Africa were included, the vast majority of sources were from English-speaking countries and authors. Although the recordkeeping culture is varied, even across English-speaking jurisdictions, it is recognised that perceptions and understandings presented here of accountability, human rights and social justice may differ from those that may be represented in a more culturally and linguistically diverse survey. This is particularly the case with regard to some of the issues touched upon by the literature, such as post-colonialism, representation of marginalised or oppressed communities, or questions relating to stolen, displaced or migrated archives. Similarly, a number of sources make reference to the potential role of recordkeeping in helping countries to achieve compliance with the United

Nations Sustainability Goals.⁵⁶⁵ In this context, the growing importance of ethical issues relating to the climate crisis and related issues of sustainability and justice are worthy of investigation but have not been covered by this research.

- 3) Finally, the increasing focus on ethical issues relating to concerns variously described as ‘fake news’, ‘misinformation’, ‘disinformation’, ‘post-truth’ and similar terms has not been addressed in detail by this thesis. Such issues are all impacted by considerations relating to the quality, accuracy and reliability of records in a public sector environment, and how effective access to accurate information affects the relationship between the individual and the State. As such, they are relevant to accountability, human rights and social justice and will continue to present new ethical challenges in the coming years, but have not been addressed in detail in this thesis. As with other issues highlighted above, they are recognised as important but beyond the immediate remit of this research.

9.4 Further Research

There is scope for further research to be conducted in a number of areas which are relevant to this thesis.

- 1) Ethical aspects of digital recordkeeping and privacy are worthy of detailed research, particularly given the gaps in digital recordkeeping strategies in the Irish public sector context. The NAI has long acknowledged shortcomings in this regard and there is scope for a more detailed assessment of the impact of such shortcomings, given the increasingly clear links between digital information, individual rights and the potential for increased government surveillance.
- 2) A wider study of the ethical issues of accountability, human rights and social justice as they relate to recordkeeping could encompass sources in languages other than English. This could result in alternative interpretations and perspectives across differing languages and cultures. Such interpretations may place a heavier emphasis on certain aspects of accountability, human rights and social justice, which have not been addressed in detail in this thesis, for example

⁵⁶⁵ See section 3.4.1 above.

repatriation of displaced archives or issues relating to climate justice and sustainability.

- 3) The rapidly-changing technological environment in which recordkeeping operates could be addressed by further research addressing issues such as fake news and misinformation. The potential implications for the recordkeeping profession of artificial intelligence represent a related area which is receiving widespread attention and which warrants further investigation. The accuracy, reliability and accessibility of quality public records are core concerns of the recordkeeping profession, with a direct impact on issues of accountability, human rights and social justice. The future role of the profession in addressing such concerns in a specifically Irish context is worthy of attention via further research.

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Appendix A: Interview and Research Ethics Documentation

A1: Plain Language Statement

DUBLIN CITY UNIVERSITY

Plain Language Statement

Introduction to the Research Study

The title of this research study is: Ethical Issues in Irish Recordkeeping Legislation and Practice. It is a PhD research study at the School of Theology, Philosophy and Music at Dublin City University (DCU). The principal investigator is Mark Farrell, who can be contacted at mark.farrell53@mail.dcu.ie.

The research study is being supervised by Professor Bert Gordijn, Dr Alan Kearns & Dr. Mark Philbin.

As part of the research, a literature review has identified the main ethical issues in public sector recordkeeping with regard to accountability, human rights and social justice. If you agree to take part in the study, you will be interviewed about your own experiences, if any, of these issues and about your opinions regarding how current Irish recordkeeping legislation and practice affects these topics.

This research has received ethical approval from the DCU Research Ethics Committee.

Privacy Notice

If you agree to take part in this study, you will be interviewed by the researcher for a period of approximately 60 - 90 minutes. Depending on public health guidelines in place at the time, the interview may take place in person (with social distancing and other appropriate measures in place) or via a secure Zoom link in line with guidelines issued by DCU.

The interview will be recorded and subsequently transcribed by the researcher. After the transcript has been checked for accuracy, the digital recording will be deleted. The transcript will be retained in a secure cloud environment provided by DCU for research projects for a period of one year after the conclusion of the research project. The research project is scheduled to be completed in April 2024.

The Data Controller for your personal data will be Dublin City University. Only the researcher named above (Mark Farrell) and, if necessary, one of the supervisors (Dr Mark Philbin) will have access to interview recordings and transcripts. Information collected will not be shared with any other parties.

You have the right to access your own personal data. If you wish to do this, please contact the researcher by email at mark.farrell53@mail.dcu.ie

The DCU Data Protection Officer is Mr. Martin Ward (data.protection@dcu.ie Ph.: 7005118 / 7008257).

Potential risks to participants from involvement in the Research Study (if greater than that encountered in everyday life)

If you agree to take part in the study, it is possible that you will be reluctant to reply to some of the questions asked, for reasons of confidentiality. You will not be identified in the project

findings, so any risks associated with confidentiality are minor. Nevertheless, you are free to refuse to answer any question put to you in the interview. You will be given the option of viewing the transcript of your interview in order to check its content and accuracy.

Any benefits (direct or indirect) to participants from involvement in the Research Study

There will be no direct benefit to you from taking part in the study. If the study contributes to a framework of improved legislation, policy and practice for recordkeeping in Ireland, it is possible that long-term indirect benefits will accrue to the archives/recordkeeping sector and to users of archives.

Advice as to arrangements to be made to protect confidentiality of data, including that confidentiality of information provided is subject to legal limitations

All of the information you provide during the interview will be confidential. Your information will be pseudonymised, i.e. it will be assigned a code for the purposes of the research and this code will be accessible only to the researcher (Mark Farrell) and, if necessary, one of the research supervisors (Dr Mark Philbin). In the research findings, participants will be identified only by general terms such as 'archivist', 'researcher', etc.

Please note that confidentiality of information can only be protected within the limitations of the law - i.e., it is possible for data to be subject to subpoena, freedom of information claim or mandated reporting by some professions.

Statement that involvement in the Research Study is voluntary

Participation in this research is entirely voluntary. If you decide to take part but subsequently change your mind, you may withdraw at any time by contacting the researcher. If you decide to withdraw, any information you have provided up to that point will be deleted and will not form part of the research.

Research Findings

When completed, the PhD thesis may be available from the DCU Library and/or on the DCU Open Access Institutional Repository (www.doras.dcu.ie). It may also be published and there may be presentations of the research at academic conferences. You will not be named or identified in the final thesis, or in any publication or presentation.

Other relevant information

It is anticipated that approximately 15 people will be interviewed as part of this research. As the sample size is quite small, and you may have concerns about confidentiality, you may prefer not to discuss your participation with your colleagues or other potential participants.

If you have concerns about this study and wish to contact an independent person, please contact:

The Secretary, Dublin City University Research Ethics Committee, c/o Research and Innovation Support, Dublin City University, Dublin 9. Tel 01-7008000, e-mail rec@dcu.ie

A2: Informed Consent Form

DUBLIN CITY UNIVERSITY

Informed Consent Form

Research Study Title

The title of this research study is: Ethical Issues in Irish Recordkeeping Legislation and Practice..

It is a PhD research study at the School of Theology, Philosophy and Music at Dublin City University. The principal investigator is Mark Farrell, who can be contacted at mark.farrell53@mail.dcu.ie.

The research study is being supervised by Professor Bert Gordijn, Dr Alan Kearns and Dr Mark Philbin.

Clarification of the purpose of the research

The research seeks to interview relevant stakeholders (including archivists, civil servants and researchers) about their experiences of ethical issues in recordkeeping with regard to accountability, human rights and social justice.

Confirmation of particular requirements as highlighted in the Plain Language Statement

I understand that participation in the study will involve an interview with the researcher, lasting 60 – 90 minutes.

Please complete the following (circle or highlight Yes or No for each question)

I have read the Plain Language Statement (or had it read to me)

Yes/No

I understand the information provided

Yes/No

I understand the information provided in relation to data protection

Yes/No

I have had an opportunity to ask questions and discuss this study

Yes/No

I have received satisfactory answers to all my questions

Yes/No

I am aware that my interview will be recorded

Yes/No

Confirmation that involvement in the Research Study is voluntary

I understand that participation is voluntary and that I may withdraw from the Research Study at any point.

Confirmation of arrangements to be made to protect confidentiality of data, including that confidentiality of information provided is subject to legal limitations

I understand that my personal details will be pseudonymised and that I will not be named or identified in the final research thesis or any other publication or presentation.

Confirmation of arrangements regarding the retention / disposal of data

I understand that information which I provide during the study will be retained securely, as described in the Plain Language Statement, and will be destroyed one year after the research is completed.

Signature:

I have read and understood the information in this form. My questions and concerns have been answered by the researchers, and I have a copy of this consent form. Therefore, I consent to take part in this research project

Participants Signature: _____

Name in Block Capitals: _____

Witness: _____

Date: _____

A3: Research Ethics Committee Approval

Ollscoil Chathair Bhaile Átha Cliath
Dublin City University



Mark Farrell
School of Theology, Philosophy & Music

Prof. Bert Gordijn
School of Theology, Philosophy & Music

Dr. Alan Kearns
School of Theology, Philosophy & Music

Dr. Mark Philbin
School of Nursing, Psychotherapy & Community Health

24th March 2021

REC Reference: DCUREC/2021/066

Proposal Title: Ethical issues in Irish recordkeeping legislation and practice

Applicant(s): Mark Farrell, Prof. Bert Gordijn, Dr. Alan Kearns, and Dr. Mark Philbin

Dear Colleagues,

This research proposal qualifies under our Notification Procedure, as a low risk social research project. Therefore, the DCU Research Ethics Committee approves this project.

Materials used to recruit participants should state that ethical approval for this project has been obtained from the Dublin City University Research Ethics Committee.

Should substantial modifications to the research protocol be required at a later stage, a further amendment submission should be made to the REC.

Yours sincerely,

A handwritten signature in cursive script, reading 'Geraldine Scanlon'.

Dr Geraldine Scanlon
Chairperson
DCU Research Ethics Committee



Taighde & Nuálaíocht Tacaíocht
Ollscoil Chathair Bhaile Átha Cliath,
Baile Átha Cliath, Éire

Research & Innovation Support
Dublin City University,
Dublin 9, Ireland

T +353 1 700 8000
F +353 1 700 8002
E research@dcu.ie
www.dcu.ie

A4: Interview Guide

1. Can you briefly outline your career/your role/your interest in recordkeeping?
2. What is your opinion about the role of records and archives in holding governments accountable?
3. In your experience/opinion, does existing Irish recordkeeping legislation and practice adequately facilitate accountability?
4. What is your opinion about the role of records and archives with regard to human rights?
5. In your opinion, does existing Irish recordkeeping legislation and practice adequately fulfill this role?
6. What is your opinion about the role of records and archives with regard to social justice?
7. In your experience/opinion, does existing Irish recordkeeping legislation and practice adequately fulfill this role?
8. Do you believe that records and archives represent a verifiable and objective truth?
9. In your experience/opinion, has Irish recordkeeping to date been inclusive, or are there issues relating to missing voices and marginalised groups?
10. Do you have specific suggestions about how Irish recordkeeping legislation and practice can be improved in order to address the type of issues we have been discussing?

A5: Sample List of Codes Generated in Nvivo

The table below, exported from Nvivo, gives snapshot of the coding process during Phase 4 of the analysis of interview data.

Codes\\Phase 4 - Developing and reviewing themes (coding on)

Name	Description
AWARENESS AND APPRECIATION	
Limits or Negatives	
Accountability in public service	References to or discussion of accountability in the public sector, without specific recordkeeping context
Box-ticking	References to accountability as a box-ticking exercise, with lack of follow-through and no commitment to implementation
Culture of non-enforcement	References to a culture within Ireland of non-enforcement of legislation and regulations, not just relating to recordkeeping but on a widespread scale
Lack of implementation	References to a lack of implementation of existing legislation or regulations, the reasons and the consequences of the lack of implementation
Medical records	References by participants to the lack of legal protection in relation to medical records, including records of the HSE
NA Act - Schedule	Discussion of the Schedule to the National Archives Act, the fact that so many public bodies are not included, the impact of this on accountability, and the desirability or likelihood of additional bodies being added.
Private sector	Participants discuss desirability and feasibility of extending recordkeeping legislation and associated procedures to private sector organisations, especially those in receipt of public funding, such as charities and religious orders

Name	Description
Protecting reputations	Participants refer to records being seen as a means to defend or protect the institution, to ensure accountability in the event of an audit, rather than uphold the rights of individuals
Positives	
Accountability - core role of records	Participants identify records and archives as having a core role in holding governments accountable, and discuss examples of this role and the potential impact of poor recordkeeping
Learning from the past	References to how archives can be used to learn lessons from the past and inform government policy relating to current events
NA Act - strengths	Participants discuss what they see as strengths or advantages of the National Archives Act
General Lack of Awareness	
Chance acquisition of records	References to records surviving and being acquired by chance or luck rather than through proper planning
Heritage v Accountability	References to archives being viewed primarily as a heritage resource rather than as tools of accountability
Lack of change	Participants refer to lack of change in government approaches or in the perception of recordkeeping over many years
Lack of political will	References to lack of will or lack of interest in recordkeeping or archives on the part of government and civil service, the need to engage public interest in order to increase political interest and create a political will to address recordkeeping issues
Mother and Baby Homes	References by participants to the Mother and Baby Homes Commission and its relevance to recordkeeping practices, accountability, human rights and social justice issues

Name	Description
Post-colonial attitudes	Suggestions from participants that failure to adequately address record-keeping post-independence was a reaction to what had been in place during British administration, a kind of denial of our history up to that point and a rejection of British-based systems and approaches
Reaction to specific incidents	Participants suggest that recordkeeping is prioritised in the short-term, in reaction to specific crises or incidents, without long-term follow-up or planning
Reliance on individuals	Participants refer to the importance of specific individuals in making progress with regard to recordkeeping, rather than consistent policies, and the risks and shortcomings associated with a reliance on specific individuals.
Poor structures and methodologies	References to a lack of appreciation or lack of understanding of the importance of records and archives, their role for government and for the public, and the lack of importance attached to public recordkeeping as a result
NA Act - shortcomings	References to inadequacies or shortcomings in the content of the National Archives Act, which parts of it are weak and why, and what changes are needed to improve it.
NA Amendment Act	Participants give their views of the 2018 National Archives Amendment Act, the motivations behind it, the manner of its introduction and its content, advantages or disadvantages
NAAC - role and powers	Discussion of the role of National Archives Advisory Council, its lack of powers due to its advisory role, how it deals with government, and the experiences of members and others about how it operates.
NAI - place within government	References to where the NAI sits within government structures, which Department it reports to, its working relationships and the importance of it being

Name	Description
	viewed as more than a cultural or heritage organisation
NAI - status	References by participants to the perceived poor standing of the NAI within the public service and amongst the public, poor visibility of the organisation and its perceived lack of powers or influence.
Records Management Practices	
Destruction of records	Participants refer to, or give specific examples of, inappropriate or unauthorised destruction of records
Lack of records	Participants express a belief or concern that there is a failure to create adequate records in the first place, the possible reasons for such a failure and the potential consequences of it in terms of accountability and individual rights
Records management	Discussion of current recordkeeping practices within the public sector, whether there is an awareness of records management issues, whether there are policies and procedures in place, and the impact of day-to-day practices.
Resources	References by participants to lack of resources and how that impacts on the ability of the NAI or other archive services to carry out their duties; whether lack of resources is used as an excuse or a justification for a fatalistic approach and acceptance of non-implementation of legislation
Related Legislation	
FOI	Participants mention Freedom of Information as a factor impacting on recordkeeping, discuss overlaps or conflicts between FOI and National Archives legislation, or address wider issues of access to information
GDPR	Participants mention GDPR or data protection as a factor impacting on recordkeeping, or they compare the importance attached to GDPR with the importance attached to National Archives legislation

Name	Description
Local Government Act	References by participants to legislation governing local authority archives, it's features and advantages
PRACTICE AND APPLICATION	
Access	
Right to Access	References to the importance of the right to access to information, in the context of accountability, human rights and personal wellbeing; including examples of restrictions which have been placed on access and the potential consequences of such restrictions
Right to Access - traditional resistance	References to attitudes within certain groups which tend to restrict or limit the right to access information
Advocacy	References to the importance of archivists being proactive in increasing awareness and appreciation of records and archives; the extent to which lack of awareness and lack of good practice is due to the profession's failure to advocate or to build up support
Impact on Individuals	Participants make reference to case studies or specific examples of how records impact on individual lives, memories, identities or experiences
Archivist Role	
Activism	Discussion of whether archivists should actively seek balance in their collections and consciously attempt to document alternative groups or viewpoints, particularly in a social justice context.
Appraisal	Participants discuss issues relating to what records are worthy of retention and how to assess the value of records
Archivist accountability	References to the need for archivists to be more transparent and accountable about the decisions they

Name	Description
	make, including decisions about appraisal and description
Bandwagon effect	Participants suggest that certain causes become fashionable, that support for social justice causes is only apparent after inequalities have been lessened and the groups affected are accepted as mainstream or trendy
Community archives	Participants express an opinion about the role of community archives, including the nature of their relationship with traditional archive services and the manner in which professional archivists view and deal with community archives
Conflicting demands	References to competing demands on archivists which may restrict their freedom to do certain things, e.g. limitations imposed by civil service codes of practice, by funding organisations or by particular employing organisations
Diversity	References to diversity within the recordkeeping profession, whether it needs to be addressed and how to address it
Mechanisation	References to an attitude which emphasises the mechanics of archival work rather than considering a wider purpose
Missing voices	References to gaps in the record due to under-representation or exclusion of certain groups or voices, the extent to which archive services collect an official version of history which excludes certain perspectives, and suggestions as to how to address these kinds of gaps
Neutrality	Participants discuss the notion of archival neutrality, whether the archivist is obliged to maintain a balanced view as a neutral facilitator, or whether it is appropriate or inevitable that the archivist's own bias affects professional decision-making.
Public sector ethos	Participants state a commitment to public service, to serving all citizens

Name	Description
Theory into Practice	References to how theoretical approaches to recordkeeping can be implemented in practice, especially where they relate to people-centred approaches, and examples of other countries where practical implementation has been attempted
Truth in records	Participants' views on whether records and archives represent truth, whether objective truth can be said to exist and the degree to which records demonstrate a bias or prejudice rather than an impartial and verifiable account
Working Practices and Relationships	
NAAC - NAI relationship	Participants discuss the nature of the relationship between the National Archives Advisory Council and the National Archives, the effectiveness of the relationship, whether the NAAC should have a greater oversight/compliance role; includes experiences of NAAC members with regard to the relationship between the two bodies.
NAI - Department relationship	Comments on the working relationship between the National Archives and the Department
NAI Practices and Attitudes	Participants refer to their experience of the work practices or working culture within the NAI, whether it takes a pro-active attitude to its dealings with government departments, whether a fatalistic acceptance of its status affects its operations and its ability to operate satisfactorily
REMEDIES	
Advocacy and Engagement	
Audit	Participants suggest a role for internal or external auditors to monitor compliance with recordkeeping legislation, or suggest a role for the Comptroller & Auditor General

Name	Description
Better enforcement	Participants identified a need for greater enforcement mechanisms
Duty to Document	Participants suggested a legal ‘duty to document’ as an effective means of improving recordkeeping standards
Greater transparency	Participants identified a greater need and greater awareness of transparency and openness in public service activities
More resources	Increased resources for NAI identified as a necessary measure to address issues identified
NAI place in government	Participants identified a need to relocate the NAI within the government hierarchy (specifically moving responsibility to Department of the Taoiseach)
Rights or person-centred	Participants encourage a shift to person-centred recordkeeping models
Role of NAAC	Participants identify issues with the role/remit of the NAC and how it is interpreted
Wider remit	A need for the NA Act to be widened, i.e. additional bodies added to the Schedule in order to increase public sector accountability

Appendix B: FOI Request to Government Departments , seeking copies of Records Management Policies

Sent by email, 9th August 2022

Good Afternoon

This is a request under the Freedom of Information Act, 2014.

I am seeking copies of the following:

- The Department's Records Management Policy.
- Any guidelines, procedures or manuals compiled as part of the Department's Records Management programme, including Records Retention/Disposal Schedules.
- The minutes of meetings held during 2021 and 2022 by any records management committee, steering group or similar body operating within the Department

Kind regards

--

Mark Farrell

Ollscoil Chathair Bhaile Átha Cliath | Campas na Naomh Uile | Bhaile Átha Cliath 9 - D09N920

Dublin City University | All Hallows Campus | Dublin 9 - D09N920

Appendix C: FOI Request to the DTCAGSM, seeking copies of National Archives Appraisal Reports

C1: FOI Request

Sent by email, 7th January 2022.

Good Afternoon

This is a request under the Freedom of Information Act, 2014.

I wish to request the following records for the years 2018, 2019 and 2020:

1. Final appraisal reports prepared by the National Archives in 2018 and 2019 in response to Applications for the Disposal of Records under Section 7 of the National Archives Act, 1986.
2. Appraisal policies, appraisal criteria or any rules, procedures, guidelines, interpretations and precedents used or applied by the National Archives in assessing Applications for Disposal of Records under Section 7 of the National Archives Act, 1986.

Thank you in advance for your co-operation

--

Mark Farrell

Ollscoil Chathair Bhaile Átha Cliath | Campas na Naomh Uile | Bhaile Átha Cliath 9 - D09N920

Dublin City University | All Hallows Campus | Dublin 9 - D09N920

C2: Decision Letter



An Roinn Cultúir,
Oidhreacht agus Gaeltachta
Department of Culture,
Heritage and the Gaeltacht

9th March, 2022

Mr Mark Farrell
Dublin City University
All Hallows Campus
Dublin 9.

Mark.farrell53@mail.dcu.ie

Our Reference Number: TCAGSM-FOI-2022-0004

Dear Mr Farrell

I refer to your request, which you have made under the Freedom of Information Acts 2014, for:

1. Final appraisal reports prepared by the National Archives in 2018 and 2019 in response to Applications for the Disposal of Records under Section 7 of the National Archives Act, 1986.

2. Appraisal policies, appraisal criteria or any rules, procedures, guidelines, interpretations and precedents used or applied by the National Archives in assessing Applications for Disposal of Records under Section 7 of the National Archives Act, 1986.

Summary of Decision

I have made a final decision to part grant your request. Please find attached the schedule of records and records themselves for further information.

For point 1. of your request, please find attached the Appraisal Reports as requested with the necessary redactions made under Section 35(1)(a) and Section 42(g) of the Act.

For point 2. There are no records.

If you have any queries in relation to this decision please contact me and I will seek to answer any questions you may have, and to assist you generally in this matter.

Right of appeal

Under Section 21 of the Freedom of Information Act 2014 you have a right to seek an internal review of this decision, including the decision to charge a fee. An internal review involves a complete reconsideration of the matter by a more senior member of the staff of this Department, who may affirm, vary or annul the original decision made. The review decision will be communicated to you within 15 working days. To appeal, you need to write to the FOI Unit by email to foi@chg.gov.ie or by post to the FOI Unit, Department of Culture, Heritage and the Gaeltacht, 23 Kildare St, Dublin 2 referring to this decision. You must make your appeal within 20 working days of the date of this notification, (the making of a late appeal may be permitted in appropriate circumstances). An application fee of €30 (€10 if you are covered by a medical card) is required before the processing of an internal review can begin. This fee can be paid by electronic funds transfer (EFT) to our Financial Shared Services (FSS) through the Department of Justice and Equality's bank account as follows:

Name of Account Holder:	Department of Justice Re: Finance Division Current Account
Account No:	14370256
Bank Sort Code:	90-57-58
IBAN:	IE54 BOFI 9057 5814 3702 56
SWIFT Code (BIC):	BOFIIE2D
Bank Name:	Bank of Ireland.
Bank Address:	New Street, Killarney, Co. Kerry, Ireland.

It is important that you inform foi@chg.gov.ie when you are about to pay this fee by EFT to ensure that the payment is recorded correctly and in a timely manner.

Please note that there is no application fee if your appeal is in relation to the decision to charge a fee.

Yours sincerely

David Noonan
Corporate Services

C3: Request for Internal Review

Sent by email, 22nd March 2022.

Good morning.

Under Section 21 of the Freedom of Information Act, 2014, I wish to request an Internal Review of the above decision issued in response to my request (TCAGSM-FOI-2022-0004)

The grounds for review are as follows.

1. Section 35(1)(a) of the FOI Act was invoked on a blanket basis in relation to all of the documents requested. However, Section 35(2) states that Section 35(1) cannot apply when the records involved are prepared by a staff member in the course of the performance of his or her functions, unless disclosure of the information concerned would constitute a breach of a duty owed to a person other than an FOI body.

The appraisal reports requested are compiled by National Archives staff in the performance of their functions and the duty of confidence (if any) is to FOI bodies, so Section 35(1) cannot apply to these records. If redactions are to be made, they should be made on a case-by-case basis with reference to individual exemption sections (28 – 41) of the FOI Act.

2. In invoking Section 35(1)(a), the response has failed to address necessary elements of that section, namely how the release of the redacted information could or would be likely to prejudice the giving of further similar information from the same person or other persons.

3. In invoking Section 35(1)(a), the response has also failed to address Section 35(3), which requires that the public interest arguments in favour of release be considered.

4. As per item 1 above, individual exemption sections should be applied to the records on a case-by-case basis. In doing so, the exemptions should be applied in line with Section 11(3) of the FOI Act 2014. The redactions made in response to the original request appear to be excessive in this regard. Many of them appear to relate to categories of information, e.g. lists of the type of information appearing within records, and not to actual file contents (which are not requested in any case). For examples, see Document 9, page 4; Document 11, pp.7-8; Document 12, p.2; Document 20, pp.3-4; Document 27, pp.2-8, and appendices (these examples are not exhaustive).

5. In considering individual exemptions, public interest considerations should be addressed. The appraisal reports detail the basis on which the National Archives makes decisions regarding the retention or disposal of public records, and the management of

public records with potential long-term historical importance. It is strongly in the public interest for the public to have as full an understanding as possible regarding the basis on which such decisions are made and redactions must therefore be carefully considered and prudently applied on a case-by-case basis, with release of information to the greatest extent possible, consistent with the limits laid down in the FOI Act. The redactions applied in response to the original request appear excessive and are not explained or justified in terms of their relevance or necessity. Where records are approved for disposal, there is a valid public interest in knowing the categories of information that have been destroyed. If not approved for disposal, the logic for redacting is not explained, given that such records are to be retained and eventually transferred to the National Archives for public inspection.

The necessary fee of €30 has been paid into the account specified in the Decision Letter, to enable the review process to begin.

I look forward to your response in due course.

Best regards

Mark

--

Mark Farrell

Ollscoil Chathair Bhaile Átha Cliath | Campas na Naomh Uile | Bhaile Átha Cliath 9 - D09N920

Dublin City University | All Hallows Campus | Dublin 9 - D09N920

C4: Documents referenced in paragraph 4 of Appendix C.3 (Request for Internal Review)

Document 9:



**An Chartlann Náisiúnta
National Archives**

To: John McDonough, Director

From: Niamh McDonnell, Senior Archivist

Re: Request from the Department of Agriculture, Food and the Marine for permission to destroy records relating to Airport Inspection Files (Horticulture/Plant Health), in accordance with Section 7 of the National Archives Act, 1986.

Introduction

Following a request for disposal from the Department of Agriculture, Food and the Marine (DAFM) a survey of the records in question was undertaken by Niamh McDonnell, Senior Archivist, on Friday 15th June 2018 at the Department of Agriculture, Food and the Marine Plant Protection Unit, Dublin Airport.

The Department's Airport Plant Protection Unit is part of the Horticulture Plant Health Section of DAFM and is responsible for the inspection of horticulture and plant products imported into Ireland and the administration of inspections as part of EU regulation 2000/29/EC (Plant Health). This regulation sets out a framework of protective measures and strict controls for the importation of plants and plant products into the European Union directly or via the transit procedure through third countries. The regulation is an attempt to protect the European agricultural, forestry and horticultural industries against infestation by harmful organisms and to prevent any threat to the biodiversity of natural habitats and the countryside across Europe. With the removal of routine border controls between member states since 1 June 1993, emphasis is now placed on controls at production level and initial point of entry

into the EU. A passport system for the importation of plants and plant products was developed as part of regulation 2000/29/EC. The plant passport may consist of a label or an accompanying document attached to the plants, their packaging or the vehicle carrying the plants. See Appendix 1 (Guide to EC Plant Passport System) and Appendix 2 (Controls on the importation of plants and plant products into Ireland from third countries) for more information. The regulation specifies that documentation produced as part of the administration process should be retained for 1 year, however, [REDACTED] to ensure an accurate paper trail of all plants and plant products imported into Ireland. Documentation held by licenced importers must be retained for 1 year and must be made available upon request to DAFM inspectors.

Border controls are maintained by DAFM at Dublin Airport and Dublin Port. All plants or plant products imported into Ireland must be directed through these locations. All plant importers are licenced by DAFM and must follow strict procedures to comply with regulation 2000/29/EC. A [REDACTED] with details of plant importation licences issued. Plant importers must complete an application form (appendix 3) as part of the registration process. Each registered producer/importer or trader is allocated a unique plant health registration number (PHR No.), which must be used in all correspondence and must be recorded on the plant passport to ensure full traceability. Information provided in this application form is transferred to the [REDACTED]

[REDACTED] Applications for plant importation licences must be directed to a designated email address (plantimports@agriculture.gov.ie) and notification of the arrival of a shipment must be sent at least 72 hours in advance of arrival to phbipairport@agriculture.gov.ie for imports through Dublin Airport and phibiport@agriculture.gov.ie for imports through Dublin Port.

DAFM inspectors liaise closely with customs officials from the Office of the Revenue Commissioners as part of the importation process. All plants or plant products are

quarantined by customs officials until such time as an inspection is undertaken by DAFM inspectors. No consignments are released for distribution by customs until a Clearance Certificate is issued by DAFM inspectors. DAFM and Revenue also liaise about what produce is to be regulated. Regulated produce is monitored closely as it has been identified as a potential threat and has a higher likelihood of contamination. Produce may be regulated on an ongoing basis or for a short period of time to reflect a specific issue or known threat.

Regulation 2000/29/EC will be updated at the end of 2018 when regulation 2016/2031/EC will come into force. As part of the new regulation, the retention period for clearance certificates and associated documentation will increase to 3 years from 1 year. [REDACTED]

[REDACTED] The new regulation will also introduce an updated EU-wide reporting system. This will replace the current EUROPHYT system, which is a live system accessible by all border control posts across the EU. This system allows border control posts in member states to issue a European-wide report of any issues with consignments entering member states. All issues identified must be notified on the system within two days. This allows member states to identify any potential risks with consignments of similar produce within their own territory before they are released for distribution across the EU. Many of the products in question are fresh food stuffs and quick decisions about inspection and distribution must be made by all border controls to ensure a standardised approach to the food distribution network across the EU and to the identification of any potential risks to a major multi-billion euro economic activity. Five complaints by border controls on the EUROPHYT system can lead to the banning of a product or the imposition of importation restrictions. All data about the number of interceptions of harmful organisms, inspection numbers and quarantine pests are sent to the European Plant Protection Organisation and the European Commission Directorate General for Health and Consumers. This information is used to collate data about economic activity and to identify any potential risks to the European agricultural, horticultural and forestry economies.

DAFM inspectors have wide-ranging powers to order the disposal of consignments depending on the type of pest and the stage of development. In the case of a serious infestation the entire consignment will be destroyed straight away to prevent contamination of the wider agricultural economy and food distribution network.

Record Series Airport Inspection files

This request for on-going disposal relates to a series of records containing plant importation licences, phytosanitary certificates and associated documentation issued as part of the administration of EU plant health legislation. The record series begins in 2012. [REDACTED]

[REDACTED] The series accrues at a rate of approximately 1,300 files per year. DAFM is seeking to dispose of files from 2012, totalling 866 files, with immediate effect and files from subsequent years on an ongoing basis subject to the Department's retention policy.

The files are [REDACTED]

[REDACTED]

Initial applications by plant importers are administered via email but correspondence is printed to file and the paper record is considered the master record.

Files include the following documentation:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Administrative/Historical Value

The files are compiled as part of the administration of a European plant importation licencing system as set out in regulation 2000/29/EC. They do not contain any reference to policy development or other statutory functions of the Department of Agriculture, Food and the Marine. The files are low-grade routine administrative files created specifically for the processing of applications for the importation of plants and plant products and are not used for any other purpose. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] The files contain only generic forms and a generic phytosanitary certificate. The licencing of importers is monitored closely to prevent any contamination of the food and agricultural sectors. Multiple applications from the same importers are received and much of the information is duplicated.

Policy files relating to the development of EU regulations and strategy regarding the plant health, the protection of biodiversity within the EU and importation of plants and plant products directly into the EU or through transit countries are maintained in the Department's headquarters in Dublin. European level policy documentation and auditing records are maintained in the European Commission until their transfer to the Historical Archives of the European Union, which is based in Florence, Italy.

Conclusion

The contents of these records contain no unique information of historical value. Significant information regarding the registration of importers, the issuing of importation licences and the types and quantities of products imported is extracted and maintained separately [REDACTED]. Permission should be granted for the ongoing disposal of files for the processing of certificates for the importation of plants and plant products. These files do not warrant permanent preservation and any further retention may constitute a breach of data protection legislation. Any authorisation granted should stipulate that it is contingent on

compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, and the permanent preservation of [REDACTED] until such time as it is appraised by staff of the National Archives to determine its archival value.

Niamh McDonnell, Senior Archivist

13 July 2018

Document 11:



**An Chartlann Náisiúnta
National Archives**

To: John McDonough, Director

From: Niamh McDonnell, Senior Archivist

Re: Request from the Department of Agriculture, Food and the Marine for permission to dispose of seven series of records held by the Basic Payment Scheme Entitlements Division in accordance with Section 7 of the National Archives Act, 1986.

Introduction

Following a request for disposal from the Basic Payment Scheme Entitlements Division of the Department of Agriculture, Food and the Marine (DAFM) a survey of the records in question was undertaken by Niamh McDonnell, Senior Archivist, and Killian Downing, Archivist on 9 October 2018 at two locations in Portlaoise, County Laois. [REDACTED] DAFM Offices, EIR Building, Old Knockmay Rd, Clonminam, Portlaoise, County Laois. The record series surveyed comprise:

- [REDACTED]
1. Consolidation of Entitlements Applications
 2. Roll Back Roll Forward Requests
 3. Unused Entitlements Appeals
 4. National Reserve Applications

5. Transfer of Entitlements Files

6. Suckler Cow Premium Scheme Files

7. Ewe Premium Scheme Files

Basic Payment Scheme Entitlements Division

The Basic Payment Scheme Entitlements Division is responsible for administering grant payments to farmers under Irish and EU schemes, and in accordance with relevant Irish and EU legislation. The Division was originally called the CAP Entitlements Division and administered the Single Payment Scheme (SPS), a direct subsidy to farmers, introduced in 2003 as part of reforms of the Common Agricultural Policy by the EU. In 2015, the SPS was replaced by the Basic Payments Scheme (BPS).

The Division is responsible for:

- Management of entitlements held by farmers under the direct payment system of income support for farmers;
- Allocation of entitlements under the BPS;
- Establishment and management of a National Reserve;
- Implementation of the Young Farmers Scheme;
- Administering the allocation of entitlements under the Scottish Derogation, which allows farmers who never held entitlements under the SPS, but who actively farmed in 2013, to claim entitlements.

None of the seven series of records surveyed as part of this application contain any reference to policy development or other statutory functions of the Department of Agriculture, Food and the Marine. Policy files relating to the development of the EU Common Agricultural Policy and related payment schemes are maintained in the Department's headquarters in Dublin. European level policy documentation and

auditing records are held in the Historical Archives of the European Union, which is based in Florence, Italy.

1. Record Series: Consolidation of Entitlements Applications

This request for once-off disposal relates to a series of records containing applications for the consolidation of entitlements and associated documentation. The consolidation of entitlements is a process by which a farmer may, in certain circumstances, give up their existing entitlements to the National Reserve Fund. The farmer is then re-allocated a lower number of entitlements with a higher net value. Consolidated entitlements are allocated from the National Reserve fund. The Consolidation of Entitlements is provided for in Council Regulation (EC) No 73/2009 (previously Council Regulation (EC) No 1782/2003). In accordance with the provisions of Article 41.3 of Council Regulation (EC) No 73/2009 and Article 7 of Commission Regulation (EC) No 795/2004 (as amended), the Minister for Agriculture, Fisheries and Food implements the Programme for Consolidation of Entitlements.

Article 7 of the Commission Regulation permits farmers to apply to consolidate their entitlements under certain circumstances where they have declared a number of hectares for the purposes of the SPS, which is less than the number of entitlements that they have been allocated.

Farmers who are eligible to apply to have their entitlements consolidated must satisfy the following conditions:

1. The number of hectares declared on the SPS application form must be less than the number of entitlements allocated to the applicant.
2. The number of hectares declared by the applicant on the SPS application form must be equal to, or greater than, 50% of the number of entitlements originally allocated to the applicant.

3. The reduction in the number of hectares declared on the application form must have arisen because of one or more of the following circumstances:

- the acquisition of land by a public authority for non-agricultural purposes;
- land rented or leased during all or part of the reference period where the lease/rental agreement has expired;
- land lost subject to buildings under the Scheme of Investment Aid for Farm Waste Management (FWM).

A farmer who acquires entitlements, by way of inheritance or gift of an entire holding from a farmer who was in receipt of direct payments during the reference period, may apply to consolidate. However, a farmer who acquires lands and entitlements by way of purchase/lease is not eligible to consolidate the purchased leased entitlements. Farmers are entitled to apply for consolidation in more than one year provided all the conditions are met.

This record series for the consolidation of entitlements application files dates from 2005 to 2014 and contains approximately 35,000 files. [REDACTED]

[REDACTED] The herd number is the unique identifier used by DAFM to track farmers through its entire payment system. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Administrative/Historical Value

The consolidation of entitlements applications were created to administer payments under the Single Payment Scheme and Basic Payment Scheme. These schemes were introduced to provide a system of income support for farmers. The record series does not contain any reference to policy development or other core functions of the Department of Agriculture, Food and the Marine.

This record series contains low-grade routine administrative files created specifically for the processing of applications and [REDACTED]

[REDACTED] The files contain a generic application form, supporting low-grade documentation and procedural assurance checks [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
[REDACTED]
[REDACTED]

DAFM complies with ISO 20071 in the management [REDACTED]

This standard is a specification for an information security management system that provides a framework of policies and procedures that includes all legal, physical and

technical controls in an organisation's information risk management processes.

Recommendation

The consolidation of entitlements applications files contain no unique information of historical value. The record series was created to facilitate the administration of payments to farmers under Irish and EU direct payment schemes only and are not used for any other purpose. The files do not warrant permanent preservation as archives and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, [REDACTED] [REDACTED] until such time as they are appraised by the National Archives to determine their archival value.

2. Record Series: Roll Back-Roll Forward Requests

This request for once-off disposal relates to a record series known as Roll Back Roll Forward requests, dating from 2005 – 2014. The function of this series is to facilitate the internal administration of requests to 'roll back' the payment entitlement position of an individual to a point in time to carry out an amendment and then 'roll forward' the payment entitlement position to the current date once the amendment is completed. These records are generated by DAFM staff to ensure an accurate record and to [REDACTED] [REDACTED]

[REDACTED] The file series, which dates from 2005 to 2014, contains approximately 7,000 paper files arranged by herd number in paper pockets.

technical controls in an organisation's information risk management processes.

Recommendation

The consolidation of entitlements applications files contain no unique information of historical value. The record series was created to facilitate the administration of payments to farmers under Irish and EU direct payment schemes only and are not used for any other purpose. The files do not warrant permanent preservation as archives and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, [REDACTED] [REDACTED] until such time as they are appraised by the National Archives to determine their archival value.

2. Record Series: Roll Back-Roll Forward Requests

This request for once-off disposal relates to a record series known as Roll Back Roll Forward requests, dating from 2005 – 2014. The function of this series is to facilitate the internal administration of requests to 'roll back' the payment entitlement position of an individual to a point in time to carry out an amendment and then 'roll forward' the payment entitlement position to the current date once the amendment is completed. These records are generated by DAFM staff to ensure an accurate record and to [REDACTED] [REDACTED]

[REDACTED] The file series, which dates from 2005 to 2014, contains approximately 7,000 paper files arranged by herd number in paper pockets.

technical controls in an organisation's information risk management processes.

Recommendation

The consolidation of entitlements applications files contain no unique information of historical value. The record series was created to facilitate the administration of payments to farmers under Irish and EU direct payment schemes only and are not used for any other purpose. The files do not warrant permanent preservation as archives and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, [REDACTED]

[REDACTED] until such time as they are appraised by the National Archives to determine their archival value.

2. Record Series: Roll Back-Roll Forward Requests

This request for once-off disposal relates to a record series known as Roll Back Roll Forward requests, dating from 2005 – 2014. The function of this series is to facilitate the internal administration of requests to 'roll back' the payment entitlement position of an individual to a point in time to carry out an amendment and then 'roll forward' the payment entitlement position to the current date once the amendment is completed. These records are generated by DAFM staff to ensure an accurate record and to [REDACTED]

[REDACTED] The file series, which dates from 2005 to 2014, contains approximately 7,000 paper files arranged by herd number in paper pockets.

technical controls in an organisation's information risk management processes.

Recommendation

The consolidation of entitlements applications files contain no unique information of historical value. The record series was created to facilitate the administration of payments to farmers under Irish and EU direct payment schemes only and are not used for any other purpose. The files do not warrant permanent preservation as archives and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, [REDACTED] [REDACTED] until such time as they are appraised by the National Archives to determine their archival value.

2. Record Series: Roll Back-Roll Forward Requests

This request for once-off disposal relates to a record series known as Roll Back Roll Forward requests, dating from 2005 – 2014. The function of this series is to facilitate the internal administration of requests to 'roll back' the payment entitlement position of an individual to a point in time to carry out an amendment and then 'roll forward' the payment entitlement position to the current date once the amendment is completed. These records are generated by DAFM staff to ensure an accurate record and to [REDACTED] [REDACTED]

[REDACTED] The file series, which dates from 2005 to 2014, contains approximately 7,000 paper files arranged by herd number in paper pockets.

technical controls in an organisation's information risk management processes.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Recommendation

The consolidation of entitlements applications files contain no unique information of historical value. The record series was created to facilitate the administration of payments to farmers under Irish and EU direct payment schemes only and are not used for any other purpose. The files do not warrant permanent preservation as archives and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, [REDACTED]

[REDACTED]

[REDACTED] until such time as they are appraised by the National Archives to determine their archival value.

2. Record Series: Roll Back-Roll Forward Requests

This request for once-off disposal relates to a record series known as Roll Back Roll Forward requests, dating from 2005 – 2014. The function of this series is to facilitate the internal administration of requests to 'roll back' the payment entitlement position of an individual to a point in time to carry out an amendment and then 'roll forward' the payment entitlement position to the current date once the amendment is completed. These records are generated by DAFM staff to ensure an accurate record and to [REDACTED]

[REDACTED]

[REDACTED] The file series, which dates from 2005 to 2014, contains approximately 7,000 paper files arranged by herd number in paper pockets.

technical controls in an organisation's information risk management processes.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Recommendation

The consolidation of entitlements applications files contain no unique information of historical value. The record series was created to facilitate the administration of payments to farmers under Irish and EU direct payment schemes only and are not used for any other purpose. The files do not warrant permanent preservation as archives and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, [REDACTED]

[REDACTED]

[REDACTED] until such time as they are appraised by the National Archives to determine their archival value.

2. Record Series: Roll Back-Roll Forward Requests

This request for once-off disposal relates to a record series known as Roll Back Roll Forward requests, dating from 2005 – 2014. The function of this series is to facilitate the internal administration of requests to 'roll back' the payment entitlement position of an individual to a point in time to carry out an amendment and then 'roll forward' the payment entitlement position to the current date once the amendment is completed. These records are generated by DAFM staff to ensure an accurate record and to [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] The file series, which dates from 2005 to 2014, contains approximately 7,000 paper files arranged by herd number in paper pockets.

Administrative/Historical Value

The National Reserve Application files were created to support the function of payments to farmers from the National Reserve fund in order to maximise the benefit to both the applicant and the State. The record series does not contain any reference to policy development or other core functions of the Department of Agriculture, Food and the Marine. The files contain generic applications forms, supporting documentation and copy documentation that is available in other public sources, [REDACTED] through other bodies such as the Courts, which are subject to the National Archives Act, 1986 and whose records will be transferred in due course. The criteria for administration of the fund is set out in EU Commission Regulations (EC) 73/2009 (previously 1782/2003) and 1307/2013.

Recommendation

The National Reserve Fund Application files contain no unique information of historical value. The record series was created to support the function of payments to farmers from the National Reserve fund and to comply with the provisions of EU Commission Regulations (EC) 73/2009 (previously 1782/2003) and 1307/2013, and are not used for any other purpose. The files do not warrant permanent preservation as archives and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, and [REDACTED]
[REDACTED]
[REDACTED] until such time as they are appraised by the National Archives to determine their archival value.

5. Record Series: Transfer of Entitlements Applications

This request for on-going disposal relates to a records series for the transfer of BPD/SPS entitlements through sale, lease or inheritance. The series facilitates the administration of applications received from farmers to transfer in or transfer out payment entitlements under the SPS, and its successor the BPS. Transfers can be permanent, for example through sale or gift, or temporary through a lease for a

defined period of time. Basic Payment Scheme Entitlements may only be transferred to an active farmer in the same country, except in the case of inheritance and/or anticipated inheritance.

The file series contains approximately 50,000 paper files, dating from 2006 – 2010

[REDACTED] The rate of current accrual is approximately 15,000 – 18,000 applications per year, which will be disposed of once no longer required for business, auditing or legal purposes.

The files contain some, or all, of the following documentation:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Administrative/Historical Value

The Transfer of Entitlements Application files were created to support the function of transfer of payments between farmers due to sale of land, lease of land, gift of land or inheritance. The record series does not contain any reference to policy development or other core functions of the Department of Agriculture, Food and the Marine. The files contain generic applications forms, supporting documentation and copy documentation that is available in other public sources, [REDACTED] through other bodies such as the Courts, which are subject

to the National Archives Act, 1986 and whose records will be transferred in due course. The criteria for administration of the fund is set out in EU Council Regulations (EC) 73/2009 (previously 1782/2003) and 1307/2013.

Recommendation

The Transfer of Entitlements Application files contain no unique information of historical value. The record series was created to support the function of transfer of payments between farmers and to comply with the provisions of EU Council Regulations (EC) 73/2009 (previously 1782/2003) and 1307/2013, and are not used for any other purpose. The files do not warrant permanent preservation as archives and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, and [REDACTED] [REDACTED] until such time as they are appraised by the National Archives to determine their archival value.

6. Record Series: Suckler Cow Premium Files

This request for once-off disposal relates to a record series that was created to facilitate the administration of applications for the transfer of suckler cow quotas between farmers in compliance with EU Council Regulation (EC) 1254/1999. The purpose of the Suckler Cow Premium Scheme was to support the income of specialist beef producers. A premium was paid on heifers and suckler cows that form part of a regular breeding herd used for rearing calves for meat.

The file series, which dates from 2001 to 2003, contains approximately 20,000 paper files [REDACTED] The files contain some, or all, of the following documentation:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
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- [REDACTED]
- [REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

Administrative/Historical Value

The Suckler Cow Premium Application files were created to support the function of transfer or sale of quotas between farmers. The record series does not contain any reference to policy development or other core functions of the Department of Agriculture, Food and the Marine. The files contain generic applications forms, supporting documentation and copy documentation that is available in other public sources, [REDACTED] through other bodies such as the Land Registry, now part of the Property Registration Authority, which are

subject to the National Archives Act, 1986 and whose records will be transferred in due course. The criteria for administration of the fund is set out in EU Council Regulation (EC) 1254/1999. The files are low-grade routine administrative files created specifically for the processing of applications and [REDACTED]

Recommendation

The Suckler Cow Premium Application files contain no unique information of historical value. The record series was created to support the function of transfer of quotas between farmers and to comply with the provisions of EU Council Regulations (EC) 1254/1999, and are not used for any other purpose. The files do not warrant permanent preservation as archives and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, and [REDACTED]

[REDACTED] until such time as they are appraised by the National Archives to determine their archival value.

7. Record Series: Ewe Premium Scheme Files

This request for once-off disposal relates to a record series that was created to facilitate the administration of applications for the transfer of ewe premium quotas between farmers in compliance with EU Council Regulation (EC) 2529/2001. The purpose of the Ewe Premium Scheme was to support the income of sheep farmers by paying them a premium for maintaining a flock of ewes. In order to be paid, applicants must hold an allocated quota for each ewe on which the premium is claimed. A farmer may not be paid on more than the allocated quota.

The file series, which were created during 2002 only, contains approximately 2,500 paper files [REDACTED]. The files contain some, or all, of the following documentation:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- | [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- | [REDACTED]
[REDACTED]
- | [REDACTED]
[REDACTED]
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[REDACTED]
- | [REDACTED]
[REDACTED]
[REDACTED]
- | [REDACTED]
[REDACTED]
[REDACTED]
- | [REDACTED]
[REDACTED]
[REDACTED]

Administrative/Historical Value

The Ewe Premium Application files were created to support the function of transfer or sale of quotas between farmers. The record series does not contain any reference to policy development or other core functions of the Department of Agriculture, Food and the Marine. The files contain generic applications forms, supporting documentation and copy documentation that is available in other public sources, [REDACTED] or through other bodies such as the Land Registry, now part of the Property Registration Authority, which are subject to the National Archives Act, 1986 and whose records will be transferred in due course. The criteria for administration of the fund is set out in EU Council Regulation (EC) 2529/2001. The files are low-grade routine administrative files created specifically for the processing of applications and [REDACTED]
[REDACTED]

Recommendation

The Ewe Premium Application files contain no unique information of historical value. The record series was created to support the function of transfer of quotas between farmers and to comply with the provisions of EU Council Regulations (EC) 2529/2001, and are not used for any other purpose. The files do not warrant permanent preservation as archives and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements, and [REDACTED]
[REDACTED] until such time as they are appraised by the National Archives to determine their archival value.

Niamh McDonnell, Senior Archivist

Killian Downing, Archivist

2 November 2018

Document 12



**An Chartlann Náisiúnta
National Archives**

To: John McDonough, Director

From: Niamh McDonnell, Senior Archivist

Re: Request from the Department of Agriculture, Food and the Marine for permission to dispose of staff training records held by the Learning and Development Unit in accordance with Section 7 of the National Archives Act, 1986.

Introduction

Following a request for disposal from the Department of Agriculture, Food and the Marine (DAFM) a survey of the records in question was undertaken by Niamh McDonnell, Senior Archivist, and Killian Downing, Archivist on 10 October 2018 at [REDACTED]

Learning and Development Unit

The Learning and Development Unit (LDU), which is part of the HR Division of DAFM, is responsible for administering and organising all training requirements to staff in DAFM. The department employs approximately 3,138 staff across 82 grades who work in approximately 80 sites across Ireland. Staff training requirements include general ICT, legal and management skills as well as specialised courses for technical, veterinary and inspectorate staff. General training is provided under the One Learning model introduced as part of the Civil Service Renewal Plan and some training is organised in cooperation with other departments or agencies.

Record Series: Staff Training Records

This request for ongoing disposal relates to staff training records and training provider files, dating from 2004, [REDACTED]

[REDACTED]. DAFM proposes to dispose of records from 2004 to 2009 immediately, amounting to approximately 70 files, and disposal of accruing files on an ongoing basis once they are no longer required for business or legal purposes. Due to an increase in recruitment in recent years, the number of courses organised by the unit has increased substantially.

The files contain some, or all, of the following documentation:

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

Administrative/Historical Value

These files were created to facilitate the administration of training requests for DAFM staff. They do not contain any reference to HR policy development or other statutory functions of DAFM. The files are low-grade routine administrative files created specifically for the processing of training applications, the arrangement of training events and the payment of suppliers, and are not used for any other purpose. The LDU section maintains procedure manuals relating to the training of staff. They do not contain any unique information of historical value. Staff members may attend multiple training events over the course of their career. Pertinent information about

the career and qualifications of individuals in DAFM is retained on their personnel file.

Recommendation

Permission should be granted for the on-going disposal of staff training records and training provider records. These files do not warrant permanent preservation and any further retention may constitute a breach of the Data Protection Act, 2018. Any authorisation granted should stipulate that it applies to this record series only and not to any training policy or strategy files and is contingent on compliance with any other legal or regulatory requirements in relation to the retention of the records, including internal administrative requirements.

Niamh McDonnell, Senior Archivist

Killian Downing, Archivist

21 November 2018

Document 20



**An Chartlann Náisiúnta
National Archives**

To: John McDonough, Director

From: Niamh McDonnell, Senior Archivist

Re: Request from the Department of Education and Skills for permission to dispose of records relating to the administration of the European Social Fund (ESF) and European Globalisation Adjustment Fund (EGF), in accordance with Section 7 of the National Archives Act, 1986.

Introduction

Following a request for disposal from the Department of Education and Skills (DES) a survey of ESF and EGF files was undertaken by Niamh McDonnell, Senior Archivist, and Killian Downing, Archivist of Archives and Government Services (AGS) on Tuesday, 2 October 2018 [REDACTED]
[REDACTED]

The files, which date from 1974 to the present time, are administrative files created as part of the management of programmes financed by the European Social Fund and European Globalisation Adjustment Fund, which are part of wider EU Structural and Investment Funds. The ESF and EGF allocations to Ireland are managed by the ESF/EGF Policy and Operations Unit of DES who work in cooperation with other government departments and State agencies to maximise the benefit to Ireland from the funds and to ensure compliance with national and EU requirements. This function was transferred to DES in 2010, having previously been administered by the Department of Enterprise, Trade and Employment (DETE).

The funds were used by Ireland to initiate retraining, education and business creation programmes for individuals in employment blackspots who found themselves out of work following the closure of traditional employment. These include the DELL computer plant in Limerick, the Waterford Crystal factory and SR Technics in Dublin Airport. The funds are also used to aid apprenticeship programmes in the building sector, return to education programmes and youth employment initiatives. There are also a number of files on the development of the European qualification framework.

Rules of governance of ESF and EGF allocations are found in EU Regulation 1303/2013, which provides for general rules governing the administration of a number of EU Structural and Investment Funds. Further EU regulations specific to these funds were also introduced to oversee their administration and governance. The EGF is governed by EU Regulation 1309/2013, which includes stipulations as to the minimum retention period for records and the ESF is governed by EU Regulation 1304/2010.

Record Series

Non-European Globalisation Adjustment Fund files

This request for once-off disposal relates to a series of files dating from the 1980s to 2008 which were transferred to DES from DETE in 2010 when that department was reconstituted as the Department of Business, Enterprise and Innovation. The files relate to the administration of training schemes by DETE, including in-company training schemes, vocational training, EU funding-supported training initiatives such as the Leonardo DaVinci Programme, National Training Fund-supported strategies such as the National Adult Literacy Agency and Engineers Ireland, North-South Training Networks, Skillnets Training Networks and FÁS apprenticeship training. Some of these files were transferred to other units who became responsible for the policy area following the transfer of functions from DETE, but remaining files were retained by the EGF/ESF Policy and Operations Unit in DES and no longer have any operational or administrative value.

European Globalisation Adjustment Fund files

This request for ongoing disposal relates to a series of files dating from 2008 to the present. The files were created as part of the administration of the EGF by the EGF/ESF Policy and Operations Unit in DES. The files contain documentation relating to the administration of individual programmes operated in Ireland. [REDACTED] [REDACTED] to comply with retention guidelines in EU Regulation 1309/2013 and have completed all auditing requirements by the European Commission.

Record types

The various series are stored together and may contain some or all of the following documentation:

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]

are held elsewhere and impractical to suggest weeding of these files, particularly those pre-dating the EGF.

The majority of non-EGF files are in paper format only. More recent EGF files are stored in hybrid files of both paper and born-digital records. [REDACTED]

[REDACTED] The electronic record is now considered the master record, [REDACTED]

The total number of files held by the EGF/ESF Policy and Operations Unit amounts to 1177 records, of which 408 have been identified for disposal. EGF files accrue at a rate of approximately 20 files per year where a new programme has been introduced but otherwise accrue at a rate of no more than 7 files per year.

Administrative/Historical Value

The files are compiled as part of the administration of European structural fund schemes. The filing system used means records are filed according to the project in question [REDACTED] Some files contain reference to policy development and demonstrate the core function of DES in its role as administrator and central authority for Ireland, including correspondence demonstrating liaison with the European Commission and other government departments and State agencies. Some of the material held on files is low-grade and routine, but this is often mixed with record types containing significant information, [REDACTED]

[REDACTED]

Ireland has made 10 successful applications to the EGF, 7 of which were submitted on foot of redundancies arising from the closure of facilities at Dell, Waterford Crystal, SR Technics (2009), Talk Talk (2011), Andersen Ireland, Lufthansa Technik Airmotive Ireland (2014), and PWA International (2015). The remaining 3 successful applications relate to supports for workers made redundant between July 2009 and March 2010 in sub-sectors of the construction industry: NACE 41, 43, and 71.

[REDACTED]

Recommendation

The request for disposal of EGF and ESF files should be refused. The contents of these records contain information of historical value and provide a unique insight into the administration of these European schemes in an Irish context. This includes

support programmes initiated following the closure of the DELL computer plant in Limerick and Waterford Crystal, both of which had a major impact on the social and economic development of the regions in question.

The files also demonstrate a core function of DES in its role of central authority for Ireland, including significant evidence of the operation of the schemes and the relationship of DES (and formerly DTTS) with government departments, State agencies and the European Commission. These State agencies, which include Solas, the Higher Education Authority and Enterprise Ireland, are not subject to the National Archives Act, 1986 and any records held by them currently have no legal protection and may have been disposed of without reference to the National Archives or their long-term historical or evidential value.

Due to the filing practices identified in this survey, some files contain personal data as defined in article 4 of GDPR. In the opinion of AGS, however, the entire file warrants permanent preservation and will therefore be subject to the exemption for processing for archiving purposes in the public interest as outlined in article 89 of GDPR and section 42 of the Data Protection Act, 2018 and retention beyond business requirements for processing for archiving purposes in the public interest as outlined in article 5 of GDPR. The files should be retained by the Department of Education and Skills for 30 years after which time a request for withholding or abstraction of files should be made under section 8(4) of the National Archives Act, 1986, where appropriate. Once the reason for retention no longer exists, the files should be transferred to the National Archives for release to the public.

Niamh McDonnell, Senior Archivist

Killian Downing, Archivist

13 November 2018

Document 27



**An Chartlann Náisiúnta
National Archives**

To: John McDonough, Director

From: Niamh McDonnell, Senior Archivist

Re: Request from the Central Statistics Office for permission to destroy records relating to census support work, in accordance with Section 7 of the National Archives Act, 1986.

Introduction

On Tuesday, 19th February 2019 Helen Hewson, Keeper, and Mary Mackey, Senior Archivist, paid a visit to the Central Statistics Office (CSO) premises in Swords Business Campus, Balheary Road, Swords, County Dublin at the request of Marie Martinez, Assistant Principal Officer, to view material that had been discovered in the course of sorting and moving modern census records as part of a reorganisation and boxing project by the CSO of records [REDACTED]. In the course of their initial sorting work, CSO staff discovered approximately 150 crates of miscellaneous records dating [REDACTED]. This material was surveyed by Helen and Mary with a view to determining what records could be transferred to the National Archives immediately, what records should be retained by the CSO for eventual transfer and what records could be disposed of. The CSO were advised to arrange the material by year according to the census in question and to group similar material together within their census year. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

On foot of this initial survey, I visited the CSO in Swords on Monday, 25th of March 2019 to appraise miscellaneous material from a number of census [REDACTED]
[REDACTED] The material had been well organised in accordance with the advice given and was arranged according to census year and document type. The majority of the material appeared to be rough work or preparatory material that holds no archival value. I surveyed all the material and separated out to a different table any records that I deemed to warrant permanent preservation as archives.

Record Series

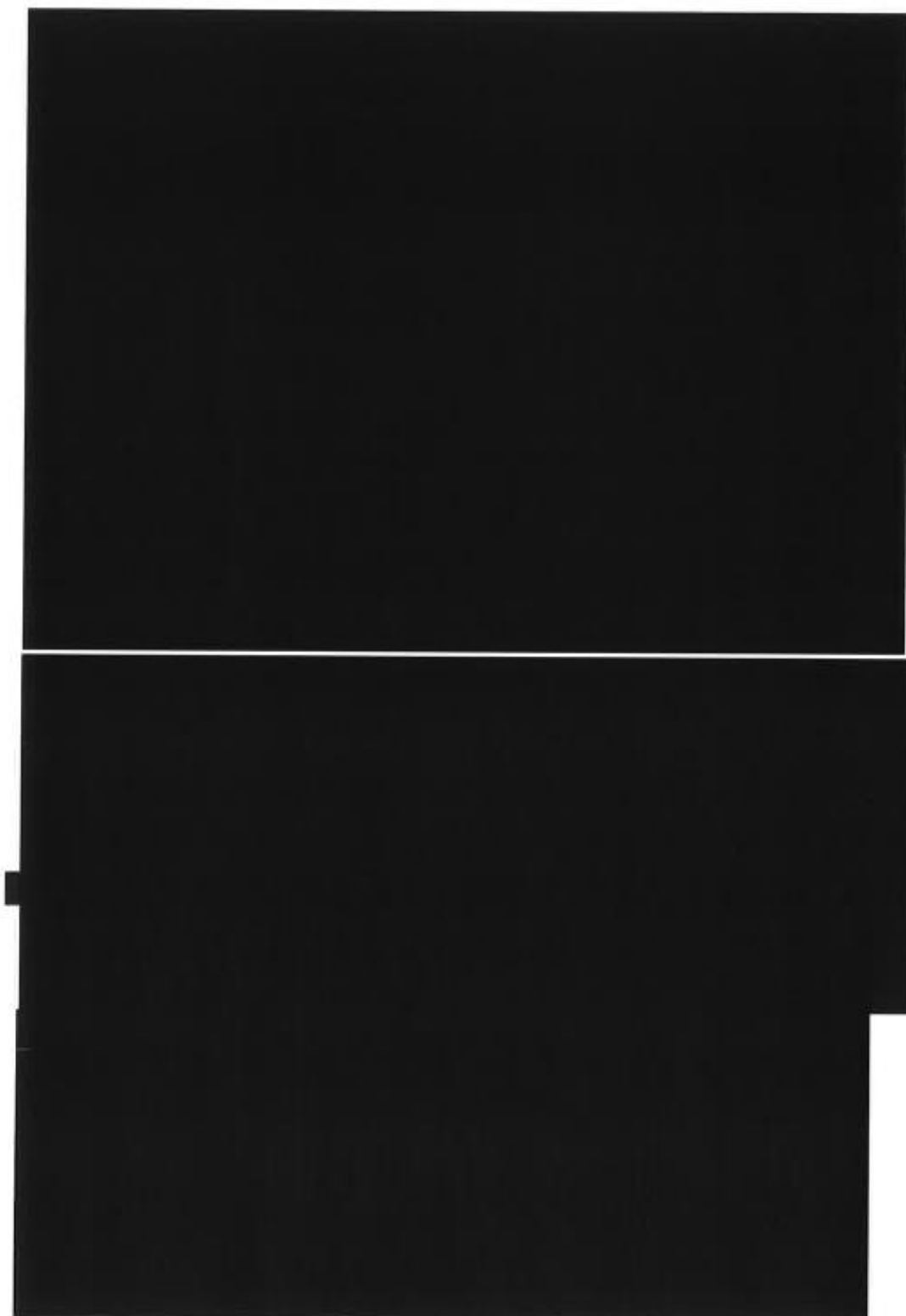
This request for once-off disposal relates to miscellaneous records from census of population conducted between 1951 and 1971. During the course of my survey I identified the following material:

[REDACTED]

- [REDACTED]
- I [REDACTED]
[REDACTED]
 - I [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]











Administrative/Historical Value

The Census of Population has major historical and research value and has been used for many decades as a crucial primary source. The National Archives 1901 and 1911 census website has received more than 2 million individual visits on an annual basis since it first went live in 1997. The 1926 census, the first to be undertaken post-independence and partition, which will be released in 2026, is likely to surpass this. Census data has been widely used by both the CSO and general researchers in a wide variety of research projects. Current census data is published in anonymised form, while household returns are closed to researchers for 100 years in accordance with section 35 of the Statistics Act, 1993.

[REDACTED]

[REDACTED] All later material is currently held by the CSO. The National Archives does not currently hold any census material other than household returns. While the information contained in the household returns forms the basis of the work of the CSO, there is also research and evidential value in much of the supporting documentation. This is particularly true for material that demonstrates the methodology and practices used by the CSO in the development of the census since the foundation of the State.

The material surveyed contains a mixture of material that should be disposed of and that which should be retained permanently. [REDACTED]

[REDACTED] This contains a large quantity of material that could be classed as a record of processing activities that does not warrant permanent retention as archives. This material relates to the processes used to oversee the administration of the census. [REDACTED]

[REDACTED]
[REDACTED]

Material that does warrant permanent preservation as archives [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Conclusion

Permission should be granted for the once-off disposal of general administrative and supporting records that do not warrant permanent preservation as archives. This material holds no research value and relevant information can be accessed in the final reports for each census, which are available in published form and are also accessible on the website of the CSO. The majority of this material is not unique and does not provide any insight into the methodology of compiling the census that is not

available in the published reports. Much of the material relates to internal administrative processes and checklists used by the CSO to maintain accurate record keeping practices, in order to ensure a high standard of accuracy in how the final calculations were achieved. On its own, this information is not complete and does not provide any unique insight that is not available elsewhere. A list of records for which disposal authorisation should be given is available at **Appendix 1**.

Permission should not be given for the disposal of records listed in **Appendix 2**. In my opinion, these records contain significant historical and evidential value and demonstrate the core functions of the CSO in its work to compile the Census of Population. They also provide a unique insight into the methodology used. Records [REDACTED] relating to enumerators should also be retained as they will have significant research and genealogical value in their own right once released to the public. A number of what appeared to be personnel files were also present. These should be retained until such time as they are reviewed in line with an overall records management policy by the CSO. They should not be disposed of in isolation without reference to the context within which they were created, the function they support and whether similar records are held elsewhere by the CSO. Some of these records, particularly those relating to personnel, will be subject to Data Protection considerations as they contain personal data as defined in article 4 of GDPR. In my opinion, however, these warrant permanent preservation and will therefore be subject to the derogations for processing for archiving purposes in the public interest and historical and statistical research as outlined in article 89 of GDPR and section 42 of the Data Protection Act, 2018 and retention beyond business requirements for processing for archiving purposes in the public interest as outlined in article 5 of GDPR. As all of this material is older than 30 years old, and is therefore subject to the National Archives Act, 1986, the CSO should submit a request for withholding or abstraction of this material under section 8(4) of the National Archives Act, 1986, where appropriate. Once the reason for retention no longer exists, the records should be transferred to the National Archives for release to the public. [REDACTED]

[REDACTED]

[REDACTED]

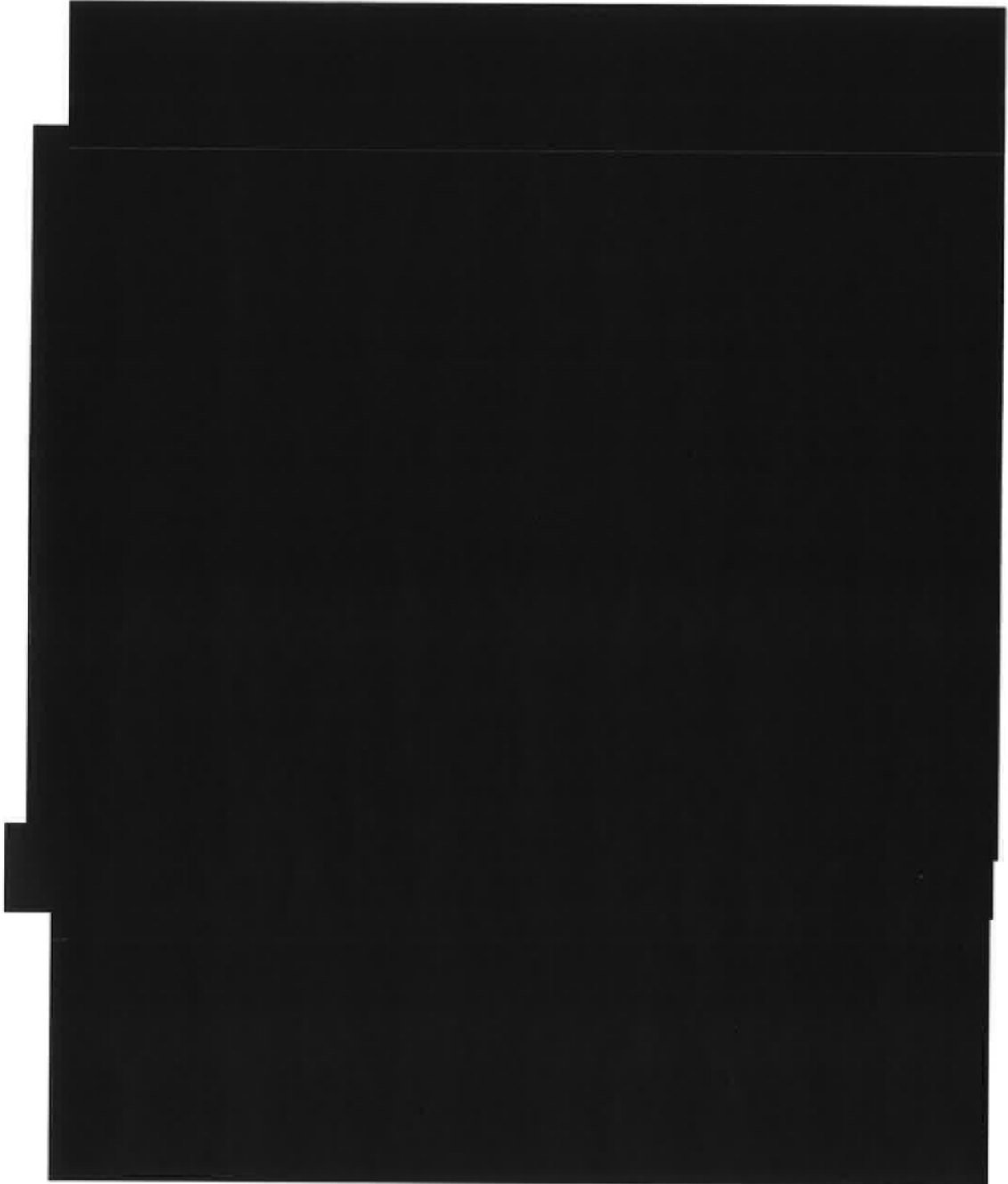
[REDACTED]

[REDACTED]

Niamh McDonnell, Senior Archivist

1 May 2019

Appendix 1

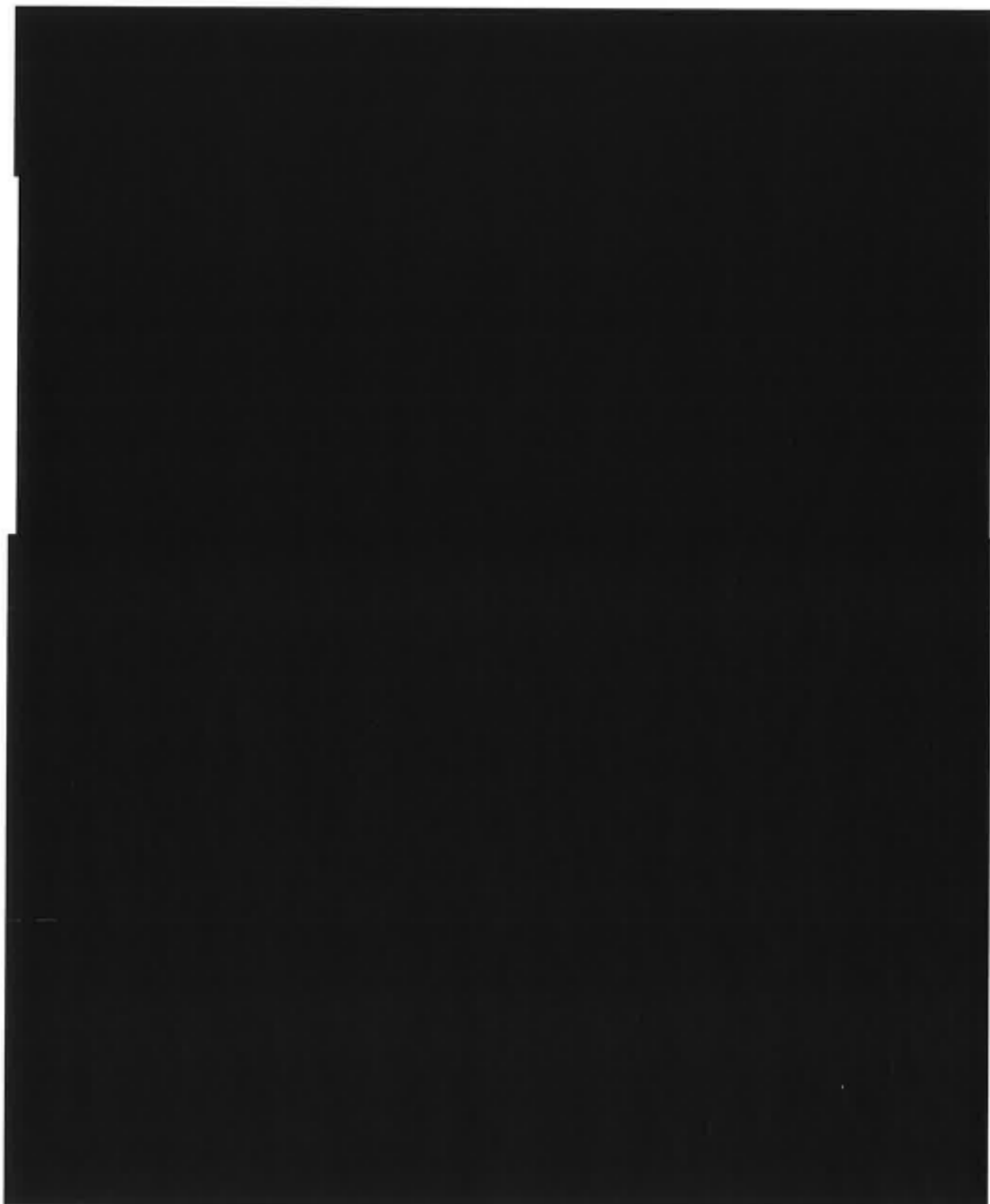


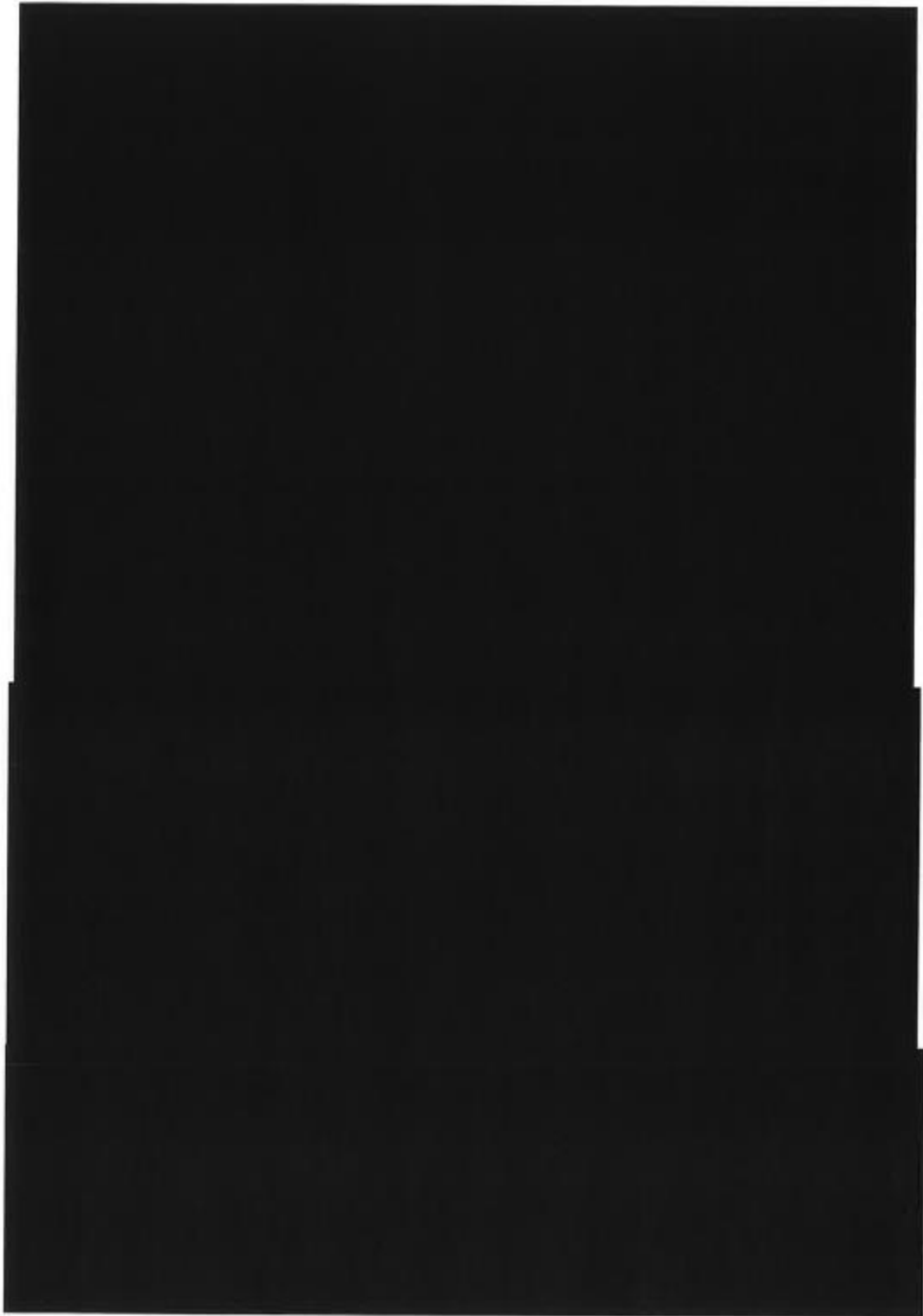






Appendix 2







C5: Internal Review Decision



An Roinn Turasóireachta, Cultúir,
Ealaíon, Gaeltachta, Spóirt agus Meán
Department of Tourism, Culture,
Arts, Gaeltacht, Sport and Media

Mr Mark Farrell
Dublin City University
All Hallows Campus
Dublin 9.

Mark.farrell153@mail.dcu.ie

13 April 2022

Our Reference Number: TCAGSM-FOI-2022-0004

Dear Mr. Farrell,

I refer to the appeal that you made under the Freedom of Information Act 2014 on 07/01/2022 for review of the earlier decision of this body dated 10/3/2022:

1. Final appraisal reports prepared by the National Archives in 2018 and 2019 in response to Applications for the Disposal of Records under Section 7 of the National Archives Act, 1986.

2. Appraisal policies, appraisal criteria or any rules, procedures, guidelines, interpretations and precedents used or applied by the National Archives in assessing Applications for Disposal of Records under Section 7 of the National Archives Act, 1986.

I am a more senior member of the staff of this body than was the person making the first decision. I have made a further decision on your request. This decision on review is an entirely new and separate decision on your request, and is explained as such below.

In response to your request, I have decided to uphold parts of the original decision but to overturn other parts. The purpose of this letter is to explain that decision. This explanation has the following parts:

- A schedule of all of the records covered by your request.
- Records to which access is denied, the giving of the relevant findings, particulars and reasons for these decisions.
- A statement of how you can appeal this decision should you wish to do so.

1. Schedule of records

I have reviewed all the records relating to your request. In my response I have released some records previously withheld.

The schedule shows the documents that I feel considers relevant to your request. It also gives you a summary and overview of the decision as a whole.

2. Findings, particulars and reasons for decisions to deny access

I note in your appeal letter under point 1 and 2 you specifically refer to the blanket nature of the invoking of Section 35 (1) (a) of the FOI Act 2014 particularly in the context of the records being prepared by a staff member of an FOI body in the course of the performance of their duties.

Information provided to the National Archives and its staff in the conduct of appraisal of records in accordance with the provisions of section 7 of the National Archives Act, 1986 is often confidential in nature with officers of the National Archives granted special access to otherwise confidential records for which a formal application for disposal has been made in order to carry out their statutory duties. The release of the information provided, from storage, IT systems used, records management information to details of file contents and sample files often referencing files for disposal or retention, would in the opinion of the National Archives prejudice the giving of similar such information or access to staff of the National Archives by Government Departments/Agencies into the future and therefore compromise the ability of the National Archives to deliver on its statutory remit.

I have in my review invoked Section 30 (1) throughout, and to respond to the issue of 'blanket' use of exemptions as outlined by you, have identified where this exemption has been used on a case by case basis where possible as outlined in point 4 of your letter. It is particularly used where there is a description/detail provided in relation to the management of resources, internal records, funding schemes, investigations. The release of this information would in my opinion have an adverse effect on the management function of the specific department/agency.

In point 4 of your letter you acknowledge the validity of redacting the actual file contents but challenge the redaction of 'lists of types of information'. Upon reviewing this material, the lists types of information as part of an appraisal report is often used to ensure that the wide range file contents represented in the sample files are represented given the surveying of thousands of records with not all files carrying the same information. A list of all possible file contents is used in this instance.

I reviewed the original decision in relation to third party requests and have not overturned these. My thinking in taking such an approach was that the ongoing working relationship between the National Archives and government departments/agencies in terms of disposal and retention requests is vital in terms of the long-term management of state records and to release information that they deem exempted under FOI would undermine this relationship.

In accordance with the provisions of both Sections 30(2) and 35(3) the application of exemptions under these Sections shall not apply in relation to a case in which, in the opinion

of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the FOI request concerned.

With regard to Section 30 (Functions and negotiations of FOI bodies), I have considered the public interest in relation to these records and have taken account of the following factors:

In favour of release:

- Public interest in the right of the public to be informed of this information, in accordance with their rights under the FOI Act
- The public interest in openness and transparency.

In favour of refusing access to the records:

- The public interest in public bodies being able to carry out their functions in efficient and effective manner
- The public interest in public bodies communicating with one another on important issues.

Transparency and openness are the fundamental tenets on which the National Archives provides public access to the government/departmental/agency records. In considering public interest in the context of the ongoing disposal/retention of records under the National Archives Act, on balance I believe that the application of exemptions under Section 30 are fair and appropriate and consistent with the statutory provisions of the National Archives Act 1986 and release would undermine that statutory provision as well as damage the working relationship with departments/agencies in the course of their work.

With regard to Section 35 (Information obtained in confidence), I have considered the public interest in relation to these records and have taken account of the following factors:

In favour of release:

- Public interest in the right of the public to be informed of this information, in accordance with their rights under the FOI Act
- The public interest in openness and transparency.
- The right to confidentiality regarding records provided to the National Archives is outweighed by the needs of the public

In favour of refusing access to the records:

- Allowing the National Archives to take the best course of action with regard to records obtained in confidence
- Whereby information is provided on a confidential basis and if released by the National Archives would jeopardise the giving of such information in the future thereby undermining the statutory obligations of the National Archives.

Having balanced the public interest factors, both for and against release, I believe that the application of exemptions under Section 35 are appropriate and the public interest in preserving the information and the reasonable expectation that the information can be maintained in a confidential manner by the National Archives, outweighs the public interest if these records were released in full.

The appraisal process of records is conducted by the National Archives with integrity and objectivity with its primary obligation being to its statutory remit and to ensuring that through the process departments and agencies understand more fully their obligations under the National Archives Act 1986. The basis of its decisions in relation to disposal or retention

under this remit ensure that ultimately records transferring to the National Archives are fully available for public access.

3. Right to Appeal

You may appeal this decision by writing to the Information Commissioner at 18 Lower Leeson Street, Dublin 2. If you wish to appeal, you must usually do so not later than 6 months after receiving this letter. Should you write to the Information Commissioner making an appeal, please refer to this letter.

If an appeal is made by you, the Information Commissioner will fully investigate and consider the matter and issue a fresh decision.

Yours sincerely,



Orlaith McBride
Director
National Archives

Appendix D: FOI Request to for certificates seeking permission to withhold records

D1: FOI Request

Sent by email, 24th February 2023.

Good afternoon.

This is a request under the Freedom of Information Act, 2014.

I am seeking copies of the following in respect of the three years 2020, 2021 and 2022:

1. Certificates for Retention of Departmental Records or Part(s) Thereof, pursuant to Section 8(2) of the National Archives Act, 1986.
2. Certificates for Retention or Withholding from Public Inspection of Departmental Records pursuant to Section 8(4) of the National Archives Act, 1986. Please note, I am seeking copies of the completed certificates, indicating whether the Consenting Officer of the Department of the Taoiseach has consented to the making of the certificates.
3. Schedules of records (if any) attached to the certificates specified at 1) and 2) above.

Best regards

Mark

Mark Farrell

Ollscoil Chathair Bhaile Átha Cliath | Campas na Naomh Uile | Bhaile Átha Cliath 9 - D09N920

Dublin City University | All Hallows Campus | Dublin 9 - D09N920

NOTE:

This FOI request to government departments, with the exception of the Department of Justice and the Department of Foreign Affairs. As the researcher was providing paid professional services to both of these departments, they were omitted from the request in order to avoid any potential conflict of interest.

D2: Records Released in Response to the FOI Request

D2.1 Certificate released by Department of Defence

An Roinn Cosanta
Department of Defence

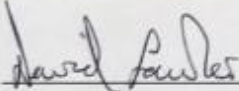


CERTIFICATE OF WITHHOLDING FROM PUBLIC INSPECTION OF DEPARTMENTAL RECORDS UNDER
THE NATIONAL ARCHIVES ACT, 1988 8(4).

I hereby certify, pursuant to section 8(4)(C) of the National Archives Act, 1986, that to make the
record(s) or part or parts thereof or class or classes of records described below in the attached
schedule available for public inspection would or might cause distress or danger to living persons on
the ground that they contain information about individuals, or would or might be likely to lead to an
action for damages for defamation.

Records referred to above:

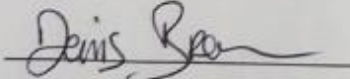
CD/2670: Refugees from Northern Ireland: Reports of Refugees in Army Refuge Centres.


David Lawler, Principal Officer, Department of Defence
Date: 28th April 2022

CONSENT

I consent to the making of this certificate.

~~I do not consent to the making of this certificate.~~


Consenting Officer Department of the Taoiseach:
Date: 12 May 2022

REVIEW DATE
12 May 2027

Notes

Bóthar an Stáisiúin, An Droichead Nua, Contae Chill Dara, W12 AD93
Station Road, Newbridge, Co. Kildare, W12 AD93 T +353
45 492 000 | info@defence.ie www.defence.ie

D2.2 Certificates Released by Department of Children, Equality, Disability, Integration and Youth

An Roinn Leanaí, Comhionannais,
Míchumais, Lánpháirtíochta agus Óige
Department of Children, Equality,
Disability, Integration and Youth



National Archives Act, 1986, Regulations, 1988

RETENTION OR WITHHOLDING FROM PUBLIC INSPECTION OF DEPARTMENTAL RECORDS PURSUANT TO SECTION 8(4) Form for use by Certifying Officers

CERTIFICATE

I hereby certify, pursuant to section 8(4) of the National Archives Act, 1986, that to make the records described in the attached schedule available for public inspection would or might cause distress or danger to living persons.

Records referred to above: see attached schedule.

Certifying Officer

Department/Office/Court: Department of Children, Equality, Disability, Integration and Youth

Date: 8 December 2021

Review date: 8 December 2026

CONSENT

I consent to the making of this certificate.

Consenting Officer, Department of the Taoiseach

Date: 9/12/2021

Review date: November 2026



Department of Children, Equality, Disability, Integration and Youth
Abstractions

Reference code	Original file number	Date of abstracted document	Description of document	Reason(s) for abstraction [under Section 8(4)]
2021/111/2	CCP/IMP/0/45743	28 November 1986	Letter from a member of the public to Minister for Health concerning his unsuccessful attempt to adopt his wife's child, contains identifying information. (2 pp)	8(4)c
2021/111/2	CCP/IMP/0/45743	16 January 1987	Letter from TD to Minister for Health on behalf of constituents wishing to adopt their two foster children, contains identifying information. (1 pp)	8(4)c
2021/111/4	CCP/INA/0/482361	2 November 1983	Page from minutes of meeting of the Adoption Board listing names and addresses of adopted children and adoptive parents (redaction). (1 pp)	8(4)c
2021/111/17	CCP/INA/0/488114	7 June 1983	Case studies of residents of 'Hope' centre giving account of how they came to be homeless, contains identifying information. (7 pp)	8(4)c
2021/111/19	CCP/INA/0/481769	3 June 1983	Letter from South Eastern Health Board psychiatrist to Minister for Health giving an account of a boy's medical treatment and time in a residential home, contains identifying information. (3 pp)	8(4)c

Bloc 1, Plaza Milesach, 50-58 Sraid Bhagold Iochtarach, Baile Átha Cliath 2. D02 XW14
Block 1, Mission Plaza, 50-58 Baggot Street Lower, Dublin 2. D02 XW14
T +353 1 647 3000 | contact@equality.gov.ie
www.equality.gov.ie

An Roinn Leanaí
Comhionannais, Míchumais
Lánpháirtíocht agus Óige
Department of Children
Equality, Disability, Integration
and Youth



2021/11/29	CCP/INA/0/482148	26 April 1962	Form for 'particulars of a child ordered to be detained' in an industrial school, contains identifying information. (1pp)	8(4)c
2021/11/29	CCP/INA/0/482148	April 1967	Form for 'particulars of a child ordered to be detained' in an industrial school, contains identifying information. (2pp)	8(4)c
2021/11/29	CCP/INA/0/482148	19 April 1962	Court order for detention of a child in an industrial school, contains identifying information. (1pp)	8(4)c
2021/11/29	CCP/INA/0/482148	21 April 1962	Letter from Garda Sergeant concerning committal of a boy to an industrial school, contains identifying information. (1 pp)	8(4)c
2021/11/29	CCP/INA/0/482148	16 October 1975	Handwritten note referring two boys to a psychologist, contains identifying information. (1 pp)	8(4)c
2021/11/29	CCP/INA/0/482148	24 October 1975	Letter from Department of Education to the Department of Health giving an account of two boys time in care, contains identifying information. (1 pp)	8(4)c

An Roinn Leanaí, Comhionannais,
Míchumais, Lánpháirtíochta agus Óige
Department of Children, Equality,
Disability, Integration and Youth



National Archives Act, 1986, Regulations, 1988

**RETENTION OR WITHHOLDING FROM PUBLIC INSPECTION OF
DEPARTMENTAL RECORDS PURSUANT TO SECTION 8(4)
Form for use by Certifying Officers**

CERTIFICATE

I hereby certify, pursuant to section 8(4) of the National Archives Act, 1986, that to make the records described in the attached schedule available for public inspection would or might cause distress or danger to living persons.

Records referred to above: see attached schedule.

Name: Mary Rogerson

Grade: Principal Officer

Department: Department of Children, Equality, Disability, Integration and Youth

Date: 28 November 2022

CONSENT

I consent to the making of this certificate.

Consenting Officer, Department of the Taoiseach

Date: 29 November 2022.

Review date: November 2027

An Roinn Leanaí
Comhionannais, Míchumais
Lánpháirtíochta agus Óige
Department of Children
Equality, Disability, Integration
and Youth

Bloc 1, Plaza Miesach, 50-58 Sráid Bhagóid Íochtarach, Baile Átha Cliath 2. D02 XW14
Block 1, Miesian Plaza, 50-58 Baggot Street Lower, Dublin 2. D02 XW14
T +353 1 647 3000 | contact@equality.gov.ie
www.equality.gov.ie



Department of Children, Equality, Disability, Integration and Youth
Abstractions

Reference code	Original file number	Date of abstracted document	Description of document	Reason(s) for abstraction [under Section 8(4)]
2022/74/11	CCL/INACT/0/478954	17 February 1971	Letter from Mrs Smyly's Homes and Schools to the Department of Health concerning a maintenance grant for a child admitted to ones of their homes (redaction). 1 document, 1 pp.	8(4)c
2022/74/14	CCL/INA/0/485553	2 October 1987; 7 October 1987	Letter from member of the public to the Minister for Health concerning her inability to adopt her daughter under current adoption legislation; letter of acknowledgement from Minister. 2 documents, 5pp.	8(4)c
2022/74/14	CCL/INA/0/485553	16 September 1987	Letter from Minister for Health to Senator concerning a request from a member of the public to amend adoption legislation to allow her to adopt her daughter. 1 document, 2pp.	8(4)c
2022/74/14	CCL/INA/0/485553	4 July 1987; 30 June 1987; 8 September 1987	Letter from member of the public to the Minister for Health concerning her inability to adopt her daughter under current adoption legislation; letter of acknowledgement from Minister; letter from the Minister of Health to a Senator concerning the case. 3 documents, 6pp.	8(4)c

An Roinn Leanaí, Comhionannais,
 Michumais, Lánpháirtíochta agus Óige
 Department of Children, Equality,
 Disability, Integration and Youth



2022/74/14	CCL/INA/0/485553	16 September 1987; 19 August 1987; 17 August 1987	Letter from TD to the Minister for Health concerning a representation from a member of the public concerning her inability to adopt her daughter under current adoption legislation; letter of acknowledgment concerning same; response from Minister to Senator concerning same. 3 documents, 5pp.	8(4)c
2022/74/14	CCL/INA/0/485553	29 July 1987; 28 July 1987	Statement made in the Seanad by a member of the public concerning her inability to adopt her daughter under current adoption legislation; cover letter for statement. 2 documents, 2pp.	8(4)c
2022/74/20	CCP/INA/0/482078	September 1983	List of participants in a foster parenting course, includes addresses and telephone numbers. 1 document. 2 pp.	8(4)c
2022/74/21	CCP/INA/0/482065	27 June 1991; 12 July 1991; 23 July 1991	Correspondence concerning adoption of a child from Romania by an Irish couple. 5 documents, 7 pp.	8(4)c
2022/74/27	CCP/INA/0/483969	28 November 1986	Fax and cover sheet concerning placement of a boy following his release from a reformatory school (redaction). 2 documents, 2 pp.	8(4)c

An Roinn Leanaí
 Comhionannais, Michumais
 Lánpháirtíochta agus Óige
 Department of Children
 Equality, Disability, Integration
 and Youth

Bloc 1, Plaza Miesach, 50-58 Sráid Bhagóid Iochtarach, Baile Átha Cliath 2. D02 XW14
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D3: Decision Letter from Department of TCAGSM



An Roinn Cultúir,
Oidhreacht agus Gaeltachta
Department of Culture,
Heritage and the Gaeltacht

27th March, 2023

Mr Mark Farrell
Dublin City University
All Hallows Campus
Dublin 9.

Mark.farrell53@mail.dcu.ie

Our Reference Number: TCAGSM-FOI-2023-0026

Dear Mr Farrell

I refer to your request, which you have made under the Freedom of Information Acts 2014, for:

I am seeking copies of the following in respect of the three years 2020, 2021 and 2022:

- 1. Certificates for Retention of Departmental Records or Part(s) Thereof, pursuant to Section 8(2) of the National Archives Act, 1986.*
- 2. Certificates for Retention or Withholding from Public Inspection of Departmental Records pursuant to Section 8(4) of the National Archives Act, 1986. Please note, I am seeking copies of the completed certificates, indicating whether the Consenting Officer of the Department of the Taoiseach has consented to the making of the certificates.*
- 3. Schedules of records (if any) attached to the certificates specified at 1) and 2) above.*

Summary of Decision

My decision is that the records you requested are being refused under Section 41(1) (a) and (b) of the Freedom of Information Act, 2014. These records are considered to be in effect the same as the original documents to which they relate, and consequently, they fall within the scope of Section 41. Section 41(1) (a) and (b) provide that a head shall refuse to grant a request if non-

disclosure of the record is authorised by an enactment, other than an enactment listed in the Third Schedule and the case is one which the head would, pursuant to the enactment, refuse to disclose the record. The National Archives Act, 1986 is not one of the enactments listed in the Third Schedule as being exempt from Section 41.

Right of appeal

Under Section 21 of the Freedom of Information Act 2014 you have a right to seek an internal review of this decision, including the decision to charge a fee. An internal review involves a complete reconsideration of the matter by a more senior member of the staff of this Department, who may affirm, vary or annul the original decision made. The review decision will be communicated to you within 15 working days. To appeal, you need to write to the FOI Unit by email to foi@chg.gov.ie or by post to the FOI Unit, Department of Culture, Heritage and the Gaeltacht, 23 Kildare St, Dublin 2 referring to this decision. You must make your appeal within 20 working days of the date of this notification, (the making of a late appeal may be permitted in appropriate circumstances). An application fee of €30 (€10 if you are covered by a medical card) is required before the processing of an internal review can begin. This fee can be paid by electronic funds transfer (EFT) to our Financial Shared Services (FSS) through the Department of Justice and Equality's bank account as follows:

Name of Account Holder:	Department of Justice Re: Finance Division Current Account
Account No:	14370256
Bank Sort Code:	90-57-58
IBAN:	IE54 BOFI 9057 5814 3702 56
SWIFT Code (BIC):	BOFIIIE2D
Bank Name:	Bank of Ireland.
Bank Address:	New Street, Killarney, Co. Kerry, Ireland.

It is important that you inform foi@chg.gov.ie when you are about to pay this fee by EFT to ensure that the payment is recorded correctly and in a timely manner.

Please note that there is no application fee if your appeal is in relation to the decision to charge a fee.

Yours sincerely

David Noonan
Corporate Services
National Archives
Bishop St.
Dublin 8.

Tel: (01) 407 2320
Mob: 085 803 1672

Right of appeal

Under Section 21 of the Freedom of Information Act 2014 you have a right to seek an internal review of this decision, including the decision to charge a fee. An internal review involves a complete reconsideration of the matter by a more senior member of the staff of this Department, who may affirm, vary or annul the original decision made. The review decision will be communicated to you within 15 working days. To appeal, you need to write to the FOI Unit by email to foi@chg.gov.ie or by post to the FOI Unit, Department of Culture, Heritage and the Gaeltacht, 23 Kildare St, Dublin 2 referring to this decision. You must make your appeal within 20 working days of the date of this notification, (the making of a late appeal may be permitted in appropriate circumstances). An application fee of €30 (€10 if you are covered by a medical card) is required before the processing of an internal review can begin. This fee can be paid by electronic funds transfer (EFT) to our Financial Shared Services (FSS) through the Department of Justice and Equality's bank account as follows:

Name of Account Holder:	Department of Justice Re: Finance Division Current Account
Account No:	14370256
Bank Sort Code:	90-57-58
IBAN:	IE54 BOFI 9057 5814 3702 56
SWIFT Code (BIC):	BOFIE2D
Bank Name:	Bank of Ireland.
Bank Address:	New Street, Killarney, Co. Kerry, Ireland.

It is important that you inform foi@chg.gov.ie when you are about to pay this fee by EFT to ensure that the payment is recorded correctly and in a timely manner.

Please note that there is no application fee if your appeal is in relation to the decision to charge a fee.

Yours sincerely

David Noonan
Corporate Services
National Archives
Bishop St.
Dublin 8.

Tel: (01) 407 2320
Mob: 085 803 1672

D4: Request for Internal Review

Sent by email, 31st March 2023

Good Afternoon

I wish to request an Internal Review of the Department's decision to refuse my FOI request (TCAGSM-FOI-2023-0026).

The reasons for my request are as follows.

1. The Decision Maker has refused my request under Section 41(1) (a) and (b) on the basis that the records sought are considered to be the same as the original documents to which they relate. This is incorrect in my view, as I did not request copies of the original records, merely copies of any certificates and any associated schedules compiled in relation to Section 8 of the National Archives Act.

I refer you to Information Commissioner's Guidance Note on Section 41 - <https://www.oic.ie/guidance-and-resources/guidance-notes/1-Section-41-Guidance-Note.pdf>

This Guidance Note quotes directly from Decision 040302 of the Commissioner, as follows:

In Case 040302 the Commissioner did not accept the arguments of the Department of Justice, Equality and Law Reform that provisions of the National Archives Act 1986 applied to a list of file titles and reference numbers accompanying a certificate of withholding which issued under that Act. Sections 8(1) and (4) of the National Archives Act expressly refer to Departmental records which are over 30 years old. Even assuming that the term "Departmental records" would include the cover of a file, the Commissioner did not accept that either the statute, or the certificate accompanying the list of files at issue, provided for the withholding of the list simply because it would reveal information included on the file covers of the certified record. She found that the list of file names and reference numbers was a separate and distinct record from the actual records certified for withholding, which were all originally created over 30 years previously.

The full text of Decision 040302 is available here: <https://www.oic.ie/decisions/d040302-Ms-Margaret-Urwin-Secretary/index.xml>

On the basis of the above it is clear that, if my request is to be refused, it must be refused on the basis of other exemption sections (e.g. because the records would contain personal data) and not on the basis of a blanket application of Section 41 which mistakenly claims that the certificates sought are the same as the original documents to which they relate. Other exemption sections, if they are relevant, can be applied via appropriate redactions.

2. The same request was submitted to other Departments, which have opted to grant the request and have not attempted to apply Section 41. Any refusals of this request from other Departments have been on the basis of Section 15(1)(a), i.e. that they do not

hold the records requested. It is therefore my belief that the arguments advanced by the Decision Maker are incorrect and that the use of Section 41 is not relevant.

3. Furthermore, it is my belief that the Decision Maker has not taken note of Section 11(3) of the FOI Act. Even if refusing my request, I contend that Section 11(3) would require the provision of relevant contextual information, e.g. the number of certificates requested, the number of certificates to which the Consenting Officer gave consent, and so on. Such an approach would allow sensitive information to be refused if necessary in line with relevant exemption sections of the FOI Act, but would comply with section 11(3) and with the overall intention of the FOI Act to facilitate access to information ‘to the greatest extent possible’.

In light of the above, I request an Internal Review of the decision. I have lodged the appropriate payment to the bank account specified in the decision letter and I look forward to hearing from you.

Regards

Mark Farrell

Ollscoil Chathair Bhaile Átha Cliath | Campas na Naomh Uile | Bhaile Átha Cliath 9 - D09N920

Dublin City University | All Hallows Campus | Dublin 9 - D09N920

D5: Internal Review Decision



An Roinn Turasóireachta, Cultúir,
Ealaíon, Gaeltachta, Spóirt agus Meán
Department of Tourism, Culture,
Arts, Gaeltacht, Sport and Media

Mr Mark Farrell
Dublin City University
All Hallows Campus
Dublin 9.

Mark.farrell53@mail.dcu.ie

26 April 2023

Our Reference Number: TCAGSM-FOI-2023-0026

Dear Mr. Farrell,

I refer to the appeal that you made under the Freedom of Information Act 2014 on 31/03/2023 for review of the earlier decision of this body dated 27/3/2023:

I am seeking copies of the following in respect of the three years 2020, 2021 and 2022:

- 1. Certificates for Retention of Departmental Records or Part(s) Thereof, pursuant to Section 8(2) of the National Archives Act, 1986.*
- 2. Certificates for Retention or Withholding from Public Inspection of Departmental Records pursuant to Section 8(4) of the National Archives Act, 1986. Please note, I am seeking copies of the completed certificates, indicating whether the Consenting Officer of the Department of the Taoiseach has consented to the making of the certificates.*
- 3. Schedules of records (if any) attached to the certificates specified at 1) and 2) above.*

I am a more senior member of the staff of this body than was the person making the first decision. I have made a further decision on your request. This decision on review is an entirely new and separate decision on your request, and is explained as such below.

In response to your request, I can confirm that we do not hold any records under #1 above. No copies of certificates for Retention of Departmental Records or Part(s) Thereof, pursuant to Section 8 (2) of the National Archives Act 1986 were issued to the National Archives for the years 2020, 2021 and 2022 as provided for under Section 15(1) (a) of the FOI Act 2014.

In response to your request #2, I am outlining in the attached schedule the *Certificates for Retention or Withholding from Public Inspection of Departmental Records* pursuant to Section 8(4) of the National Archives Act, 1986 records received by the National Archives from the Department of the Taoiseach that I believe are relevant to your request.

This schedule also covers #3 in your request above.

In response to the specific points as outlined by you in your Appeal Letter, having reviewed the request I am refusing release of the records in the attached schedule under Section 35 (1) (b) of the FOI Act 2014 which states that disclosure of the information concerned would constitute a breach of a duty of confidence provided for by a provision of an agreement or enactment (other than a provision specified in column (3) in Part 1 or 2 of Schedule 3 of an enactment specified in that Schedule) or otherwise by law.

These documents as outlined in the schedule are copies of original certificates issued under Section 8 (4) of the National Archives Act 1986 by the Department of the Taoiseach to the relevant departments and agencies. They are not records of the National Archives. It is my belief that to release these certificates which include specific details of records withheld as well as further details in the in the accompanying schedules, would constitute a breach of statutory duty and would not be in the public interest. I would further contest that to do so would prejudice the giving of similar such information by Government Departments in the future and therefore compromise the ability of the National Archives to deliver on its statutory remit under Section 8 (3) of the National Archives Act 1986.

In response to the second point raised in your Appeal Letter, I have reached my decision independently and without any knowledge of other comparable or similar requests submitted by you to other departments/agencies.

You may appeal this decision by writing to the Information Commissioner at 18 Lower Leeson Street, Dublin 2. If you wish to appeal, you must usually do so not later than 6 months after receiving this letter. Should you write to the Information Commissioner making an appeal, please refer to this letter.

If an appeal is made by you, the Information Commissioner will fully investigate and consider the matter and issue a fresh decision.

Yours sincerely,



Orlaith McBride
Director
National Archives