

Protection of Privacy and Controlled Access to Anglican Parish Records

Addendum to the report of the Diocesan Archives to Diocesan Council April 12-13, 2013

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List of acronyms and abbreviated terms in this essay:

NSA	Nova Scotia Archives. Formerly: Nova Scotia Archives and Records Management/Public Archives of Nova Scotia (NSARM/PANS)
CNSA	Council of Nova Scotia Archives
FIA	NS Freedom of Information Act 1977
FOIPOP	Freedom of information and Protection of Privacy Act (NS Legislature) 1993-2010
PIPEDA	Personal Information Protection and Electronic Documents Act (Federal) 2001
ADA	Anglican Diocesan Archivists Network
NADP	National Archival Development Program
PADP	Provincial Archival Development Program
PAPEI	Provincial Archives of Prince Edward Island
The “Archives”	Diocesan Archives
The “Diocese”	Diocese of NS and PEI
“St. Paul’s Archive”	St. Paul’s Church Archive

SUMMARY:

In January 2013, the St. Paul's Church Archive reported to the Diocesan Archives that information transcribed by Kim Stevens from the microfilm of St. Paul's records at NSA had been added to an online searchable genealogical database, created by Dwayne Meisner. The St. Paul's Archivist has asked us to investigate the possibility of legally stopping this, on the grounds that it has contributed to the recent decrease in research requests (and research fees) made to St. Paul's Archive, and that it may result in a violation of the confidentiality of these records. St. Paul's has suggested removing the 25 reels of microfilm from public access at NSA.

Having made our investigations, the Diocesan Archives has found that NSA has not breached any agreement with us in allowing transcription and that neither NSA nor the Diocese is legally responsible for the outcome of the public use of transcriptions. This outcome cannot be measured accurately; the data used is already a matter of public record and has been accessible to the public for many years and in many formats. The Dwayne Meisner website is privacy protected and the dates of the St. Paul's records on it are not later than 1873. Genealogy poses no perceivable threat to the privacy of our parishioners recorded in the registers. Church records are not copyrighted and cannot be withheld from the public at NSA under the terms of FOIPOP. While we would *prefer* that online databases of our records were not allowed, they are not our responsibility, and we have reason to fear their misuse.

The microfilm is the property of NSA. The St. Paul's Church Archive need not rely solely on research fees to operate effectively; it can apply for preservation grant funds from the PADP, a program delivered by NSA, to maintain its collection. As an independent institution, it can appeal to NSA to remove the 25 reels of St. Paul's records on microfilm from public access, although this may not achieve any desired result.

A second question arose out of the reporting of this incident at Diocesan Council of Feb.15-16, 2013: Is it "safe" to allow public access to microfilm of Anglican Church records at NSA, meaning, are their contents at risk of public exploitation and are we (the Diocese of NS and PEI) liable for any resulting violation of privacy?

The Diocesan Archives has established and practiced effective restrictions on access to our records since 1989, and more so from 2005 to 2008, since genealogical research has increased and the demand for public access has risen greatly in the last fifteen years. (SEE: APPENDICES 1, 2 and 3: Diocesan "Archival Policies" and Administrative Diocesan Policies 2.2.4 and 2.2.5) The NSA cooperates with us by disallowing photocopying or downloading from their microfilm. NSA has microfilmed almost all of our parish records in modules since 1966. Transcription has always been allowed, yet we have received *no reports* of complaints or claims of privacy violation *in fifty years* or longer. This indicates that the general public regards genealogy as a valuable and beneficial activity, and the majority of researchers have respected the privacy of others.

For the above reasons, the Diocesan Archives maintains that the contents of these records are "safe" from misuse by the public and that our restrictive policies are working effectively. The NSA also provides free cold storage for the microfilm negatives as a preservation backup for us; it handles genealogical enquiries, which we are not mandated or equipped to do; and it has helped us to develop our archives by supporting the educational and practical resources we receive from the CNSA, who have helped us to qualify for federal and provincial grants. We see no threat to our parishioners' privacy from public access to the microfilm at NSA or from other outside sources, including Dwayne Meisner's database.

The Diocesan Archives asserts that it is in the best interest of the Diocese to continue working with the NSA and other institutions to uphold our current access restrictions

effectively. We recommend that the Diocese update the Administrative Policies 2.2.4 and 2.2.5 to reflect the Archives' current restrictive practices as a guideline to the parishes.

SECTION I: THE CASE AT HAND:

There are two issues before us to examine:

- B. The claim that a portion of the parish records of St. Paul's, transcribed from microfilm at NSA, having been given public access on a searchable online database, has caused a decrease in research requests to St. Paul's Church Archive, and that this Internet access should be stopped because it might violate the confidentiality of these records. St. Paul's has suggested that removing the 25 reels of St. Paul's records on microfilm from public access at NSA would prevent this from happening further. St. Paul's Archive has asked the Diocesan Archives to investigate this incident and its possible outcomes.
- C. The question of the general "safety" of having Anglican Church Records on microfilm at the NSA, raised out of discussion of the St. Paul's Archive's issues at Diocesan Council of Feb. 15-16, 2013.

These are two separate questions and must be addressed separately to achieve clarity.

A. **St. Paul's Church Archive:**

1. **We have not discovered any laws that could be applied** to stop the use of transcriptions from our records in an online database.
 - a. Anglican Church parish records are not copyrighted, therefore Copyright law does not apply to them.
 - b. Churches are not named in PIPEDA (a Federal Act) as organizations covered by its terms, although we do adhere to its terms as if we were, recognizing our moral obligation to do so. (We do not expose to the public or sell any personal contact information contained in our electronic databases.)
 - c. Our own Nova Scotia Act, FOIPOP, does list conditions under which some records may be restricted from public access, but it considers names, dates of birth, marriages and deaths already a matter of public record and therefore it is the public right to access them.
 - d. Neither the Diocesan Archives, nor the NSA, is in any way liable for the use of the information transcribed by the researcher after it has left our institutions. This is beyond our scope of control. If a case of misuse were claimed, it would be levied on the researcher, not the holders of the source of information.
 - e. If any correct application of law is discovered, we could only report the offending Internet database to the enforcing agencies (if they exist).

NOTE: SEE: Appendices 8 and 9 – Chancellor's Memos.

2. **NSA has not breached any agreement with the Diocesan Archives** by allowing transcription from the microfilm of Anglican Church records.

- a. NSA has always allowed transcription from its records and is acting in compliance with FOIPOP by giving public access to the records in its holdings.
- b. NSA follows the Diocesan Archives practices in restricting access. On every catalogue description of the microfilm, it is written: "Records cannot be reproduced without written permission of the parish Rector." This means that persons legitimately seeking a copy of their own baptism or marriage are referred directly to the parish.
- c. NSA does not allow photocopying or downloading of records from the microfilm. The records of St. Paul's on the website in question are dated not later than 1873 and were transcribed from microfilm purchased by Kim Stevens with permission from our Bishop in 1998, which is in accordance with our policies.
- d. In the past year, it has allowed the use of laptops at the microfilm reading stations, for transcription only, making it possible for researchers to transcribe data more quickly and accurately. The use of laptops, as an improvement over manual writing tools, is now a common practice in most research institutions, but reproduction of records in whole or in part is not allowed without special permission.

NOTE: Many transcriptions and compiled databases of our records have been used (with permissions) **for the broader public good**, for instance: to study medical history of the population; to further the restoration of burial grounds, and to make access to information easier within our own parishes, to name three examples.

3. **It is impossible to prove that the Dwayne Meisner's genealogical database is the direct and only cause of the decrease in research requests** coming to St. Paul's Archive over the past year:
 - a. The same records exist in many formats and are available online and in other institutions for public research access.
 - b. There are already several other institutions in NS and PEI that hold microfilm and/or compiled transcriptions of Anglican Church records. The Beaton Institute in Sydney, Cape Breton, the Public Archives of PEI, the Genealogical Association of NS, the Family History Centre of the Mormon Church of Latter Day Saints, and at least one historical research institution in each of the counties of Yarmouth, Lunenburg, Queens, Kings, Colchester, Pictou and Cumberland. (SEE: Appendix 7)
 - c. It is more likely that genealogical requests to the churches have decreased as a result of more people doing their own research and using the multitude of alternative resources available to them.
4. **We have not found any evidence that online genealogical resources have or will result in violation of individual privacy:**
 - a. Dwayne Meisner's Privacy Policy allows public access to names of people that may be living only to family members who have a valid login username and password and the appropriate permissions to access that part of the database. Quote: "For the individuals listed that we do not have enough information about to determine their living/death status, we flag them as living, and therefore will only be displayed" to the above qualified users.

- b. Our own Diocesan policies confine the use of our own records to the purposes of Synod or Parish business and restrict the distribution of microfilm of our records to institutions that have agreed to uphold our access restrictions and procedures. (SEE: Administrative Diocesan Policies 2.2.4 and 2.2.5 and the Diocesan “Archival Policies” here attached.)
- c. **We have never received any report** of a complaint or claim against violation of privacy in the last 50 years or more during which time transcription has been allowed from the microfilm at NSA.
- d. This would indicate that the general public regards genealogy as a valuable activity that is a beneficial service to the public and that the majority of researchers have respected the privacy of others by confining their research to that of their own families without interest in publication or revenue.
- e. This also indicates that our restrictions on access, shared and practiced by NSA, *have been effective*, even against the exponential rise in genealogical pursuits and more widespread use of digital technology in the last ten years.

5. Removal of microfilm from public access is not an option:

- a. The microfilm at NSA does not belong to us; it is the property of NSA.
- b. NSA cannot remove microfilm in its holdings from public access, except those few containing records of a certain date (post 1949) that renders the personal identifying information confidential, *which they have already done*.
- c. The Diocesan Archives has no reason to remove any microfilm from public access at NSA since we do not do genealogy ourselves, we do not have the space, time or staff to manage it, and the microfilm is stored offsite as a *preservation backup copy* to the benefit of the whole Diocese
- d. NSA has been microfilming our records in modules since 1966 and storing it free of charge as a service and support to us. There are over 700 reels of Anglican records on microfilm housed by the NSA at present.
- e. As an independent institution, the St. Paul’s Church Archive may appeal to NSA to remove the 25 reels of microfilm containing St. Paul’s records from public access*

* This is not advisable as it might fail to produce any desired result.

6. St. Paul’s Church Archive is not wholly dependent on genealogical research fees to maintain and preserve its archival collection:

- a. As an institutional member of the CNSA, St. Paul’s Church Archive is eligible for preservation grants from the PADP, a program delivered by NSA.
- b. St. Paul’s preservation work in the past twelve years is extensive, and well acclaimed by the CNSA. There is still work that can be done to improve the condition of its collection, and the adjudicators of PADP would recognize the value of their proposed projects.
- c. St. Paul’s Archive continues to receive additional research requests that are not genealogical in nature.

B. **The question of the “safety” of Anglican Church Records on microfilm at NSA:**

First: It does not follow that the contents of all of our parish records are “unsafe” simply because (a portion of) one parish’s records exist in an online genealogical database.

This question is easily answered by examining the facts:

1. The Archives Committee of the Diocesan Archives has been aware of this issue for more than 20 years and has already taken successful measures to ensure the “safety” of the contents of our records, both the originals and those on microfilm, by imposing restrictions on access to them, with the full compliance of the NSA to practice our restrictions on access to the microfilm.
2. We have been conscious of the risks since 1989, and in 2002, at the direction of the Anglican Diocesan Archives Network (including the General Synod Archivist) we alerted our Diocesan Council to the need to protect the Diocesan Administration and its parishes from liability in a case of misuse of the information*.
3. We then rewrote our own Access Policies in 2005 through 2008 adding greater restrictions to meet this need for the whole Diocese.
4. Because of this coordinated practice of consistently protecting the privacy of our parishioners, the Diocesan Archives has no issue with, or any doubt about the safety of information contained in the parish records microfilm at NSA.

*No such case has ever been reported to us.

SEE: Sections II and III next for a detailed description of access restrictions in place at NSA and in the Diocesan Archives.

SECTION II: Restrictions on Access at the Nova Scotia Archives

1. Public transcription from any records at NSA is allowed and is considered a public right under the terms of the Nova Scotia Freedom of Information and Protection of Privacy Act (“FOIPOP” -- enacted 1994, revised and augmented from the Nova Scotia Freedom of information Act in effect since 1977).
1. The Nova Scotia Archives “Routine Access to Archival Records of Public Bodies Policy” explains the extent of its public access in relation to FOIPOP.
2. All researchers must register their names and contact information at NSA before being admitted to the research areas at NSA.
3. Researchers are cautioned against violating the restrictions in place with signs posted in the research areas.
4. Photocopying from the microfilm is strictly prohibited.
5. The use of laptops is allowed for transcription but downloading copies to a digital storage device is strictly prohibited.
6. The NSA research staff continually monitors the activity of users of the microfilm, aided by the red band of identification on the microfilm containers of Anglican Church records.
7. No purchase by any institution of a copy of a reel of microfilm of Anglican records is ever transacted until written permission from our Diocesan Bishop is received by the NSA Archivist, on the advice of the Diocesan Archives, and only after we have secured the use of our restrictions on access policies and procedures, in writing, from the requesting institution.
8. In the case of original (manuscript textual) Anglican Church records stored in the collections at NSA (e.g. St. George’s Parish registers, the Inglis Papers.) no photocopying is allowed without permission from the Parish Rector and in certain cases, the Diocesan Archives, and that only for authorized Parish or Synod business.
9. These policies and procedures are supported by the Diocese and guided by the Diocesan Administrative Policies 2.2.4 and 2.2.5 (1989), and the Archival Policies of the Diocesan Archives (2005-2008).

SECTION III: Restrictions on Access in the Diocesan Archives:

The Diocesan Archives is mandated to collect, preserve and provide [controlled] access to the records of enduring value of the Diocese of NS and PEI.

As part of its Preservation Strategy, the Diocesan Archives prevents manual over-handling and environmental and public exposure of our parish records by not allowing them to be used for genealogical research at all.

1. Access to any records in the Diocesan Archives collection is restricted to the “bodies” that originally created them: the Diocesan Synod, its appointed Officers, institutions and organizations, and its Parishes and their organizations.
2. Authorized researchers (historians known to us, Diocesan Officers, or Rectors and Church Wardens) are allowed access by appointment only, and only under the constant supervision of the Diocesan Archivist.
3. Genealogical research is NOT allowed in the Diocesan Archives. Requests of this nature are referred to the microfilm at NSA or at another county institution, or to the Diocesan Genealogist, Taunya Dawson (who uses the microfilm and online resources for her work).
4. No photocopies or digital copies of the collection textual contents are distributed to the general public. Copies of photographs may occasionally be sent to authors who are writing for the public good, on condition of acknowledgement in publication of the source.
5. Photocopying of parish records to acid-free paper is done by the Archivist on an individual basis, for preservation, or for access by the parish that is the corporate owner of the records, only at the request of the Parish Rector and Churchwardens for copies of their parish records to be used in the parish.
6. Requests for single copies of baptisms, confirmations, marriages and burial records dated less than 100 years ago, are NOT given directly to the person requesting them; they are scanned and sent by email to the Parish Rector who then follows up the request directly with that person, upon obtaining the appropriate identification and/or family entitlement to the record, as per Diocesan Archives recommended procedure.
7. Any request to purchase a copy of a microfilm reel by another institution is first referred to the Diocesan Archives, who then contacts the requesting institution to obtain a written Access Policy from them that matches our own and upholds our restrictions. Only when that is secured, the Diocesan Archives then recommends to the Bishop to send written permission to NSA to produce and sell a single copy of that particular microfilm to the institution applying for it.
8. Not more than one institution per county is approved for holding copies of Anglican Church Records on microfilm, and that only if it agrees with us to implement our Access Policies and procedures.
9. Only two people hold keys to the Diocesan Archives rooms and vault: The Diocesan Archivist and the Director of Personnel.
10. The physical safety of our Diocesan collection and the intellectual control of its contents are not in question, especially since we have just housed the collection in an environment of optimum standards for preservation and security (the newly installed on-site mobile shelving).

CONCLUSIONS:

1. The Diocesan Archives does not see any need for action on the part of Diocesan Council with regard to the issue of public access to archived Anglican Church records.
2. We assert that our established policies and procedures have been followed with due diligence by this Diocese and by other institutions holding copies of our parish records, and have been successful in preventing the misuse of our information by the public.
3. We do not anticipate any risk arising from the public use of online genealogical databases, nor do we perceive any harm done in the immediate past.
4. We will re-distribute to all parishes copies of our “Archival Policies” with the appropriate Canons and Administrative Policies to keep on file as a ready reference.
5. It is advisable at this time that we update the Diocesan Administrative Policies 2.2.4 and 2.2.5, as these have remained unchanged since 1989. This would accomplish two things:
 - ♦ These policies would reflect more fully the current policies and effective practices of the Diocesan Archives, and serve as a more complete guide to our clergy and parishes.
 - ♦ This would show consciousness at the Diocesan Administration level of these issues and the attention we have given them in the past twenty-four years.

NOTE: This diocese does not yet have a written Administrative Privacy Policy Statement governing its ACTIVE and SEMI-ACTIVE records (not archived), which is imperative to have in response to the implications and terms of both FOIPOP and PIPEDA. This is a separate issue which will be addressed at a later date.

APPENDICES: (Attached as digital files to the distribution email of this report)

1. “Archival Policies” of the Diocesan Archives.
2. Diocesan Administrative Policy 2.2.4 “Anglican Church Records”.
3. Diocesan Administrative Policy 2.2.5 “Distribution of Microfilm Copies of Anglican Church Records”.
4. Nova Scotia Archives “Routine Access to Archival Records of Public Bodies Policy”.
5. Nova Scotia “Freedom of Information and Protection of Privacy Act” (FOIPOP), 1993, Amended 1999-2010.
6. “Personal Information Protection and Electronic Documents Act” (PIPEDA), Privacy Commission of Canada, enacted 2001. www.priv.gc.ca/leg_c/leg_c_p_e.asp (Press CTRL + Click the link to go to the PIPEDA website.)
7. Examples of existing copies and compilations of Anglican Church records available to the public in other research institutions.
8. Chancellor’s Memo 1.
9. Chancellor’s Memo 2