

Surveillance, documentation and privacy: an international comparative analysis of state intelligence records

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Abstract The annals of modern history are replete with examples of how state agencies have constructed mechanisms to observe and document the subversive activities of internal parties or individuals as well as perceived foreign influences or threats. While the definition of “subversive” changes with governing parties, the documentation of previous systems persists in the custody of archival repositories. These files represent the lives and work of individuals, and archivists face significant moral and ethical challenges regarding their disposition. This comparative study examines cases from across the globe and throughout the twentieth century to reveal the dispositions of surveillance records. More specifically, the study identifies the main variables that impact how these files are handled. This study begins with a theoretical framework that identifies common trends in the archival literature regarding surveillance files and their place in recovery and reconciliation efforts. Definitions are provided to establish the boundaries of this work within a broad categorization of levels of access that emerged from the case studies. Each level of access is then explored more deeply using specific examples to illustrate the complexities of custody and access encountered with these records. Ultimately, the study of the disposition and access to surveillance files uncovers three interrelated themes: the power of records, the impact of archival practice and the need to fully explore the context in which those files are created and retained.

Keywords Surveillance · Human rights · Privacy · Access

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Introduction

Archives are responsible for the retention and preservation of records that document government activities. Most government activities that produce archival records relate to the mundane activities of the everyday life of citizens. Systematic surveillance programs, on the other hand, extend well beyond the quotidian and are designed to control the activities of individuals deemed to be “threatening.” In the aftermath of these programs, surveillance files fall under the responsibility of archival repositories. The disposition and access policies related to those files illuminate a tension between access and privacy. When records of past surveillance and repression are made public, they take on new meaning. Initially used by the state as a means to control citizens and quell opposition, these records can become the evidence used by victims and their relatives for the purposes of accountability, memory making and truth seeking. In countries such as Germany, Australia and the USA, records of repression find new purposes in archival repositories as those societies show a willingness to face their past. However, the preservation of these records is not devoid of challenges and ethical questions for archivists and for society in general. Regardless of the access policy, are archives also placing the privacy of individuals in these files at risk? Would there be a circumstance in which destruction of these records is the best approach? If yes, who makes this decision?

The main purpose of this research project was to shed more light on how archives have dealt with the disposition, access and preservation of surveillance files. More specifically, the study identifies the main variables that impact how these files are handled. Specific cases will highlight the ethical and moral ramifications of disposition and access decisions made either through legislation or within the archival context. This paper begins with a theoretical framework that identifies common trends in the archival literature regarding surveillance files and their place in recovery and reconciliation efforts. Definitions are provided to establish the boundaries of this work within a broad categorization of levels of access that emerged from the case studies. Each level of access is then explored more deeply using specific examples to illustrate the complexities of custody and access encountered with these records. Ultimately, the study of the disposition and access to surveillance files uncovers three interrelated themes: the power of records, the impact of archival practice and the need to fully explore the context in which those files are created and retained.

Theoretical framework

In “Access: The Democratic Imperative,” Ketelaar (2006) uses the cases of security files from former Communist regimes in Eastern and Central Europe to discuss the importance of the relationship between access to archives and human rights. For instance, access to records of state surveillance, Ketelaar explains, serves both the individual’s right to access and a societal purpose (p. 68). These statements are not new. As early as 1995, the right to access documentary evidence was recognized as a critical principle in a report from the International Council on Archives (ICA) and

UNESCO regarding archives of repression. Chaired by Spanish archivist Antonio Gonzalez Quintana, this report emphasizes the importance of records as evidence to determine compensation to victims and to remove from power those responsible for repression (Gonzalez Quintana 1997). Similarly, Joinet (1996) recognizes the preservation of archives as a fundamental step toward the victims' right to know the truth about their experiences (p. 255). Peterson (2005), in her study of archives of truth commissions, further explains the importance of preserving these archives, stating that their preservation will not only provide evidence of the commission's work, but access to these archives allows for a continued historical interpretation of the truth commission and of the human rights violations documented (pp. 2–3).

In 2009, Gonzalez Quintana published an updated edition of the ICA/UNESCO report in which, among other things, he emphasized the fundamental value of preserving archives of repression. As Gonzalez Quintana explains, archives are “a true reflection of the society which produced them,” and therefore in the context of State repression the records reflect the actions committed against citizens (Gonzalez Quintana 2009, p. 47). The ICA's Universal Declaration on Archives (2011) further underscores the importance of open access to archives, stating that it “enriches our knowledge of human society, promotes democracy, protects citizens' rights and enhances the quality of life.” The declaration puts emphasis on the “vital necessity of archives” for accountability and protection of citizens' rights.

Despite this agreement about open access, there are tensions with concepts of custody, privacy and individual rights. These tensions are exemplified by deliberations surrounding the use of records for truth seeking and accountability processes. In February 2011, the Office of the United Nations High Commissioner for Human Rights hosted a seminar to discuss the use of archives in these initiatives. Participants, including archivists involved in the management of archives of repressive regimes, shared their experiences and ideas to assess the role of archives in guaranteeing the right to know. The participants outlined the challenges regarding access to archives of repression (United Nations. Office of the High Commissioner for Human Rights 2011, p. 7), which include the over-classification of intelligence records for purposes of national security. The end result of this over-classification can often be perceived of as an intentional excuse for the concealment of information less favorable to the regime.

The disposition of records was an important component of the discussion held during the 2011 seminar. The participants in the seminar agreed that the custody of records of repressive regimes should ideally fall under the authority of the national archives rather than under the aegis of a special repository. The participants, however, recognized that in countries with weak national archives legislation it might be necessary to establish “transitional records centers” that would ensure the custody and preservation of archives of repression (United Nations. Office of the High Commissioner for Human Rights 2011, p. 4). For example, Caswell argues that the creation of the Documentation Centre of Cambodia (DC-Cam) represents a stable solution for the housing of Khmer Rouge records due to the “complex and volatile political landscape” in Cambodia (Caswell 2013, p. 118). During the national political transitions of the late twentieth century, both approaches occurred. For instance, Viktoras Domarkas indicates that Lithuania's National Archives were

selected to manage the archives of the Communist Party and security services. While Lithuania was part of the post-Communist transitions in the Eastern Bloc, the use of the National Archives Service for the custody of records of the former regime was unusual (Domarkas 2005, p. 4). In contrast, many South American countries created special repositories dedicated to preserve the record of their repressive past (Andaur Gómez 2012, p. 166). This approach has raised concerns surrounding the respect of context and provenance of the records. In addition, the tendency to treat these records as isolated groups runs the risk of diminishing their relationship to other government fonds (p. 167). While this study does not focus on the question of how surveillance files housed in special archival repositories impacts the understanding of their relationship to other government records, further research about this topic using a comparative case study methodology would provide more concrete answers.

Issues over disposition and access to surveillance records are not exclusive to countries transitioning from a repressive past. The struggles over citizens' right to access government documents and the State's arguments for keeping those records also exist in well-established democratic countries. Rachel Lilburn's (2005) discussion of the security intelligence records in New Zealand highlights the need for national archives to hold strong legislative powers to deal with surveillance records (p. 223). In the USA, struggles over preservation and access of surveillance records have been addressed in the courts. For example, in 1979, a lawsuit was filed in the US District Court to prevent the destruction of FBI records, and Judge Harold H. Greene halted further destruction until a new retention schedule was put in place (Steinwall 1986). This ban continued until 1986 when Judge Greene approved the retention plan submitted by the National Archives five years earlier (Bradsher 2000).

A discussion on the disposition of and access to surveillance files is not new to the archival literature. The East German Stasi file experience has been documented thoroughly in the archival literature and is held up as a model of balancing access and privacy (Danielson 2004; Ketelaar 2006; Jedlitschka 2012). However, there has not been a comprehensive comparative analysis to uncover the factors that can impact the disposition of surveillance files and the role that those files play in the memory of a society.

Despite the differences in the cases examined, this research project identifies the convergence of archival discourse in three areas. First, these cases illustrate the power, both positive and negative, of the archival record and the archivist's social responsibility. As found in a growing scholarship on the power of archives (Harris 2007; Cox and Wallace 2002; Jimerson 2009; Caswell 2010), the archival record impacts processes of accountability and memory making while the concealment or destruction of the archival record adds to the silences in the archives (Carter 2006). Second, the cases illustrate the significance of archival practice. For example, the dissemination of policies regarding access to surveillance files has a direct effect on their use. It could be argued that unclear policies serve, consciously or not, as a restriction to access. If archivists agree that the public has the right to know, then they need to know about the existence of surveillance records and have clear information regarding their access. Trust is an archival imperative. Finally, arguments against the opening of the archives need to be fully explored. Arguments

in support of non-access as an important action toward “reconciliation” raise genuine suspicions about the motivations behind those views. However, there are valid questions regarding risks of access and use of these archives to do ongoing harm. Ash (1997), in discussing his personal journey with the file kept on his own activities by the Stasi, sums up the experience as “painful encounters, truth-telling, friendship-demolishing, life-haunting.” While he ultimately does not regret the access policy, he asks, “Might it not, after all, be wiser to allow their own particularly imaginative mixture of memory and forgetting, of self-respect built on self-deception?” (p. 117).

Definitions

In order to develop a framework in which to study the cases, we defined important concepts such as surveillance, surveillance file, privacy and access within the context of the state gathering information for political reasons. For the purposes of this research project, we define surveillance as a collective activity under an overriding agency to gather information about an individual through governmental and non-governmental sources. The important aspect to this definition is the gathering or collection of information that is analyzed and retained. Therefore, we define surveillance file as the collective intelligence and interpretation of the information gathered.

The concept of “privacy” is generally well understood, but there are implications for this study that need to be clarified. Richard B. Parker defines privacy as “control over when and by whom the various parts of us can be sensed by others” (cited in Moore 2008, p. 420). Moore (2008) draws from this definition to delineate the right to privacy as “a right to maintain a certain level of control over the inner spheres of personal information and access to one’s body, capacities, and powers” (p. 420). Behrnd-Klodt and Wosh (2005) explain that the protection of privacy “generally implies that personal information will not be revealed to others and that individuals will have the right to make private decisions and choices without government interference” (p. 2). In sum, the concept of privacy implies rights of a person to control what is revealed about her/his life. In the context of this study, privacy is impacted in two phases. First, the act of surveillance and intelligence gathering by the state constitutes an invasion of an individual’s privacy in which the watchers infringe on his or her personal life and decide what information about the individual is included in the file. Second, the opening of surveillance files raises questions about an individual’s right to control the release of information in those records. For archivists, the disposition of surveillance files creates an imperative for handling the invasion of privacy from a surveillance program in such a way that decreases the ongoing invasion of privacy through the records and recognizes the potential of inaccurate information.

For the purposes of this project, access is defined as the degree to which a file is available for review. Based on our comparative study, we articulated different levels of access to categorize the disposition and access of surveillance files from each country (see Table 1).

Table 1 Levels of access

Levels of access	Criteria
Access—open with clear policies	Records are considered open while following clear access policies
Access—open with constraints	Ranges from more open to less open. The spectrum depends on what and/or how much is redacted from the record and who is responsible for the restriction
No access—closed	Disposition of archives is known, but the files are closed
No access	Disposition of archives is unknown or destroyed

Methodology

While other studies of surveillance records and their archival implications have focused on individual countries or a group of countries that present a homogenous problem and solution (the Eastern Bloc, for example), this research project casts a wide net to uncover the variables that impact accessibility and privacy issues around surveillance files. In keeping with a broad approach, we examined countries on several different continents and with different political structures. We also considered both large-scale endemic surveillance programs such as those in the Eastern Bloc to situational surveillance programs such as the occupation of East Timor. In all, we examined surveillance programs in 16 countries. While our list represents only a subset of surveillance programs in the twentieth century, it can be considered as representative.

For each case, the historical context in which the files were created and the name of the intelligence agency were identified. We considered political, social and economic factors as well as cultural influences that helped to determine the nature and purpose of the surveillance. We also examined the level of participation by formal and informal networks of informants and the kinds of documentation that resulted from the program. In considering the impact of the files following a regime change, we considered if the records were made public and, under what circumstances, the current disposition of the files, and any access and privacy policies.

Data were collected through news reports, national archives Web sites, scholarly articles, reports (including those resulting from truth commissions) and e-mail contacts with archivists and scholars in the area under study. For each case, the historical conditions, variables impacting the case and current situation were recorded to provide an overview of the situation for comparative purposes. While it was possible in the end to create general categories of access discussed above, each country presented unique circumstances that help to illustrate the complex issues of surveillance files and access.

Like any research project, this study has its limitations. Not every case of surveillance in formerly oppressive regimes was examined to the same level of scrutiny. In many cases, information about the program and the disposition of the files proved elusive. The reliance on information that is available online is a particular limitation. For example, national archives Web sites vary greatly in the

kind of information they provide. In addition, some archival holdings may have restrictions based not on written policy but on a lack of publication or notification. This subversive restriction to access is difficult to detect given that it is the *lack* of information that signals it is happening. That lack of information could mean that either the archives do not hold the records or they are intentionally or unintentionally vague about those holdings. Finally, language barriers hampered access to information about specific cases.

Findings and discussion

Table 2 presents the findings regarding disposition and access from all the countries studied. The information about the disposition of surveillance files illustrates the considerations regarding the custody of the records and whether it became the responsibility of a national archives or a special repository. Regarding access, Table 2 shows that in most situations where the files were not destroyed there is open access. The disposition and access of surveillance files can be grouped into four main categories: open access with clear policies, access with constraints, closed access and unknown/destroyed. Cases selected for discussion exemplify the deeper issues of access encompassed in each category.

Access: open with clear policies

The first category of levels of access illustrates a best-case scenario among the cases examined for this study. In these cases, the records are considered open and there are clear policies available to individuals to gain access. The barriers to access in this category are comparatively minimal to other categories in this study. The policies primarily focus on the protection of the privacy of individuals documented while providing the steps to allow access to the records. This recognized need for balance exposes an archival tightrope: the desire to maintain the historical record of malevolent and iniquitous activities of a repressive regime in order to preserve the truth of the events, in conflict with the desire to mitigate the invasion of privacy that individuals had sustained and restore the dignity of a society's citizenship. The means by which this goal is achieved vary from case to case, however.

Three case studies illustrate the context in which open access to files has been achieved. First, the well-documented success story of the surveillance files of the Ministry for State Security (Stasi) of East Germany illustrates that swift action and a commitment to open access can help a reconstituted nation heal. Second, the case of the files of Mexico's Federal Directorate of Security demonstrates the achievements of openness after a long period of struggle over the public's access to intelligence records created during the rule of the Institutional Revolutionary Party. Finally, the Mississippi State Sovereignty Commission, active during the Civil Rights movement in the USA, puts into perspective the legacy of surveillance in a country ostensibly democratic in nature.

The history of the East German secret police (Stasi) and the disposition of their files after the dissolution of the communist regime provide a model for the archival

Table 2 Disposition and access of state intelligence records

Country	Intelligence agency	Years	Current disposition	Access
Albania	Directorate of State Security (Sigurimi)	1945–1989	Many files destroyed	Files not destroyed: closed
Argentina	Secretariat of State Intelligence ^a	1976–1983	Unknown	N/A
Chile	National Intelligence Directorate (DINA)	1973–1977	Unknown/possible destruction of records	N/A
Czechoslovakia	State Security (StB)	1945–1990	Security services archive	Open
East Timor	Indonesian Occupying Forces	1974–1999	Unknown	N/A
Hungary	State Protection Authority (AVH)	1945–1956	Historical archive of the Hungarian State Security	Open after declassification ^b
Japan	Kempeitai	1881–1945	Destroyed	N/A
Kenya	British Colonial Administration	1952–1960	The National Archives, UK	Open
Mexico	Federal Directorate of Security	1947–1985	Archivo General de la Nación	Open
Poland	Ministry of Public Security (MBP) Security Service (SB)	1945–1954	Institute of National Remembrance	Open ^c
Puerto Rico	Police of Puerto Rico-Intelligence Division		Archivo General de Puerto Rico	Closed
Romania	Securitate	1967–1989	National Council for the Study of Securitate Archives (Bucharest)	Open
Socialist Federal Republic of Yugoslavia	Department of State Security (UDBA)	1946–1991	Archives of the Republic of Slovenia	Open
Spain	Central Service of Documentation of the Presidency	1972–1977	Unknown	N/A
South Africa	National Intelligence Service	1980–1994	Destroyed	N/A
USA—Mississippi	Mississippi State Sovereignty Commission	1956–1973	Mississippi Department of Archives and History	Open

^a The Secretariat of State Intelligence has a longer history. For the purposes of this study, we focused on the period of the military junta

^b The National Security Services were required to transfer intelligence files in 2000 after they are declassified. Records that are still classified are kept by the National Security Services and must be checked for declassification every 3 years. See: Historical Archives of the Hungarian State Security, <http://www.abtl.hu/en/records>

^c The Institute's Web site states that victims of surveillance have the right to access

tension between the retention of files documenting the invasion of privacy and the desire to provide access to that history. Joachim Gauck's quick efforts ensured the retention of the Stasi surveillance files along with a serious approach to balancing access and the protection of privacy. The legislation campaigned for by Gauck, the first Federal Commissioner for the Stasi Archives, not only saved the files from destruction (one solution offered to help "cope" with a destructive past) but also established an access policy that included the right for individuals to access their own files while at the same time advocating for the right to privacy for third parties. The 1991 Stasi Records Act regulated the custody, preparation, administration and use of the records to facilitate individual access to personal data to "clarify what influence the State Security Service has had on his personal destiny"; to protect the information in the files from further use by the State Security Service; to "ensure and promote the historical, political, and jurisdictional reappraisal of the activities of the State Security Service"; and to provide information that would help with the purposes of the act (Danielson 2004, p. 181).

Gauck's own reflections of the recovery and preservation of Stasi files show how the purposes of keeping these archives evolved. Soon after the public's takeover of the Stasi headquarters, the recently elected parliament used Stasi records for lustration, vetting public officials to see who appeared in the files as undercover collaborators. Gauck (1994) explains that these actions were not done for vengeance, but rather as a necessary action after almost six decades of Nazi and Communist dictatorship: "The intention was not to remove former Communists (members of the Socialist Party, SED) from all posts, but rather to respond to the East German people's minimal demand that persons who had conspired with the regime, unbeknown to their fellow citizens be deemed unsuitable for public positions of trust" (p. 279). The preservation of these files also served a historical purpose, since access to them provides researchers the opportunity to "portray the actual processes of domination and organization, demonstrating the interplay between the ruling party and its instruments of surveillance and oppression" (p. 280).

Gauck's efforts demonstrate the role that access to surveillance files can play in the healing process. Danielson notes: "the ability of victims to learn the identity of informants has strengthened rather than weakened the democratic process. Even opponents concede that a great service was done by revealing the truth, no matter how inconvenient" (Danielson 2004, p. 183). This attitude was realized thanks to the citizens' recognition of the importance of keeping these files and the prompt action from activists to stop further destruction of the records. It was the beginning of what Gonzalez Quintana (2009, p. 20) calls the "boomerang effect," where records that were used for repression obtain a new meaning in an era of accountability.

In Mexico, there was no takeover of a building, but rather a growing recognition by groups of citizens advocating for the right to know and government transparency. For example, in 1994, citizen groups joined forces to create Civic Alliance, an organization that advocates for government transparency and fair electoral processes (Doyle 2003, p. 63).¹ This work included advocacy for the right to

¹ <http://www.alianzacivica.org.mx/antecedentes.php>.

access government records (see IFAI 2004).² Additional activist groups focused on the human rights abuses committed during the rule of the Institutional Revolutionary Party (PRI), including the Tlatelolco massacre. On October 2, 1968, security forces confronted students protesting in the Tlatelolco Plaza in Mexico City. This confrontation caused an unspecified number of deaths and hundreds were arrested (Sloan 2012, pp. 62–63). More than 45 years later, the exact number of deaths is still not known.

The 2000 election of Vicente Fox of the National Action Party (PAN) as the President of Mexico marked the end of the PRI political dominance and increased the demands for truth and accountability for human rights violations during PRI rule (Piccato 2013, p. 94). In 2002, President Fox signed the Federal Access to Information Law, which provides citizens with mechanisms for obtaining government records.³ Additionally, the president signed an order to open secret intelligence archives as part of the efforts to investigate past human rights abuses. According to the order, the archives of the Federal Directorate of Security (DFS), among other security and intelligence archives, were to be transferred to the *Archivo General de la Nación* (AGN). But even with the transfer of records, the process to gain access to them was not very clear. Initially, there were no descriptive guides or indices that would facilitate the identification of records (Doyle 2003, p. 71). In addition, the AGN approved an agreement with the *Centro de Investigación y Seguridad Nacional* (CISEN) that stipulated that a CISEN archivist would control access to these archives (Doyle 2003, p. 71; Camacho 2007).⁴ The records of the Federal Directorate of Security, 1947–1984, are currently open to the public (personal communication AGN February 26, 2014).

While access to the DFS archives has not led to criminal prosecutions, it has opened the doors to the study and analysis of an important period in Mexico's recent history. For example, in 2013, the *Journal of Iberian and Latin American Research* published a special issue titled "Spy Reports: Content, Methodology, and Historiography in Mexico's Secret Police Archive." The articles include discussions about access to the records of the DFS. Padilla and Walker (2013) explain that access to the archives has improved significantly in recent years, but they indicate that there are still some obstacles to overcome. Specifically, they indicate that while the DFS collection has a card catalog searchable by subject, the researcher does not have access to it. The archivist is responsible for conducting the searches. Despite this challenge, Padilla and Walker state that the dialog between researcher and archivist can often be productive and helpful (p. 4). Similarly, Aviña (2013) visited the AGN in 2005 as a doctoral student and, like the early users of the records, was attended by an archivist who was a former member of the DFS. Aviña, a Mexican–American, was conducting research about guerrilla organizations from the city of Guerrero. He recalls his first meeting with the archivist:

² See Alianza Cívica, "El derecho de acceso a la información en México: un diagnóstico de la sociedad," *Instituto Federal de Acceso a la Información Pública, México* (2004).

³ See <http://www.freedominfo.org/regions/latin-america/mexico/mexico2/>.

⁴ http://www.contralinea.com.mx/archivo/2007/diciembre/htm/Cisen_en_AGN.htm.

[The archivist] did not noticeably disapprove of the project nor reject outright my request for access to the documents pertaining to the guerrilla organisations. He simply demanded to know, before proceeding, where I was from. He tensely queried: ‘Are you from Guerrero?’ Access, it seemed at the moment, would depend on my place of origin (p. 42).

Aviña obtained access to the documents but years later still wondered why he was asked that question (p. 43).

The cases of East Germany and Mexico illustrate that the opening of surveillance records can be an essential part of political transitions. In the USA, historical accounts of surveillance have raised questions about the State’s tactics within a democratic society that disrupted people’s right to privacy and to dissent (Medsker 2014). One well-known example is COINTELPRO, the FBI’s program created to disrupt the activities of organizations like the Black Panther Party and Puerto Rican pro-independence groups. A history that is not as well known took place at the heart of the Civil Rights Movement in Mississippi.

From 1956 to 1977, the Mississippi State Sovereignty Commission collected information on civil rights activists. The Commission was created by the State of Mississippi in the wake of *Brown vs. Board of Education* (1954), the US Supreme Court ruling that denounced the separate but equal social structures that dominated society in much of the Southern States. The objective of the Commission was to “do and perform any and all acts deemed necessary and proper to protect the sovereignty of the state of Mississippi, and her sister states...” (MDAH n.d.). The Commission’s investigative powers included the compilation of reports on organizations and individuals that challenged segregation. These surveillance activities were accomplished through the substantial use of informants, including members of the African American community (see Katagiri 2001).

The commission was finally disbanded by the legislature in 1977. That same year, the American Civil Liberties Union filed a lawsuit requesting the opening of the files (Rowe-Sims et al. 2005, pp. 163–164). This legal case went on for seven and a half years, when a ruling given by Judge William Barbour gave the ACLU access to the files for discovery purposes. Four years later, Judge Barbour further ruled that as public records, they should be open to the public, with stipulations regarding the privacy of individuals named in the records.

Following Judge Barbour’s legal opinions and negotiations, the Mississippi Department of Archives and History, which had custody of the files, implemented the Privacy-Review-and-Disclosure Procedure. This policy included inviting people who believe their names might be in the records to contact the archive and choose a privacy option. The majority of the Commission records were opened to the public in 1998, with additional documents made available to the public in 2000. The final release of records took place in January 2001. In a monumental step toward promoting access to these files, the Mississippi Department of Archives and History provided full-text online access to the records in 2002 (MDAH n.d.).

Rowe-Sims et al. (2005) reflect on the lessons learned from the handling of the records of the Sovereignty Commission:

The Sovereignty Commission saga brought into stark focus that passivity is not an option in a modern information-hungry and litigious society. MDAH needed to establish policies and procedures dealing with privacy-sensitive materials and to step beyond the traditional role as a mere keeper of records (p. 172).

This experience puts into perspective the social responsibility of archivists and the significance of archival practice.

The three cases of open access illustrate that while they share some similarities, differences do exist. For example, the opening of the files of the Federal Directorate of Security was tied to the political transition in Mexico. This was also true with the Stasi. On the other hand, the Mississippi Sovereignty Commission reflected a social revolution rather than a political one. One important similarity is that access to the files occurs in tandem with upheaval: East Germany falls, Mexico breaks with PRI dominance, and Mississippi succumbs to the Civil Rights Movement. These significant breaks from the past are thus reflected in the opening of the archives. This is not the case everywhere.

Access: open with constraints

The factors that impact access restrictions to surveillance records include more than privacy and confidentiality issues. These include custody issues, political struggles and trust in the archival record. The following three case studies illustrate how decisions over disposition and access of surveillance records are tied to a country's own political past and to how it has addressed this history.

The experience in Kenya reveals the impact of custody on the access and use of surveillance files. While records that document abuses carried out by the British government during the military conflict in the 1950s are technically open and available through the National Archives in the UK, the custody of those records reinforces a lingering colonial legacy and presents limitations on access simply through their physical location. In Romania, the custodial history of the Securitate files has led to a lack of trust in the authenticity and veracity of the record. The records continue to wield damaging political power. Finally, Spain presents a very complex example that combines open access to some archival records about the Civil War and the Franco dictatorship with complete closure of other records. The latter has led to continuing controversies over access to these archives. In each of these cases, the status of the records is technically open, but there are mitigating circumstances that provide barriers to the records that undermine their open status.

The current status of Kenyan colonial surveillance files presents one example of access with constraints. If issues of access can be presented as a binary status of either open or closed, then the surveillance records from Kenya would be considered open. But the situation with the Kenyan files illustrates complex notions of "open" and "access" that accompany the archival record. In Kenya, Kikuyu groups collectively referred to as the Mau Mau participated in a military conflict between 1952 and 1960. These uprisings were not strictly African versus British, but the Mau Mau insurgency led to the end of British colonial rule in Kenya (Blitz

2011). As a part of its strategy at the end of their colonial regime, the British government had a systematic policy of documentation destruction or “cleansing.” Despite that, the files documenting British colonial activities in Kenya resurfaced and are now considered to be open to access in the British National Archives. These documents were uncovered as a result of a 2011 lawsuit pursued by five Kenyans who sought reparations from the British Government for torture. In an account of the suit, one official noted of the files: “All historical documents need to be read by reviewers ahead of their transfer to the National Archives. But there has always been the problem that other material received higher priority. As a result, the files relating to the former colonies have just been sitting in a corner and neglected” (Blitz 2011).

The Kenyan files are described at an aggregated level in an online catalog for the National Archives, with files titled “Mau Mau Personalities: personal details and information” and “Mau Mau organisation and personalities.”⁵ Through this mechanism, it is easy to determine that the records actually exist. However, unlike previous “cleansing” policies, current procedures underscore access issues that are a result of benign neglect rather than an attempt to manipulate or control the archival evidence. Further, unless a researcher is in the UK, access is restricted by the files’ physical location even though they document the repression of citizens of a now sovereign nation. If one motivation for providing access to surveillance files is to help individuals and nations heal from painful periods of repression, proximity to those violated would be an important aspect to their access. Scholarship on post-colonial archives point to custody as one of the core issues facing the former colonized and colonizers (Bastian 2003; Stoler 2010). Post-colonial archives present a myriad of issues, of which surveillance files are one piece.

Similar to the challenges of post-colonial archives, post-Communist archives represent a complex space. In some ways, the secret police of all Eastern Bloc countries can be discussed as one. The Soviet Union provided a model for secret police action that was adopted and adapted for each of the countries behind the Iron Curtain. While the models for surveillance and oppression of populations were inspired by Soviet policies and actions, the outcomes exhibited various shades of oppression and degradation. As a result, the records of surveillance activities lack uniformity due to external and internal factors.

Oppression during the Ceausescu Communist regime in Romania was similar to that of East Germany, if only more extreme. The Department of State Security, known popularly as the Securitate, is considered to be one of the largest and most brutal secret police forces in the Eastern bloc. Scholars estimate that the Securitate employed 14,000 full time agents and somewhere between 400,000 and 700,000 part-time collaborators (party members) and informers (non-party members) (Stan 2005). The post-communist history, however, is dissimilar. First, the overthrow of the Romanian and East German communist governments, although very close in time, differed in significant ways. East Germany’s government was party driven, whereas the government in Romania was authoritarian, dominated by President Nicolae Ceausescu and his wife Elena with the backing of the military. The

⁵ See the official online catalog of the National Archives at <http://discovery.nationalarchives.gov.uk/>.

combination of Glasnost and Perestroika, introduced by Mikhail Gorbachev in the Soviet Union to address the decay and decline of the USSR, caused a ripple effect of change throughout the Eastern bloc. In East Germany, there were substantial migrations to surrounding countries, massive protests and the beginnings of the destruction of the very symbol of oppression, the Berlin Wall. The East German government held final elections in early 1990, which resulted in a peaceful transfer of power to democratic-leaning parties, and reunification with West Germany became a possibility. In Romania, the larger political context was similar, but rather than a peaceful transfer, massive crowds of protesters filled city streets while Ceausescu and his wife Elena hid behind a still-loyal military. Finally, on Christmas Day 1989, Ceausescu and his wife Elena were tried in a 1-h military tribunal and sentenced to death. The Ceausescus were then immediately led out to a small courtyard and executed by firing squad.

The dramatic elimination of Ceausescu did not have the revolutionary impact on Romania that the destruction of the Berlin Wall and resignation of East German leadership did for Germany, however. The vacuum left by the overthrow of Ceausescu was quickly filled by the National Salvation Front and led by secondary communist leaders. The new leadership, under Ion Iliescu, did not renounce communist ideology, and reform efforts were in line with that ideology. Reform included the dissolution of the Securitate, but the Department of State Security, in charge of the Securitate, remained in control of the records of Securitate activities for some time. This meant that the Securitate records were not protected from destruction or modification to obscure the role of individuals in those records (Stan 2002). As a result, many Romanians believe that since 1989 the archive has been significantly altered. In fact, many records are considered “altered beyond recognition” (Stan 2005).

Securitate policies ensured distrust in the archives from the start. For example, a 1968 decree banned party members to serve as informers for the Securitate. Therefore, it was Securitate policy that when an informer became a party member, his or her personal informer file was destroyed. Additionally, in 1977, an order from the Ministry of Interior decreed that files of deceased informers and collaborators should be destroyed (Stan 2005). These policies ensured that the records were subject to manipulation throughout their lifecycle, and therefore, suspicion of their evidentiary value is an integral part of the archive.

In addition to harboring significant doubts about completeness and integrity, the files of the Securitate archives have also been used as political weapons rather than for personal or society-level healing (Stan 2002). Recent activities have sought to stabilize the files and regularize access to them. However, by 2005, “only a fraction of the archive is extant, and only a fraction of the extant archive is currently available to the public through the National Council, its legal custodian” (Stan 2005). The long-term lack of public access has created public distrust in these files, despite the fact that they are currently open (Stan 2012).

Similar to the integrity problems encountered with the Securitate files, the surveillance files from the Spanish Civil War and the Franco period illustrate the impact that the context of creation and archival policies can have on access. Almost forty years after the death of Francisco Franco, the memories of *franquismo*

continue to be contested. In 1976, the Law for Political Reform was enacted and democratic elections were held in 1977 (Edles 1995, p. 362). There were no truth commissions and no criminal prosecutions for human rights abuses committed during the dictatorship. Spain's path was, as Davis (2005) explains, a "*pacto de olvido*" (p. 863). This "pact of oblivion" impacted the handling of archives of the Civil War and the Franco dictatorship (Gonzalez Quintana 2007).

The mid-1990s saw an emergence of groups in Spain that actively sought to recover the collective memory of the Civil War and the Franco dictatorship (Davis 2005, p. 867). These efforts continue in today's politics of memory in Spain that challenge the pact of oblivion. This challenge includes calls for the right of citizens to access records of the Franco regime. The results, however, have been mixed. On the one hand, the 2007 Historical Memory Law included the creation of the Historical Memory Documentary Centre ("*Historia del Centro Documental*" n.d.). This institution's main collection is the Spanish Civil War Archive, located in Salamanca.⁶ On the other hand, the whereabouts of the archives of the *Servicio Central de Documentación de la Presidencia de Gobierno* continue to be unknown (Gonzalez Quintana 2009, p. 52). The records of the Franco regime represent the very real challenge of scattered documentation. In many other cases, a single central repository responsible for the surveillance files can be identified. This is not true in Spain.

There have also been struggles over the declassification of important documents from the Spanish Civil War. In 2013, the United Nations Working Group on Enforced or Involuntary Disappearances met with Spanish government officials and victims of *franquismo* to discuss the State's responsibility in the cases of disappearances during the Civil War and the dictatorship. The group stated that the Government has a responsibility to find information on the disappeared and to criminally prosecute those responsible, among other observations. The Working Group identified the resistance to declassify government documents as a major impediment to learning about the disappearances (Junquera 2013). Researchers have echoed concerns over the lack of access to archival records. In July 2013, 142 academics and researchers signed a public letter asking for the immediate opening of military archives (González 2013).

It could be argued that one reason for the difficulties over the proper preservation and access of the archives of the Civil War and *franquismo* is a legacy of the management of archives in Spain. Management of archives during Franco's dictatorship was disorganized, providing a chaotic archival memory. Corominas Noguera (2008) explains, "the disorder generated by the postwar [period] along with the lack of archival policies during *franquismo*, produced significant consequences to the administration of Spanish archives" (p. 293, Trans.). In this case, the very creation and maintenance of the records engendered skepticism as to whether or not they fully document the story of the Franco regime.

In all three cases, access is ostensibly granted to the records of surveillance but obstacles interfere with their potential positive use. From issues of proximity to weapons for political power and distrust to questionable archival practices and

⁶ <http://en.www.mcu.es/archivos/MC/CDMH/Presentacion/Historia.html>.

partial access, “open” records still deal with the legacy of their creation and maintenance. Even when regimes have changed, it can be difficult for a society to come to terms with its own past transgressions, and the archival record can often be seen as the appropriate area in which to control that message. Therefore, questions of access cannot be easily resolved or considered as either open or closed.

No access: files closed

Closing surveillance files is considered to be one strategy to respect the privacy and confidentiality of the subjects in the records. Privacy and confidentiality are crucial issues with regard to surveillance files because these files not only contain information collected against an individual’s will but could also contain information that is untrue. Despite this concern for the victims of surveillance, there is a general recognition that the files have enduring value for understanding a country’s past. In Puerto Rico, the preservation of surveillance files created by the Intelligence Division presents a unique perspective on the tension created around the disposition of surveillance files both reviled and valued as a record of a troubled past. The uniqueness of this case is highlighted by three aspects. First, the victims were initially allowed to retrieve their own files; second, the files are currently in the custody of multiple repositories; and third, the files that are retained are closed for the foreseeable future with no clear future access policy.

As with many surveillance societies, the surveillance activities in Puerto Rico were known by pro-Independence leaders, but the extent was not fully understood. This perception was confirmed in 1987 when, during a radio interview, a former police agent indicated that the Police of Puerto Rico maintained files against individuals identified as independence supporters (Blanco-Rivera 2005, p. 302). Following this disclosure, a lawsuit was filed to protect the files of the Intelligence Division from being destroyed (Fratelli Torres 2003). Soon after, Judge Arnaldo López Rodríguez declared that surveillance on political grounds was unconstitutional and recognized the rights of individuals to obtain their own files (Blanco-Rivera 2005, p. 306). The case of Puerto Rico is the only one identified in which the victims had an opportunity to control the disposition of their own file. Not all the files were claimed, however, and in 1993, a court decision established that unclaimed files were to be kept closed and in the custody of the Judiciary System for a period of ten years, after which appraisal decisions should be made (Fratelli Torres 2003). In 2003, Puerto Rico’s Supreme Court President Judge Andreu Garcia signed an administrative order approving the destruction of the records on his last day in office. Fortunately, the order was not immediately carried out, and later in 2003 interim President of the Supreme Court Francisco Rebollo López signed an administrative order overwriting Garcia’s order. In that order, Judge Rebollo López stated that the documents were of historical value and therefore should be preserved. He ordered the transfer of the files to the University of Puerto Rico (Rama Judicial de Puerto Rico 2003).

Debate over the custody of the records did not end, though. The *Archivo General de Puerto Rico* (AGPR) disputed the decision to transfer the documents to the University of Puerto Rico, claiming that because they were government records they

should be transferred to the AGPR. The legal struggle over the custody of these files continued, and in 2005 President of the Supreme Court Judge Federico Hernández Denton signed a new administrative order stating that the AGPR should have the custody of the files (Tribunal Supremo de Puerto Rico 2005). The unclaimed files are currently in the custody of the AGPR and closed to the public. The University, however, retains surveillance files that have been donated by individuals who initially claimed their files from the government. Those files are open for research.⁷ Additionally, the Juan Mari Bras Foundation digitized his file of over 15,000 pages and has published its contents online for access.⁸

Puerto Rico provides an example of surveillance files being preserved but closed to the public. It is anticipated that eventually these files will be open, but the steps to reach this goal are currently not clear. Furthermore, the circumstances surrounding the disposition of the files of the Intelligence Division are complex. The files that are housed at the AGPR are only one part of the documentary evidence discovered in 1987. Therefore, the surveillance files at the AGPR are an example of what South African archivist Harris (2002) calls “a sliver of a window into the event” (p. 64). The impact of separate custody and closed access to the files to the memories, and oblivion, of political surveillance in the country are not clear. While this dark period in Puerto Rico’s political history is not completely forgotten, it still constitutes a somewhat elusive memory in the national conscience.

No access: unknown or destroyed

Unlike the disposition of the files of the Puerto Rican police, which are closed, there are two other categories of “no access” that need to be considered. The first is the complete destruction of records. The destruction of records means that whatever their actual account, what is known of these records, their content and their meaning can never be considered. The case of pre-war Japanese surveillance programs illustrates the impact of a program of destruction. The second category of “no access” is the *unknown* disposition of records. It is possible that they have been destroyed, intentionally or not; it is possible that they are moldering in a basement or closet and have yet to be discovered; it is even possible that systematic documentation was not a part of the surveillance program. The current status of the records is simply unknown. The case of East Timor uncovers the very real issues of that status and the potential for further harm that exists when disposition is unknown.

The destruction of files has been part of most periods of transition from repressive regimes. In East Germany, the Stasi managed to destroy files before being overrun by the activists. The destruction resulted in around 15,500 bags of shredded documents that were seized by the agents who took over the Stasi headquarters in early 1990. The British government routinely destroyed files relating to colonial crimes and talked about cleaning the record of colonial rule

⁷ Links to the finding aids are available at <http://biblioteca.uprrp.edu/CPR.htm>.

⁸ Juan Mari Bras was a pro-independence political leader and founder of the Puerto Rican Socialist Party. The digitized collection is available at <http://juanmaribras.org/carpetas.html>.

(Ellicott 2013). In Chile, the truth commission asked for access to the police archives and was informed that the records had been legally destroyed (Blanco-Rivera 2009, p. 139). In the transition from the communist regime in Bulgaria, it is estimated that between one-third and one-half of the files documenting surveillance programs were destroyed (Buruma 2007). The destruction of the Bulgarian records means that the umbrella murder incident in London that resulted in the assassination of Bulgarian dissident Georgi Markov will never be fully explained. The Markov file is one among the many Bulgarian secret police files that have been destroyed, and the involvement of the Bulgarian secret police along with the KGB will never be known (Buruma 2007).

The case of the Japanese police and military files provides one example of the impact of destruction on the archival legacy. The Japanese civilian police leading up to and during World War II were alternately referred to as the Special Higher Police Force or the Thought police. They were part of the Police Preservation's Peace department and were in charge of investigation and control of political groups and dangerous ideologies, such as communism and democracy—anything deemed against the Imperial Household. This police force was abolished in 1945 by the American Occupation Authorities. Other surveillance activities in Japan at this time were conducted by the military police (Kempeitai) through what was referred to as neighborhood groups. They are often compared to the secret police of Germany, although the Kempeitai were a publicly recognized branch of the Japanese Army. They were also disbanded in 1945. Work done by an organization called the Research Center for Materials on Social Problems (RCMSP) in the 1970s is the only evidence of the files created by these organizations. The RCMSP were responsible for the publication of a series of documents, including five volumes on the Special Higher Police Force. The documents these publications are based on no longer exist and the RCMSP organization is gone. In fact, the publications themselves are the only evidence of this effort. Even though surveillance activities in pre-war Japan differ from other cases under review here in that they appear to have centered more on perceived subversive groups (e.g., communist, democratic, or socialist) rather than individuals, the disposition of the files was intentional and complete destruction nonetheless (Ogino 2004).

While the destruction of records in Japan is disconcerting to archivists and citizens, at least there is a record that indicated the files existed. The case of East Timor, on the other hand, is even more disturbing due to the unknown disposition of all records. East Timor (Timor Leste) suffered significant abuses under Indonesian occupation following independence from Portuguese colonial rule in 1974. The Indonesian occupation was marked by violence and brutality, which the Timor Leste Commission for Reception, Truth and Reconciliation (CAVR) has documented in its 2,500 page report. The report, *Chega!*, addresses human rights violations such as displacement, detention, torture, trials, sexual violence, famine and killings. *Chega!* also contains many statistics and graphs, a short history and a long appendix on the violence of 1999, the apex of the independence movement, following the resignation of Indonesian President Suharto. The *Chega!* report also details the “intelligence” system that employed East Timorese spies and informants (CAVR 2006, p. 25). According to *Chega!*, the informant system recruited in much

the same way that other informant systems worked. Informants participated for bribes or were recruited by force or threat (p. 27). East Timorese informants were referred to as *mauhu* and contributed to the desperation of an occupied people:

this system of intelligence informants and spies played a large role in creating suspicion among East Timorese. It enables the military to penetrate the Resistance, as well as establishing it to plant rumours and misinformation. Many East Timorese were forced to play a double game, and were continually at risk of being suspected by either side. There were large numbers of East Timorese spies and their prevalence meant that civilians rarely knew who was *mauhu* and who was not, who to avoid and who could be trusted. The pervasiveness of the system sowed deep suspicion among the East Timorese population, and social bonds and cohesiveness were casualties of this undercover element of the conflict (p. 27).

While the CAVR did significant work in identifying transgressions and working toward reconciliation, the “archives” that are retained by the CAVR document the reconciliation process rather than the documentation of transgressions. The archives collection includes interviews with leaders, victim statements, records of hearings, court files and press clippings.⁹ But what are not within these archives are the original documents produced by the Indonesian regime. It is assumed that surveillance files, if they still exist, are within the holdings of the Indonesian government. Patrick Walsh, Australian scholar and Post-CAVR Secretariat Senior Advisor, indicated that critical materials about the events in East Timor remain in Indonesia (personal communication, February 22, 2014; Walsh 2011).

Conclusion

Gonzalez Quintana (2009) writes that there are many solutions for the handling of the archives of State Security (p. 55). One factor that he underscores is the political context in which these records are uncovered, discovered or destroyed. Our research has found that these many alternatives also translate into how access is provided or not provided. While there is no simple solution, understanding this context and the diverse number of experiences encourages archivists to be more aware of the ramifications involving the preservation and access of surveillance files.

This study presents a comparative analysis of the disposition and access of surveillance files. The authors grouped the case studies into four categories regarding access: open with clear policies, open with constraints, closed access and unknown/destroyed. Most of the countries selected fell into the first two access categories. The study of the cases identifies the convergence of archival discourse in three areas: archives and power, the impact of archival practice and the need to fully explore the context in which those files are created and retained. The study also identifies areas in which further research is needed. Specifically, archivists should develop a comparative analysis that focuses on the custody of surveillance files,

⁹ See <http://www.cavr-timorleste.org/en/archives.htm>.

with particular attention to the cases where a special repository was created instead of transferring the records to the national archives.

The relation between archives and power has been extensively discussed in the archival literature. However, the value of archival praxis in these contexts has not been as extensively addressed. This is especially the case of the creation of policies for the access of surveillance files. Gonzalez Quintana (2009) presents important recommendations regarding the regulation of access and use of archives of repressions. These recommendations focus on the rights of individuals to access their files and determine whether third parties can study their files (p. 81). While the cases analyzed in this research project show that there are different ways countries have addressed the access of surveillance files, the availability or non-availability of clear access policies impacts the use of the surveillance files. In Mexico and Romania, the records are open for research, but there are no policies available on how to request access to these files. While the archivist can answer these questions if a potential user contacts the archive beforehand, the call for access and accountability should also include a clarion call for transparency on the part of the archives. Additionally, research should be done to examine the impact of archival description in the use of surveillance files.

Ultimately, the problem of surveillance files should be understood in the larger context of archival responsibilities. Can we find a way to measure empirically the impact of the disposition of surveillance files from former repressive regimes on society? Initiatives in measuring the impact of archives in social justice are underway (Duff et al. 2013). In what way will surveillance files specifically fit within that framework being developed?

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