Archive Rats

By David McKnight *

Within the bowels of the archives buildings in Washington, London, Amsterdam, Moscow and Berlin is an elite, unofficial club. To join the club you must spend at least five years rummaging through the yellowing files of spy agencies, the military and the obscurer regions of foreign affairs. Then you become a club member - an 'archive rat'.

Members range from eminent Oxford dons with a string of worthy books to the obsessives who accumulate the inevitable gossip, mysteries and examples of arcane logic that pepper the world of national security.

Once a year, in the slow news period of New Year, a gaggle of journalists get into the act as new archival releases are unveiled. Cabinet papers are the prime target and we read, finally, what occurred behind closed doors 30 years ago.

I was stricken with 'archive fever' about eight years ago. While working on *The Sydney Morning Herald*, I lodged a number of requests for files held by the Australian Security Intelligence Organization (ASIO). Then began the now familiar wait for the faceless bureaucrats to release heavily censored files (insert your own metaphors here of glaciers or eyedroppers).

Some five years later, Allen & Unwin published my book *Australia's Spies and their Secrets*, which extensively used those files and gave an inside view on ASIO and its role in the Cold War. Along the way, via several courtrooms, I learnt a lot about Australia's Archives Act and how it is administered.

I learnt the value of having an enforceable legal right to material. I learnt to value the provisions of the current Archives Act. These included the absence of any financial barriers to seeking information and the existence of time limits on responses to requests. Skirmishes with agencies like ASIO are inevitable if a researcher wants to dig deeply and the public's existing legal rights are significant weapons.

An agency that wants to withhold material from public access has three main options:

- it can deny the material exists;
- it can disregard time limits for responses;
- it can censor vital parts of files.

In using the Archives Act to write my book, I faced all three problems and was able to challenge them with a modicum of success.

Denial

In 1990, ASIO denied it held material on a range of political figures and organisations associatied with the Catholic Labor Right (B.A. Santamaria, the Industrial Groups etc.). Several years later, a wealth of files on these subjects was released, but only after a major challenge mounted by another researcher, Mark Aarons, in the Administrative Appeals Tribunal (AAT).

In the early 1990s, I asked for material on the former Labor minister 'Diamond' Jim McClelland. I had requested his file because I saw a reference to it in another ASIO document. ASIO point-blank denied it had material on McClelland. I appealed to the Inspector-General of Intelligence and Security, who found that a file had existed, but that it had, in all likelihood, been destroyed just before Labor won the 1972 election.

Disregard

Many requests I made went unfulfilled for long periods - much longer than the legal time limits (usually 90 days). I challenged this through both the AAT and the Inspector-General. Without recourse to such a tribunal and to enforceable time limits, little could have been achieved.

Deletion

The blacking out of key parts of files is the commonest way agencies and Australian Archives deny public access to government records. No doubt there are valid reasons for this on occasions, but sometimes deletions are routinely and sweepingly imposed. The motto seems to be 'when in doubt, cut it out'. I say this not out of malice, but because of the following experiences in challenging such deletions.

I have seen duplicate pages in different files in which material released in one file is concealed in another. Invariably the material is utterly innocuous. More common are instances where material deleted from a file is restored through an internal reconsideration. More material is always released and sometimes substantial deletions are overturned. Why then was the material deleted in the first place?

Second, an agency like ASIO sometimes makes an internal policy change on certain classes of material. In the past four years it has progressively improved access for researchers. I'll never forget the evening I was waiting at a bus stop, having a preliminary ruffle through a series of files, which ASIO had mailed to me. I found myself reading a transcript of a phone conversation between Alan Dalziel, the secretary of Labor leader Dr Herbert Evatt, and another political figure. Good grief! Without warning, ASIO had changed its policy. Yesterday's document, suppressed for reasons of national security, became today's publicly available document. In fact, in previous years, the AAT had solemnly upheld ASIO's contention that phone tap material was absolutely out of bounds. When ASIO turned the tables, the AAT looked very foolish. Had it been an independent tribunal making up its own mind, or was it just a rubber stamp for whatever level of censorship ASIO chose to implement?

Something similar occurred with my challenges in the AAT. On many occasions, ASIO trumpets the fact that no AAT judgments have substantially gone against it. But reality is different from surface appearance. While researching my book, I initiated a challenge in the AAT to ASIO's deletions. During the case, ASIO backed down on many deletions and released material during the hearing. (This occurs in almost any challenge in the AAT, as ASIO realises that many deletions are indefensible.) Then, rather than proceeding with the case, ASIO proposed an 'out of court' settlement. This involved ASIO giving me access to a very significant number of files, which had not been censored in the usual sweeping way. Such a settlement was sensible, but it also allowed ASIO to keep its unblemished series of wins in the AAT.

An even larger AAT case, run by writer and journalist Mark Aarons, resulted in several thousand pages being released during the hearing. Again, yesterday's document whose release would damage national security becomes today's released document - and the sky does not fall in.

Such skirmishes depend crucially on the AAT being a cost-free tribunal. Ordinary citizens (who can rarely afford lawyers) can challenge bureaucratic decisions only if they do not face crippling legal costs if they lose. No challenge to ASIO's policy on archives has ever been mounted in the Federal Court. I suspect the simple reason for this is that the academics, writers and journalists simply cannot afford to pay huge legal costs.

The international scene

The current scene overseas has seen the liberalisation by intelligence agencies in the archival release policies. Formally, the CIA is committed by Presidential executive order to a more liberal policy. In May 1997, for example, it released a large number of files on its subversion of a democratically elected government in Guatemala. As well, a manual detailing the use of common household objects to kill someone was released. In the archival desert that is the CIA, this was an oasis.

Perhaps the most significant release of once ultra-secret material occurred in 1995-96, when the US National Security Agency (NSA) released its 'Venona' material. Venona was the code name for a vast operation, which recorded and decoded thousands of Soviet intelligence and diplomatic cables from 1943 to the early 1950s. Some of this involved cables to Moscow from the Soviet embassy in Canberra and touched on what became known as the 'Petrov affair', after the name of a Soviet spy who defected in Australia in 1954.

But all has not been sweetness and light. Within both the CIA and the British MI5, recalcitrant forces have tried to minimise and block this liberalisation. Three years ago, US President Bill Clinton appointed a panel of experts to oversee a kinder, gentler policy of CIA openness. But several months ago, one academic panel member resigned, publicly accusing the agency of window dressing in its openness policy.

Similarly, the British intelligence establishment as a whole totally opposes the release of virtually any intelligence material. When the NSA proposed the release of its Venona cables between Canberra and Moscow, British intelligence protested bitterly, since it had a large stake in the original decoding operation. This appears to have had little material effect on the release. However, this absolute British opposition has a continuing material effect on what Australian intelligence agencies release. Time and again, ASIO officers stand up in Australian tribunals to explain that British opposition to release of material on joint operations means nothing can be released. It will be fascinating to see what 'new Labour' will do in regard to MI5 files.

ASIO and the Archives Act: 1997 and beyond

Even before the current Archives Act was passed in the 1983 parliament, ASIO fought any obligation to release any material. It lost that time. But ever since, it has mounted several attempts to gut the Act insofar as it affected ASIO. It has made little headway, largely because most canny observers realise that if ASIO is granted special dispensation, other 'sensitive' agencies like Foreign Affairs and Defence will join the queue.

What is at stake?

According to ASIO, the majority of requests for its archives are nice, safe, personal requests from curious children to see Auntie May's ASIO file. ASIO saves its wrath for a small minority of researchers who, they imply, request unreasonable numbers of files and divert time and money to their narrow personal requests. I cannot speak for every researcher, but most of this minority are, like me, either historians, journalists or academics. The fruit of their research eventually finds its way into the public domain for all to see, in books, newspapers, files and scholarly articles.

Thus, what is at stake in any alteration to the Archives Act is not the rights of a bunch of idiosyncratic researchers (the 'archive rats'), but something more significant: The right of the public to know part of the history of Australia.

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