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Using the Privacy Act as a research tool

Larry Hannant

SIX YEARS AFTER Canada's Access to Information Act came into force, historians and general-interest writers have begun at last to appreciate its values and make use of it as a research aid. In the course of doing so, they have also run up against its limitations.¹

Much less attention has been devoted to the Privacy Act, federal legislation which came into force in 1982. At first glance, this inattention seems warranted. Whereas the Access Act is readily identifiable as a useful can-opener to pry apart fusty government vaults, the Privacy Act deals with individuals; using it seems more like snooping than righteous disclosure.

In fact, the Privacy Act can be a helpful device to obtain hard-to-get primary records. Surprisingly, it can also capture interesting secondary material. So, even though it has more limited possibilities than the Access Act, historians and other writers ought to consider it another weapon in their arsenal.

In this brief note I will outline some of the conditions under which the Privacy Act can be used for research on subjects of historical and contemporary interest. I will describe, too, how the Act has been used to gather some noteworthy, and previously-unavailable, background material for a biography of the redoubtable social activist Claire Culhane.

Born in 1918, Culhane became active with the Communist Party in her native Montreal in the 1930s. In 1967 she was hired to work in a Canadian-funded tuberculosis hospital in Quang Ngai, South Vietnam. She was there when the Tet offensive shook the United States forces occupying the country. After her return to Canada, she earned a reputation as a determined critic of the U.S. and of Canada's role in Vietnam as handmaiden to U.S. aggression. Since the mid-1970s she has distinguished herself as a prisoners' rights advocate, lobbying on behalf of, writing about, and battling for hundreds of inmates.

¹See, for example, Gregory Kealey, "The Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the National Archives and Access to Information: A Curious Tale," in *Labour/Le Travail*, 21 (1988), 199-226.

The Privacy Act in theory — how to use it

The Privacy Act was passed by parliament as a bill to allow individuals to discover information about themselves held by government. It was touted as a measure to restrict the type of personal information which can be collected by government on individuals as well as to make it easier for them to learn what has been amassed and, if necessary, to correct errors.

Because the Act deals exclusively with individuals, it is most applicable to a project in which one person figures prominently, such as a biography. But because it allows one to request information on significant people within a group, the Act can also be used to collect valuable supporting details on organizations. Anyone contemplating a study of the Waffle, for example, ought to be knocking on the doors of personalities like Jim Laxer and John Richards with a fistful of Privacy Act request forms.

In the case of contemporary topics, be prepared for outright rejection by police forces like the RCMP and the Canadian Security Intelligence Service. Since 1983 several people who have been politically active in the past 20 years have attempted to use the Privacy Act to obtain their records from the RCMP and CSIS. Only one, Winnipeg activist Nick Ternette, has been able to pry out anything, and this only after lengthy court battles with the RCMP. Both the Mounties and CSIS utterly reject letting out of their grasp anything they consider still to be of a sensitive nature, and the Act allows them plenty of latitude to do so. Other government departments, however, can be much more fruitful sources.

The nature of the modern state requires that even if there is no equality of economic and political power between individuals, there is a roughly-democratic surveillance system. If anything, the poor and powerless, by a strange twist of fate, might find they have information riches which humble their wealthier and more influential fellow citizens. There is probably no doubt about who has the bigger CSIS databank account: Hardial Bains or Conrad Black. Getting the key to the jackpot, however, is another matter.

Since everybody gets counted, probed, and scrutinized, usually more often than they wish to be, most people will have government records. But few people pause to consider just how broad-ranging the data-collection is. Legion indeed are the government departments compiling information on all of us. The result is a welter of possible federal government sources of data — mundane ones such as public service, health, employment, military, and tax records, as well as those derived from the growing intrusive role assumed by the police, security agencies, external affairs, immigration, and corrections.

The conditions under which such records can be accessed are strict. Under the Privacy Act, individuals must apply for the information kept on them. Both the Privacy Act and the Access to Information Act prevent others from obtaining information about an individual, except with the written permission of the subject. Moreover, once a person dies, the Privacy Act prevents release of information on

her for up to 20 years. Because the 20-year rule places such a restrictive clamp on information, writers contemplating projects on elderly social, labour, and political personalities ought to begin the Privacy Act legwork immediately.

Once a person is dead more than 20 years, the Access Act can be used to obtain vital facts. For example, an Access request could help unearth details about what the RCMP and the Bank of Canada thought of William Aberhart, the former premier of Alberta who died in 1943. But the chance is good that at least some of the government's gleanings would have been scrapped in the interim, because the Privacy Act allows government departments to dispose of personal information or give it to the National Archives, if it is historically valuable. Such disposal or transfer must, however, follow certain rules set out in the Act.

Requesting information under the Privacy Act can be a bewildering experience. Fortunately, the initial step of identifying which department might have information is smoothed somewhat by a fat official document found in most public libraries. This mammoth index of federal agencies covered by the Act and descriptions of the databanks they have is published each year by the Treasury Board, which administers the legislation. Personal information request forms come with the index, and fortunately are much shorter than income tax forms.

Nevertheless, deciding which databank might contain relevant information is a mind-numbing chore. This is especially so if your subject, like many people, has interacted with the government bureaucracy in a variety of guises and social roles — whether as recipient, advocate or opponent. One saving grace is that it is not always necessary to keep the request within the bounds of distinct databanks. The Act allows a person to submit a general description of information sought, so long as the person is able to “provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.” [Section 13(2)] So it makes good sense to include a written description of the desired information as well as to list what seem to be appropriate databank numbers. If supporting documents are available, include those with the request.

Applying for personal information is one thing; getting it is another. Like the Access to Information Act, the Privacy Act provides ample justification for government agencies to keep what they know under lock and key. Many databanks have been exempted by order of the federal cabinet. This includes both those which severely restrict the Access Act (relating, for example, to national security, matters subject to solicitor-client privilege, information obtained in confidence from other governments, etc.) and those peculiar to the Privacy Act, such as those which hold information pertaining to security clearances that might reveal a confidential source.

Once a Privacy Act request is received, an institution has 30 days to reply to it. This does not mean, however, that a wait of one month will bring a windfall of facts. A host of clarifications, requests for further information, and correspondence will likely delay the arrival of any material, especially if there is an extensive file. In practice, as we shall see in the case of Claire Culhane's requests, three to five

times the prescribed time may elapse before much of substance arrives.

How the Privacy Act works in practice — the Claire Culhane case

One could not find a better subject for a Privacy Act search than Claire Culhane. In the course of more than 50 years of political activism Culhane has run afoul of many government departments — RCMP, the Canadian International Development Agency (CIDA), the National Parole Board, and Correctional Service Canada, among others. The private views of some of them we will likely never know. What External Affairs Minister Mitchell Sharp said in cabinet meetings about the doughty thorn in the side of his foreign policy the Privacy Act cannot reveal, since cabinet deliberations are exempt from the Act. Still, the requests have proven to be a useful adjunct to other research routes pursued by author Mick Lowe, who is writing Culhane's biography.

Using the Treasury Board index of personal information, Culhane initially requested files from 27 databanks held by eleven government departments and agencies. A full response usually took far more than the 30 days specified by the Act. By the time clarifications were requested and provided and searches renewed, as much as five months had elapsed. The result was sometimes worth the wait.

Some inquiries unleashed a cataract of information. CSIS provided 466 pages of information, much of it compiled by the RCMP, and dating back to her activism in Montreal in 1940. Although the RCMP appears to have had no record of her teenaged political involvement on behalf of the Spanish Loyalists, the file reveals a high level of surveillance from that time forward. She was tracked to Victoria, Vancouver, and then back to Quebec in the 1950s. The Force dutifully noted personal traumas — like the ups and downs of her marriage — and triumphs — like her vociferous cries from the public gallery of the House of Commons against Canada's connivance on behalf of the U.S. in the Vietnam war.

The documents she received have not provided an answer to one of the intriguing mysteries of Culhane's life: how an activist of her standing was cleared to work in a project in such a sensitive spot as Vietnam. She was screened. A 7 July 1967 letter from the External Aid Office (now CIDA) asked the RCMP to conduct a record check on Culhane. In August the RCMP replied with "all available information concerning Claire Culhane," asking, in turn, to "be informed of the course of action which is taken as a result of the attached report." The External Aid Office acknowledged that "it would not be in the interest of this office to employ this person." But they did not do so until July 1968. Meanwhile, Culhane went to Vietnam. Exactly what vital wires got crossed, the documents do not show.

This episode points to one of the limitations of the Privacy Act. Because the Act gives the authorities plenty of legal opportunities to make cuts, the resulting

documentation may be hit and miss. And the records are not always primary-source material. Indeed, a good portion of the CIDA, CSIS, and Correctional Services files which Culhane has received are not primary sources. Much of it is from secondary sources, including newspaper clippings from a bewildering variety of prominent dailies and obscure weeklies. The CSIS file also contains the entire contents of a 100-page booklet she wrote — “Une Québécoise au Vietnam.”

In some ways, this is a disappointment. One discovers only a few of the anxieties officialdom harbors against the woman June Callwood has called “the country’s busiest and best one-woman parade.” But even sanitized as they have been, such files are of immense value. Having such a wealth of secondary sources in one place is itself no small benefit.

The extent of the exemptions in Culhane’s records is daunting. The correctional service sent her a list of 146 pages deleted from the five volumes of material covering some ten years of her prisoners’ rights advocacy. Whole pages were exempted; in some cases virtually an entire file was blanked out under Section 26 of the Act, which allows a government institution to refuse to disclose any personal information about an individual other than the one who made the request. Since Culhane works on behalf of individual prisoners, these files often related to them and so are legitimate felt-pen targets. But such sweeping deletions might not apply to requests different from Culhane’s.

Culhane was an ideal subject not only because of the volume of her files and breadth of her interaction with the state. She is also highly skilled at dealing authoritatively with bureaucrats. Equally important, she’s indefatigable. Like much legislation, the Privacy Act is legally intricate enough to stump most mortals who do not possess a law degree. Culhane did not let official bluff put her off. Bureaucratic gobbledygook offers her an irresistible challenge, and she steadfastly refused to take “notwithstanding” for an answer.

Not every historical subject who takes on the chore will be so persistent or skilled. Fortunately, researchers can use the Privacy Act by obtaining the written consent of their subject and then doing the spadework themselves.

The prize might be slightly disappointing to those who dream of what documentary wealth a truly open Privacy Act could yield. But amid the dross will be nuggets that make the dredging process worthwhile.

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