

Ethical destruction?

Privacy concerns regarding public records in Sweden, 1900–2015

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This version with minor corrections regarding format, language etc.

Purpose and aims

The Swedish so called “principle of public access to official documents” (*offentlighetsprincipen*) is regarded as a national pride, with constitutional founding in the Freedom of the Press Act of 1766. However, this principle of free access to official records as the main rule is under constant debate. Some argue that the exceptions from the rule, particularly in the secrecy legislation, go too far – making it difficult for journalists, academic researchers and others seeking information.¹ On the contrary, others mean that the access to personal information in official records is too liberal, leading to privacy infringements. One of the latest examples in Sweden is the controversy following the commercial database *Lexbase* that collected public information on Swedish citizens within criminal records and sold it to the public.²

This conflict between differing arguments becomes the most sharpened when privacy concerns have lead to proposals and decisions of *destruction of information*, which is today legally regulated for e.g. social security records and several public databases. The controversies around this phenomenon, which I call “ethical destruction”,³ form the nucleus of this project. Ethical destruction is a radical measure, chosen when privacy concerns overweigh others, such as those of transparency, future research, and the possibilities to reuse information.

The overall aim of the project is to analyse differing views of privacy concerns in a longer historical perspective, c. 1900–2015, arguing that they uncover vital aspects of the relationship between individual and society as a whole. The object of study is privacy legislation in Sweden concerning *official records* (records created by or sent to any state or municipal body), with particular focus on the conflict between *keeping* and *destroying* records deemed to be menacing to privacy. Like few other issues concerning archives, this conflict evokes political disputes and is vivid all over the world. In Canada, there was an agreement in 2005 allowing citizens making the decision whether

¹ *Handlingsoffentlighet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003* (Stockholm 2004).

² See <<http://magasinetfilter.se/magasin/2012/40/hadanfarden>>. Another controversy followed the release of photographs of murdered children from the preliminary crime investigation records (*förundersökningsprotokoll*) after the so called Arboga murders in 2008. This led to widespread critique, and a state committee was instructed by the government to examine cases like this, concluding that existing rules of secrecy – wrongly – had been neglected, thus the legislation did not have to change. SOU 2009:72 (*Insyn och integritet i brottsbekämpningen – några frågor*), p. 60–61, 83–84, 175–177. [SOU = *Swedish Government Official Reports*].

³ In Swedish *etisk gallring*, which is the most common expression in Swedish archival discourse along with *integritetsgallring*.

their census acts would be anonymised for eternal future.⁴ Sweden has also increased opportunities for individuals to decide on destruction of information.⁵

The conflict between making records secret (but keeping them) and destroying them seem to have grown since the 1960s, and the core part of the project will be an in-depth examination of tensions between secrecy and outright destruction in that period concerning three categories of records – medical records, social security records and records obtained in certain forms of academic research including personal data, e.g. in sociology and medical research. However, a more extensive survey will also be made on secrecy legislation during a longer time period, from c. 1900 onwards. The main reason, being developed below, is to problematise the assumption that privacy concerns were almost “born” in the 1960s with the computerised society. There were in some respects very strict legislation of secrecy for privacy reasons already in the early 20th century. The project will also seek to highlight various kinds of conflicts – political ones and/or between various interest groups such as archivists and university researchers.

With the focus on records and archiving, the project is bridging “the history of privacy” with the questions on how the “future heritage” is created. There is a tension between two themes sometimes described as typical of our age, increased privacy concerns and heightened interest in the preservation of our history.⁶ This is a question of huge general interest. There are many critical voices concerned that people in the future will not be able to show evidences of oppression and violation in the past, since the records serving as proof would have been destroyed as being threats to privacy. It is also feared that privacy concerns may infringe on contemporary democracy, making a larger part of the information within public bodies inaccessible for journalists and others seeking transparency.

With this project, changes and continuities over time in the views on privacy and ethical destruction will appear more clearly. Preliminary findings show that specific groups of agents such as archivists, researchers, journalists and pro-privacy politicians tend to hold differing opinions that can be categorised as certain ideal-typical “interests” for privacy, economics, transparency, heritage and academic research. The examination of concrete agents and discussions leading to various decisions and legislations can possibly demonstrate complexities and conflicts over time, as well as showing those things and ideas where there was a general agreement at a given time.

Survey of the field

The proposed project combines central themes in contemporary history and archival science. The history of *the ideas of privacy* has been studied from different perspectives. There are surveys analysing the subject in a long time perspective from a perspective of

⁴ Terry Cook & Bill Waiser, “The Laurier Promise: Securing Public Access to Historic Census Materials in Canada”, in Cheryl Avery & Mona Holmlund (ed.), *Better off forgetting? Essays on archives, public policy, and collective memory* (Toronto 2010), p. 71–107.

⁵ E.g. in the present *Patient Data Act* (SFS 2008:355), 8 chap. 4 §, patients can apply for the destruction of information in their own medical records. [*SFS* = *Swedish Code of Statutes*]

⁶ Cf. David Lowenthal, *The Heritage Crusade and the Spoils of History* (Cambridge 1998).

history of ideas,⁷ whereas the major bulk of research – in Sweden as well as in other countries – tend to focus on its connections with the computerised society of the recent decades.

One of these fields is the research on privacy matters connected to the computerisation of society from the 1960s onwards. This is a vibrant research field, with numerous scholarly discussions on the tensions between secrecy and freedom of information, occasionally arguing that privacy concerns are to be seen as an ideology.⁸ Concerning Sweden, there are important investigations on the development of data protection legislation, such as the 1973 Data Act (*datalagen*) and the 1998 Personal Data Act (*personuppgiftslagen*, PuL). Such studies in history and social science have the electronic technology as their main focus, studying different agents' vis-à-vis computers in society,⁹ or the implementation of legislation in the administrative practices.¹⁰ There are also a couple of studies covering more singular examples, most notably the controversy in 1986, when the sociological research project *Metropolit* was heavily criticised in mass media for its longitudinal registration of personal data. After that, the Data Inspection [the government agency guarding privacy interests in personal data] demanded destruction of numerous records in the project.¹¹

Another field is that of the general history of freedom of information and public access in Sweden. The existing literature is of different kinds, but generally wider historical perspectives focussing on the societal contexts of the changes are missing. First, there are a number of historical surveys of a non-academic character by journalists, often being central figures themselves in the public debate on freedom of information vs. secrecy.¹² There are also a number of law studies on freedom of information and secrecy legislation.¹³ Typically, they don't analyse in depth the agents behind different views, rather they discuss the views as they are already there. They identify conflicts of interests on a more principal level, e.g. between integrity concerns and openness concerns.¹⁴ There are also surveys from an archival perspective, most notably Evabritta

⁷ E.g. Ferdinand D. Schoeman, *Privacy and Social Freedom* (Cambridge 1992).

⁸ E.g. Bernd Carsten Stahl, "Privacy and Security as Ideology", *Technology and Society Magazine, IEEE*, vol. 26, issue 1 (spring 2007), p. 35–45; see also Lorna Stefanick, *Controlling Knowledge: Freedom of Information and Privacy Protection in a Networked World* (Edmonton 2011).

⁹ Lars Ilshammar, *Offentlighetens nya rum: teknik och politik i Sverige 1969–1999* (Örebro 2002); Åsa Söderlind, *Personlig integritet som informationspolitik: debatt och diskussion i samband med tillkomsten av Datalag (1973:289)* (Borås 2009).

¹⁰ Sten Markgren, *Datainspektionen och skyddet av den personliga integriteten* (Lund 1984).

¹¹ Gunilla Qwerin, *Metropolit i massmedia: en studie av hur Metropolitprojektet bevakades och beskrevs av TV och Stockholmstidningarna* (Stockholm 1987); Sten-Åke Stenberg, *Född 1953: folkhemsbarn i forskarfokus* (Umeå 2013).

¹² Eva Spira & Ann Dahlin (ed.), *7:16 – och andra hot mot öppenheten: om offentlighet och sekretess i Sverige och EU* (Stockholm 2000); Nils Funcke, *Tryckfriheten: ordets män och statsmakterna* (Stockholm 2006); Anders R. Olsson, *Att stänga det öppna samhället – om ett politiskt missbrukat begrepp: personlig integritet* (Enhörna 2008).

¹³ Hilding Eek, *Om tryckfriheten* (Stockholm 1942); there are also historical parts in handbooks and legal commentaries, such as Alf Bohlin, *Offentlighetsprincipen*, 8th ed. (Stockholm 2010); Carl Norström, *EU och den svenska offentlighetsprincipen* (Stockholm 1995).

¹⁴ E.g. Patricia Blanc-Gonnet Jonason, "Integritetsskyddet och offentlighetsprincipen i IT-samhället: en jämförelse mellan den svenska och den franska modellen", in Cecilia Magnusson Sjöberg & Peter Wahlgren (ed.), *Festskrift till Peter Seipel* (Stockholm 2006), p. 51–76; cf. also Stig Strömholm, *Integritetsskydd i massmedia*, Det 28. nordiske juristmøde i København 1978 (available at:

Wallberg's study on 20th century secrecy legislation concerning military records, from a descriptive perspective including focus on various more or less legal practices within the military to avoid openness.¹⁵

When looking at the secrecy legislation in a longer time perspective, it is easily detected that there was a concern for privacy early on, e.g. for the "sanctity of private life" (*privatlivets helgd*) as it was called in the 1937 Freedom of the Press Act.¹⁶ At that time, it was for example decided that secrecy to protect personal information in certain cases would last for up to 70 years, which is still the case.¹⁷

These facts produce one of my major research questions, concerning the actual level of increase of privacy concerns when computers entered society. It is still in many cases an open question whether increased privacy concerns are related to late modern computers, or if it is rather a phenomenon typical of modernity.¹⁸ The research concentrating on the effects of computer society tend to emphasise a sharp rise in privacy concerns in Sweden in the 1960s, part of an international trend where e.g. single works such as Alan W. Westins *Privacy and Freedom* (1967) can be noted.¹⁹

However, it can be questioned whether this increase to some extent can be explained that privacy in the 1960s was conceptualised as a *topic of its own*, even if it existed long before that, but seldom as a public debate issue. That is why I will extensively study also the earlier parts of the 20th century, and by including non-electronic records in the analysis, it will hopefully be possible to give new perspectives on the actual importance of computerisation in the privacy debates.

I agree with those researchers that have earlier questioned the tendency to oversimplify the relations between individual and society during modern history, for example by giving a predominantly positive or negative picture of the modern welfare state.²⁰ The long historical perspective and my ambition to highlight concrete agents, will hopefully lead to a deepened understanding of the issue. The analysis of views on privacy concerns vs. the interests of society as a whole should also be seen as an analysis of a kind of political ideas. Like e.g. nationalism and ideas concerning the relations between humans and nature, the ideas on privacy cannot easily be connected to the traditional political ideologies, which only make them even more interesting.

<http://jura.ku.dk/njm/28/>). Law studies on secrecy tend to be normative, striving to influence legal praxis, e.g. to strengthen medical patients' rights in privacy and secrecy matters; Ulrika Sandén, *Sekretess och tystnadsplikt inom offentlig och privat hälso- och sjukvård: ett skydd för patientens personliga integritet* (Umeå 2012).

¹⁵ Evabritta Wallberg, *Rikets säkerhet: försvarssekretessen i ett historiskt perspektiv* (Stockholm 2001).

¹⁶ SFS 1937:729, 2 §, 2:o (p. 1536). See also SFS 1897:34, p. 8–9 (secrecy for personal information in state church records, if openness would be harmful for them: "enskilda personers lefverne och seder, så vidt de lända dem till skada eller förklenande").

¹⁷ The 70 years principle was proposed in the legislation process by the National Archives, prop. 1937:107, p. 38–39. [*prop.* = *Swedish government bill*]

¹⁸ The split image becomes visible when different scholars' views on privacy matters are put together: "Identifiering på gott och ont", *Forskning och framsteg* no. 4, 2007.

¹⁹ Ilshammar, *Offentlighetens nya rum*, p. 123–129; cf. also Olle Abrahamsson, "Integritetsskyddet i samhällsdebatten", in SOU 2007:22, del 1, p. 493–535.

²⁰ Urban Lundberg & Mattias Tydén, "Stat och individ i svensk välfärdspolitisk historieskrivning", in Marika Hedin et al., *Staten som vän eller fiende? Individ och samhälle i svenskt 1900-tal* (Stockholm 2007), 17–39. Lundberg and Tydén are presently producing a book with results from the research project *Staten kontra individen: individuella rättigheter i Sverige 1809–2000*.

I also intend to put views on privacy in a wider context, relating my findings to major theories on modern historical development and their impact on the role of the individual in society, such as Foucauldian theories of the ‘surveillance state’ and various theories that hold forward that we live in a new epoch since the 1960s and 1970s. For example, critical theories on late capitalism or “flexible capitalism” tend to emphasise that today’s society celebrates the alleged free individual at the expense of society or the common good – not only in ideas but also e.g. in the organisation of the work-life.²¹ Should increased privacy concerns be interpreted as an effect of such individualism?

Turning to *archival science*, there is a growing field of research on the position of archives in a wider societal context. While much of the focus still lies in the role of archivists themselves in deciding what to keep for the future, there are studies positioning archives in politics as a whole. This project is especially relevant for the existing subfield on secrecy and possibilities to individual access to records and accountability.²²

Typically, scholarly research in archival science is aiming at raising the general consciousness in the archival community of their profession not being impartial and uninfluenced by politics and power structures.²³ Overall in the late 20th century, archival institutions all over the world have actively worked for openness, freedom of information and transparency,²⁴ warning that the trend towards information destruction for privacy reasons might in fact be devastating for those very individuals whose privacy are to be protected, since those records can be the only existing evidences of various forms of misdeeds. It has been argued that if the Holocaust would happen today, evidences would be destroyed for privacy reasons because of the data protection legislation. In Sweden, the same argument is voiced concerning e.g. the forced sterilisation around the mid 20th century.²⁵

There is some Swedish research relevant for the proposed project, for example studies on relations between the National Archives and the Data Inspection in their on-going consultation on how to deal with registers with personal data,²⁶ and there are also other studies covering the archives’ appraisal decisions – such as my own project *What is kept in the archives*, where the focus lies on heritage discourses in retention decisions.

²¹ E.g. Fredric Jameson, *Postmodernism, or, The Cultural Logic of Late Capitalism* (Durham 1991); Richard Sennett, *The corrosion of character: Personal Consequences of Work in the New Capitalism* (New York & London 1999); Luc Boltanski & Ève Chiapello, *The new spirit of capitalism* (London 2005).

²² Margaret Procter, Michael Cook & Caroline Williams (ed.), *Political pressure and the archival record* (Chicago 2005); Verne Harris, “Against the grain: psychologies and politics of secrecy”, *Archival Science*, vol. 9 (2009), no. 3–4, p. 133–142.

²³ E.g. Verne Harris, *Archives and justice: a South African perspective* (Chicago 2007); Randall C. Jimerson, *Archives Power: Memory, Accountability and Social Justice* (Chicago 2009).

²⁴ Lajos Körmendy, “Changes in archives’ philosophy and functions at the turn of the 20th/21st centuries”, *Archival Science* vol. 7 (2007), p. 173; see also the ICA [International Council of Archives] Code of Ethics; <http://www.ica.org/5555/reference-documents/ica-code-of-ethics.html>.

²⁵ Eric Ketelaar, “Archival Temples, Archival Prisons: Modes of Power and Protection”, *Archival Science* vol. 2 (2002), p. 229; Berndt Fredriksson, “Vad skall vi bevara? Arkivgallringens teori, metod och praktik”, *Arkiv, samhälle och forskning* no. 2, 2003, p. 48.

²⁶ Peter Sivervall, ”Bevara eller gallra personuppgifter i personregister – samrådsförandet mellan datainspektionen och Riksarkivet åren 1974–1994”, student thesis in archival science (Stockholm 1996).

The existing archival literature on the conflicts between privacy and archival retention, even though they often have an element of being parts of a general debate, offer many empirical examples of the destruction–retention conflict in today’s society. In particular, it is connected to the conflict between privacy concerns in data protection legislation (in EU, following the 1995 data protection directive) with the interests of archiving,²⁷ as well as the conflict between secrecy and openness in general.²⁸ Therefore, such studies can be used for extensive international comparisons with the results from the largely empirical research that is intended in this proposed project. Are privacy concerns generally “stronger” in other countries, leading to more ethical destruction, and is the Swedish freedom of information legislation still standing out with openness being the general rule rather than secrecy? Or, has the wave of international freedom of information legislation over the last decades diminished that difference?²⁹ And what are the implications of the integration of Sweden into the European Union, and the fragmentation of the welfare state?

To sum up, from the 1960s, and particularly after the Data Act of 1973, there has evolved a sort of struggle between an “integrity camp” – demanding increased record destruction for the sake of privacy – and a “retention camp” – stressing the future importance of archival material about individuals although sensitive right now. The question remains current through the 1998 Personal Data Act, the large number of register laws, and at this writing some commentators fear that the new European Union General Data Protection Regulation risks threaten both the principle of public access to official documents and further impose mandatory destruction of information.³⁰

Project description

The project will analyse secrecy legislation in Sweden from c. 1900 to the present day (2015). The analysis will be made on two levels; a more *extensive* one aiming at catching the main overall tendencies concerning the handling of official records deemed menacing of privacy reasons. For demarcation reasons, a more *in-depth* part of the project will analyse the discussions concerning three categories of records, mainly in the period c. 1965–2015 when ethical destruction has become a common solution.

The extensive part of the study will aim at presenting a comprehensive image of secrecy legislation intended to protect personal privacy, including the eventual rise of the demands of ethical destruction of records. This means figuring out major tendencies

²⁷ Tim Cook, “Archives and Privacy in a Wired World: The Impact of the Personal Information Act (Bill C-6) on Archives”, *Archivaria* 53 (2002), p. 94–114; Malcolm Todd, “Power, Identity, Integrity, Authenticity, and the Archives: A Comparative Study of the Application of Archival Methodologies to Contemporary Privacy”, *Archivaria* 61 (2006), p. 181–214; Livia Iacovino & Malcolm Todd 2007, “The long-term preservation of identifiable personal data: a comparative archival perspective on privacy regulatory models in the European Union, Australia, Canada and the United States”, *Archival Science* 7 (2007), p. 107–127.

²⁸ Livia Iacovino, “Archives as Arsenals of Accountability”, in Terry Eastwood & Heather MacNeil (ed.), *Currents of archival thinking* (Santa Barbara 2010), p. 181–212, 192–193.

²⁹ Cf. Blanc-Gonnet Jonason, “Integritetsskyddet och offentlighetsprincipen”, p. 56–59.

³⁰ Staffan Dahllöf, Nils Funcke & Fredrik Laurin, ”EU:s nya datalag oförenlig med svenska grundlagar”, *Dagens Nyheter* 13 April 2013.

concerning what records are protected from open access, *under what conditions*, for how long, the possibilities for individuals to decide on the secrecy of information concerning themselves, and whether certain agents (e.g. certain public authorities and academic researchers) may get access to normally secret information. That has been a topic e.g. concerning civil registration (*folkbokföring*)³¹ and crime investigation records. On this level – including the influence of the Data Act (1973) and Personal Data Act (1998) in the fields of archival retention – I will explore the overall tendencies with the help of important changes in legislation. However, in this part there will be no systematic analysis of the source materials *preceding* the regulations, as in the in-depth study, which is presented in the following, including a fuller account of the sources to be used.

In order to demarcate the study into a manageable level, I have chosen three fields for a more intensive analysis: social security records, medical records and research records. They are all areas that have been largely discussed in politics and society in general for a long time, and they all contain both non-electronic and electronic records:

A. Social security records and *B. Medical records*. Both these record categories have been widely debated. Since 1936, there was a law on social security registers, stipulating general secrecy for outsiders.³² Still, social security records and medical records were for long normally kept in archives. However, in the 1970s and 1980s a number of inquiries were made, fuelling demands for destruction for privacy and/on economic reasons,³³ leading to legislation concerning retention and destruction of medical records in 1985 (renewed in 2008) and social security files in 1991.³⁴

C. Research records. The project would in this part study a constant discussion on personal privacy interests in certain research data, a recurrent theme in politics and in particular cases involving the Data Inspection and the National Archives. At some times, these issues concerning privacy and records in universities have come to public attention, influencing the discussion as a whole. Apart from the already mentioned Metropolit debate in 1986, one can mention the controversy in 2003–05 when research material connected to the disputed psychiatric diagnosis DAMP was illegally destroyed.³⁵ Sometimes it is claimed that researchers have a generally low awareness of freedom of information and archival legislation that hypothetically leads to instances of “unofficial” ethical destruction and conflicts with e.g. archival authorities.³⁶ A more specific issue within this category is the development of a research ethics policy, which

³¹ SOU 1990:18; SFS 1990:1536.

³² SFS 1936:56 (*Lag om socialregister*), 8 §.

³³ E.g. Ds S 1982:5 (*Bevarande av journaler m.m.*) and Ds S 1986:5 (*Gallra och bevara socialtjänstens personregister*), with archived consultation bodies' opinions in: regeringsakt 1985-03-28 no. 39 and regeringsakt SocD 1992-02-13 no. 01, both in *Socialdepartementets arkiv, huvudarkivet 1975–* (National Archives, Arninge).

³⁴ *Patientjournallag* (SFS 1985:562); *Patientdatalag* (SFS 2008:355); *Lag om ändring i socialtjänstlagen* (SFS 1990:789); *Förordning om ändring i socialtjänstförordningen* (SFS 1991:26).

³⁵ See eg. parliamentary motion 2003/04:K379 demanding legislation changes after the DAMP controversy.

³⁶ Samuel Edquist, ”Bevarande av forskningsmaterial 1967–2014: tvång eller fri vilja?”, paper at *Svenska historikermötet*, Stockholm 8–10 May 2014. See e.g. examples in dnr 31-353-96 in F3BA vol. 336, *Riksarkivets ämbetsarkiv, yngre huvudarkivet* (National Archives, Stockholm).

also deeply involved the archival institutions.³⁷ Still today, the rules on retention or destruction of research records are somewhat contradictory, with archival legislation and specific regulations from the National Archives standing against regulations from the Data Inspection and various register laws.³⁸

It could also be well argued that other kinds of records could be chosen, for example crime investigation records, but the three categories above should hopefully be sufficient. It can also be argued that one should include such records where almost no one (publicly) demands long time preservation, such as camera surveillance data or information gathered by national intelligence surveillance from data and telephone traffic.³⁹ Examples of the later cases, as well as the opposite where there is a consensus for retention, for example civil registration data, will however be shortly discussed in the project as contrasting cases, helping to understand why there are conflicts between retention and destruction in some areas but not in others.

I will be covering a number of agents – or interest groups – that are involved in the discussions on privacy in records. Apart from *politicians* inside and outside of government, the legislation processes have also included – thanks to the consultation system normally preceding legislation – archival institutions, various public authorities (state and municipalities), professions (e.g. researchers, trade unions, etc.), mass media, and occasionally other citizen groups, such as patient organisations, genealogists and amateur historians. In my preliminary findings (see below), the debates on privacy issues can to a large extent (of course not generally) be described as conflicts between interest groups such as archivists, researchers, journalists and pro-privacy politicians. Interestingly, academic researchers typically figure on two sides – in some cases they are the ones creating and keeping records that are seen as menacing to privacy, otherwise they are the ones wanting access to records for their own research.

Building upon my preliminary findings, I intend to use a set of five ideal-type ”interests” that will be useful for structuring the source material, where the opinions vary concerning access to records containing personal information. Two of them work for destruction, and three for retention:

- The *privacy interest* primarily works for protecting personal privacy. Typically, it leads to demands on various levels of secrecy or ethical destruction.
- The *economic interest* is often an important driving force for destruction of records.⁴⁰ This “interest” is generally a result of limited resources in state and municipalities, seldom a target in itself but rather a necessity.
- The *transparency interest* is the view that records should be kept as *evidences*, for individuals to control their own contacts with authorities, e.g. medical records and surveillance acts from the security police. This interest for

³⁷ E.g. SOU 1989:74 (*Forskningsetisk prövning*), with archived consultation bodies’ opinions in: vol. 14 in *Datalagsutredningens arkiv*, YK 4421 (National Archives, Stockholm).

³⁸ See e.g. <http://www.codex.vr.se/en/forskningagande.shtml>

³⁹ Cf. Ola Svenonius, *Sensitising urban transport security: surveillance and policing in Berlin, Stockholm, and Warsaw* (Stockholm: Stockholms universitet, 2011).

⁴⁰ Destruction decisions in order to remove *redundancy and information over-load* is not included in this model, since it is probably not a central theme (even though it is often central in archival appraisal at large).

transparency and accountability also applies for the general right to control the deeds of the authorities, by single citizens or by mass media.

- The *heritage interest* stresses that information should be kept in order to provide the society of the future with the best possible view of the past.
- The *research interest* wants information to be kept in order to help academic research. In social and historical sciences, there is no sharp limit towards the heritage and transparency interests. The research interest is more “purified” when it comes to medical research.

This model is a starting point, and it will probably be redefined and sharpened during the research process. Its methodological benefits lies to a large extent in the fact that the different interest types are not mutually exclusive; on the contrary they are often combined and/or contrasted within the same agent or interest group. Different ideas become more “valid” if they meet other conflicting ideas and still “survive”. There is always a risk in studying ideas and texts, that a positive view on a certain issue might be pure rhetoric, which is readily wiped away when posed against something else. For example, very few are in principle *against* the value of documenting society for future heritage. For some, however, it will be easily sacrificed if it costs too much or if it risks personal privacy.

Sources to be used

To begin with, I will make an extensive survey on relevant aspects in the secrecy legislation in Sweden from c. 1900 to the present day, much due to the fact that so far, no comprehensive analysis has been made. The secrecy legislation is tightly connected to the freedom of information legislation, which has been valid for records created by or submitted to government agencies – from 1937 also municipal and county council agencies.⁴¹

Until 1937, the detailed rules on secrecy were included in the Freedom of the Press Act, thus having constitutional status. At that time, a special law on secrecy was introduced, replacing the detailed rules in the Freedom of the Press Act with a number of key purposes for which secrecy may be legislated, for example national security, crime prevention and individuals’ privacy and economical concerns. Thereby, the parliament could change the secrecy rules easier, by simple majority decisions. The law has been completely renewed twice, in 1980 and 2009,⁴² and even more importantly: it has been changed a vast number of times, in recent decades normally several times a year.

There have also been other important laws, specifically concerning social security files and medical records, for example. Another category is the so-called register laws (*registerlagar*), mainly covering specific electronic records, where destruction of records is the main rule, whereas retention is optional.⁴³ From 1997 and onwards, the

⁴¹ Before 1937, the status of municipal records was disputed (prop. 1936:140, p. 7).

⁴² *Lag om inskränkningar i rätten att utbekomma allmänna handlingar* (SFS 1937:249); *Sekretesslag* (SFS 1980:100); *Offentlighets- och sekretesslag* (SFS 2009:400).

⁴³ Sören Öman, “Särskilda registerförfattningar”, in Cecilia Magnusson Sjöberg & Peter Wahlgren (ed.), *Festschrift till Peter Seipel* (Stockholm: Norstedts juridik, 2006), p. 685–705; there is also a database over register statutes set up by the Swedish National Archives.

National Archives have therefore issued a number of *retention* regulations concerning these kinds of records.

A major part of the source material will consist of official print from the legislative process: public investigations ordered by the government (in the series *SOU*, Swedish Government Official Reports, and *Ds*, Ministry Publications Series), government bills, parliamentary motions, parliamentary committee reports, parliamentary debates and the final laws and ordinances. I will also study some archival material created in these processes, particularly consultation bodies' opinions (*remissyttranden*) on official inquiries, normally found in the government archives.

For the in-depth part of the study, I will also include internal inquiries made in key public authorities such as the National Archives (*Riksarkivet*), the National Board of Health and Welfare (*Socialstyrelsen*, including *Medicinalstyrelsen* before 1968) and the university authorities (the present *Universitetskanslersämbetet* with predecessors). For example, the National Archives performed inquiries concerning social security files and medical records in the 1970s, in co-operation with representatives of the municipalities.⁴⁴

To complement the consultation bodies' opinions in the legislation process, I will include debates on the topics in some interest groups' branch journals, such as *Arkiv, samhälle och forskning* and *Nordisk arkivnyt* (for the archival profession), *Pressens Tidning/Medievärlden* (the press) and *Universitetsläraren* (university teachers, incl. predecessors before 1984).

Significance

This project will contribute to further understanding of the history of the overall concept of individual privacy, because of the historical examinations as I have argued above.

In the field of archival science, the project will contribute to subfields such as research on accountability issues, and bring more light to the processes whereby the future documentary heritage is created. In particular, the project will develop the understanding of archival processes in a wider societal perspective – *archival politics*.

The proposed project will also be relevant for wider societal discussions, since questions of privacy and the keeping evidences of potential misdeeds probably will be topical for a long time.

Preliminary results

The project proposed here partially builds on some “side results” from my older project *What is kept in the archives?* that ends in 2015. There, I analyse the reasons for long-time preservation *in general* – a very different question than the ones proposed here. However, investigations in that project have led to some preliminary findings and tendencies, concerning the tension between retention and “ethical destruction”. For example, in the 1980s legislation process on social security records and medical records, the conflict between retention and ethical destruction was very palpable, and the

⁴⁴ *SOU 1975:71 (Landstingens arkiv – slutbetänkande)*, p. 113; *SOU 1977:40 (Socialtjänst och socialförsäkringstillägg: lagar och motiv)*, p. 746.

economical aspects of keeping records were also a key argument. The economical aspects were also visible in the 1930s, when non-obligatory registration of social registries were proposed as a minority view – since registration would be a heavy load on small municipalities.⁴⁵

Sample examinations on secrecy legislation in the period c. 1900–1965 also show that there were sometimes quite strict secrecy rules in certain cases, making a long historical perspective relevant for a larger study. For social security registries, the law of 1936 demanded absolute secrecy for all outsiders, with no time limit. In fact, it was only in 1961 that the law was changed giving possibility for researchers to get access to the registries.⁴⁶

Hypothetically, there was a boom of ”destruction” until the 1980s, when the retention interest seems to have been strengthened by the Archives Act in 1990. However, in most periods, there are obvious examples of tensions between different groups of agents. Archival institutions seem to have been fighting for preservation of records even if they were a danger to privacy. The Swedish National Archives defended research interests but also used the argument that ethical destruction risked wiping out traces of misdeeds in history, creating a beautified picture of the past.⁴⁷

Archives and universities seem to have been largely united in defending retention interests, for example in the prolonged discussions from the 1960s to the 1990s on archival retention in certain sample regions (*intensivdataområden*), for the interest on longitudinal research. These discussions affected all the three record categories I have chosen for in-depth analysis, resulting in today’s legislation where all social security records are to be preserved in some Swedish counties and from individuals with certain birth dates.

However, there are signs of conflicts between archives and universities connected to privacy vs. retention interests, not the least in cases when researchers, for example, have wanted to protect their informants in questionnaires and medical examinations from ending up in archives. It can be seen in the legislation process on social security records, medical records and research ethics. This is partially connected to divergences in the views of the status on research data, with a common conception in the scientific community that researchers ”own” their research materials, even though the legal framework largely regards them as official records that should be treated thereafter.⁴⁸

Concerning the political arena, there seems to be a tendency that the privacy interest to some extent has been a dividing factor between political parties, with non-Socialists closer to the ”privacy” node while the Social Democrat government bill in 1990 –

⁴⁵ E.g. *Andra lagutskottet* no. 18, 1936, dissenting opinion by K.G. Westman and Gustav Albert Johansson i Hallagården: ”Pappersmängder och skrivelser böra ej onödigtvis tynga förvaltningen”.

⁴⁶ SOU 1977:40 (*Socialtjänst och socialförsäkringstillägg: lagar och motiv*), p. 741.

⁴⁷ E.g. PM 1986-12-23 by Staffan Smedberg, dnr 707-87-55 in F1D vol. 48, *Riksarkivets ämbetsarkiv, yngre huvudarkivet* (National Archives, Stockholm); see also the criticism from the National Archives towards *Socialutredningen* in prop. 1979/80:1, p. 324–326 and 446–450. Also amateur historians were largely critical towards ethical destruction of records; see opinions from Riksförbundet för hembygdsvärd, Genealogiska föreningen and Sveriges släktforskarförbund regarding a National Archives proposal for ”appraisal policy”, in dnr 124-91-32, F1D vol. 184, *Riksarkivets ämbetsarkiv, yngre huvudarkivet* (National Archives, Stockholm).

⁴⁸ Edquist, ”Bevarande av forskningsmaterial 1967–2014: tvång eller fri vilja?” (cited above).

preceding the Archives Act – made a mark against ethical destruction.⁴⁹ In the decision process of the 1980 Secrecy Act, a conservative MP marked that medical records should not be seen as official records at all, but rather as ”working papers”, thus not accessible: “The justification for ‘the principle of public access to official documents’ in Swedish law is based on the notion of the citizen’s need and right to control authorities. However, there is neither a need nor a right for the citizen to infringe other citizens’ privacy”.⁵⁰

⁴⁹ prop. 1989/90:72, p. 40.

⁵⁰ *Konstitutionsutskottet* no. 37, 1979/80, p. 47 (Gunnar Biörck, m). [”Motiveringen för ”offentlighetsprincipen” i svensk lagstiftning baseras på föreställningen om medborgarens behov av och rätt att kontrollera myndigheterna. Något medborgerligt behov av, eller någon rätt, att göra intrång i andra medborgares personlig integritet föreligger däremot inte.”]