

P/HO - Mr. Franklin

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P/HO - Arthur G. Kogan

Access to the Department's Records: Historical Survey

First Phase (to 1921): Without Specific Regulations

It appears that prior to 1921 no clear-cut rules or procedures were in existence defining in precise terms the Department's policy on access to its records by outside researchers. But undoubtedly there were accepted procedures, practices and traditions on the basis of which the responsible officers of the Department made their decisions about admitting specific individuals or categories of persons to the files. The ill-defined nature of the Department's access policy may be gauged from a report given at the meeting of the AHA in 1893 and incorporated in the annual report of the AHA for 1894 in which it was stated that "historical papers in the State Department ³² are not accessible to the historical student except as a specific favor..."

Even though the terms under which access to the files could be granted were not clearly defined, there is sufficient evidence that the files of the Department were used to a considerable extent by historical researchers in the first two decades of the 20th century. On the basis of correspondence in decimal file 116.2 the following conclusions may be drawn with regard to the conditions under which access to the files was granted:

All the records since the beginnings of the Republic were in the custody of the Department and were serviced by the personnel responsible for these materials. Researchers had to make applications for access with each case being decided on an ad hoc basis. There was no "open" period as we would understand this term. Researchers had to submit their notes for clearance by Departmental officers regardless of the period covered in their research. It seems that there was relatively "free" access to the files up to 1850 or 1860 but that it was much more difficult to gain permission to consult materials of the subsequent period. Yet even notes from documents of the pre-1860 period could be withheld. Correspondence in the files indicates, for instance, that in 1916 notes were withheld relating to the diplomatic

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papers of 1849-1851 (116.2/34). There were even outright refusals of access to such early materials as in the case of a Dominican scholar who had wanted to see diplomatic correspondence relating to Santo Domingo in the period 1845-1869 (116.2/146). As late as 1921, Henry Wriston, who had been allowed to see papers relating to the Special Agents of the pre-Civil War period, was refused permission to expand his research into the post-1861 period (116.2/203). In inter-Departmental correspondence in 1920 it was stated explicitly that only under exceptional circumstances had the Department allowed examination of its archives subsequent to 1860. This statement was made in connection with a refusal of access involving a researcher who had wanted to see secret files of the period 1861-1865 (116.2/195, 196).

In this early period there was no relationship between the publication of "Foreign Relations" and access to the files. Since "Foreign Relations" stayed within 10 years to currency until into World War I and as access was granted primarily to older records, the question of tying "Foreign Relations" to access could not arise.

During this early part of the 20th century researchers in the Department's files were accommodated only to the extent that the personnel was able to service the records and deal with the researchers. Thus, after the United States entered World War I, all applications for access were rejected because of the pressure of business. For the next 2-3 years researchers were discouraged from making application because the Department, as it informed one of them, lacked facilities and personnel "to properly supervise procurement of records and examination of notes" (116.2/175).

Second Phase (1921-1938): The Departmental Orders

The second phase of the Department's policy on access was inaugurated by the issuance of the first set of regulations dealing specifically with the question of research access to records.

Departmental Order 210 of May 28, 1921, was issued in compliance with the spirit of the Congressional Act of March 3, 1901 (31 Stat. 1039) which provided that "facilities for study and research in the Government Departments ... shall be afforded to scientific investigators and duly qualified individuals, students, and graduates of institutions of learning ... under such rules as the heads of the Departments ... may prescribe."

The Departmental Order emphasized that space and personnel limitations would permit servicing only a few researchers at a time; that records would not be open to undergraduates; that the applicant must be known to the Department or be "duly accredited by sources known to the Department"; that the Department must be convinced of the "responsibility" of the applicant and of the purpose of his research being "legitimate and useful". The Order also stipulated that material on "pending business" or material which might prove to be "injurious to the public interest" must not be used and that notes, at the discretion of the Department, were "subject to inspection".

Departmental Order 210 was superseded by Departmental Order 309, issued August 11, 1924. This Order did not change the basic policy set forth in the earlier Order but it was more detailed with regard to procedures. It is to be noted that neither Order limited access chronologically. Yet it can be assumed that there was no departure from the existing practice of not giving access to any materials less than 25 years old.

A further revolution in the Department's access policy was inaugurated by the creation of an Archives Section in the Division of Publications which was given custody of the Department's records prior to August 1906. This new arrangement also affected access policy, as reflected in Departmental Order 377 of June 15, 1926, which gave the Division of Publication supervision over outside researchers. The Chief of that Division was given responsibility for conferring with all interested offices in the Department "as to what, if any, of the correspondence prior to August 16, 1906, may not be available for purposes of research to competent students". It was also stated that "the practice in this regard shall be similar to that which is in use in the selection of documents for 'Foreign Relations'".

Departmental Order 377 established a definite limit beyond which research in the Department's records was not to be carried out. Yet it would certainly not be accurate to characterize the period prior to August 1906 as a truly "open" or even a "restricted" period as we would understand it. A letter of June 1927, written by Tyler Bennett, stated that the archives of the Department, for purposes of general research, were not open beyond the year 1898 although certain subjects "might be pursued down to 1906" (116.2/4440). Moreover, the records were not available to all members of the public but only to "professors, publicists, doctors, doctoral candidates and persons of established position in the

community". A letter from Mr. Wynne, dated October 22, 1927, made it clear that only persons in those categories would be given access to the pre-1906 files. Finally, notes taken by such persons were subject to review by the Department which reserved the right to refuse permission to publish or to use the material in the files (116.2/5640).

While under the provisions of Departmental Order 377 access was not granted to files after August 1906, the "Foreign Relations" volumes were released within 9 years of currency. During the next twelve years, from 1926-1938, this gap between publication and currency increased to 15 years. Access was still in back of the publication of "Foreign Relations" when significant changes in access policy occurred in the period 1938-1939.

Third Phase (1938-1946): Opening the Records in the National Archives

An important event in the evolution of the Department's policy with respect to records was the establishment of the National Archives in 1936. Between 1937 and 1939 the Department transferred to the National Archives its basic file of diplomatic and consular correspondence for the period 1789-1906 as well as diplomatic and consular post records of the period 1793-1937 and other miscellaneous groups of records. No restrictions were placed on the use of these files, except for certain categories of the kind now covered by Restrictions Statements. Thus, only after the transfer of the old policy records to the National Archives can we speak of a truly "open" period of the files in the present meaning of the term.

Since the basic file of Departmental records of the period 1789-1906 was generally open to researchers in the National Archives, a new Departmental Order (751 of April 5, 1938) clearly applied only to post-1906 records. This Order regulated the use of the Department's records by outside researchers more or less along the lines of the previous order, especially with respect to applications and review of notes. No specific time limitations were placed on the use of records but it was stipulated in this Order that files "which are in current use or which cannot be made public without the disclosure of confidences reposed in the Department or which adversely affect the public interest" should not be made available to researchers.¹

¹Under the liberal provisions of this Order of 1938 Samuel Plagg Bemis was allowed to examine notes on records

of the most recent period in connection with his study of United States policy toward Latin America. But servicing the records for him and examining and evaluating his notes proved to be a big burden to the responsible officers of the Department. The limitation on access in the Departmental Order of 1939 discussed in the next paragraph may have been partly promoted by the experiences with Professor Bemis (116.2/926, 930, 931).

But the provisions of Departmental Order 751 were soon changed under the pressure of events preceding the outbreak of World War II. Revised regulations set forth in Departmental Order 796 of June 19, 1939 stipulated that in view of the international situation confidential or unpublished records of the Department dated later than December 31, 1918, would no longer be made available to outside researchers. But each year the Department would give consideration to the situation then existing "with a view to advancing the date fixed whenever such action is deemed possible". Records dated prior to December 31, 1918, "or such subsequent date as may be fixed by the Department" might be made available to persons who are not officials of the United States Government, subject to certain conditions. The categories of persons to whom permission might be given to consult the records "through the date fixed by the Department" were similar to those enumerated in the Departmental Order of 1926. It is also to be noted that the Order of 1939 like the preceding one of 1938 allowed aliens to submit applications for access to the records if they were accompanied by letters from the respective foreign mission certifying that the applicant was "favorably known" to that mission and that the latter was "familiar with the purpose of the applicant's work".

Thus, by 1939 there was a genuinely "open" period of the files as a result of the transfer of unrestricted records through 1906 to the National Archives, while the "closed" period (after 1918) and the "restricted" period (1907-1918) were defined in Departmental Order 796 of June 19, 1939.

By 1939, when the open period extended through 1906 and the restricted period through 1918 the annual volumes of the "Foreign Relations" series had completed coverage through 1924.

After the initial transfer of records to the National Archives in 1938 and 1939, the end of the open period was normally advanced when additional files or portions of files were sent to the Archives. In November 1942 that date was advanced to December 31, 1910, and in September 1945 to December 31, 1913.¹ With respect to the records transferred to the National Archives, it is to be kept in mind (as was mentioned earlier) that certain restrictions were placed on specific categories of records such as passport files, unsettled claims, Foreign Service inspection reports, etc.

Parallel to the advance of the terminal date of the "open" period as a result of the transfer of records to the National Archives, there were two advances of the "restricted" period. By Departmental Order 955 of July 18, 1941, the terminal date of the period of restricted access (subject to applications to the Department and review of notes) was moved from December 31, 1918 to December 31, 1920. By Departmental regulation 420.1 of March 15, 1946, that date was advanced to December 31, 1932.

Fourth Phase (1947-1963): The Three Periods of Access

In 1947 the Department for the first time issued a regulation (420.1, May 5, 1947) which dealt with all its records in terms of three periods of access. Unpublished records prior to January 1, 1922 (except for specially restricted categories such as passports, citizenship, etc.) were "available for inspection by the general public in the National Archives, subject to its regulations". On January 1, 1948, and each year thereafter until January 1, 1955, this date was to be automatically advanced one year. Unpublished records in the period between the open date and January 1, 1933 "or such subsequent date as may be fixed by the Department" could be made available under basically the same conditions that applied to the use of the post-1906 records under the Departmental Order of June 19, 1939. Records of the "closed" period (defined as dated later than January 1, 1933) were not to be made available to outside researchers except in circumstances "determined to be exceptional". A determination to permit access to records of the "closed" period could be made only "on the grounds that the interests of national policy are served thereby".

¹This information is based on various memoranda in our old "Access" and "Regulations" folders drawn from items in file 116.2.

These regulations issued first in March 1947 were revised in March 1948 (420.1 of March 12, 1948). This revised version of 1948 listed for the first time the three periods of access as "open", "restricted", and "closed". The open period was the period prior to January 1, 1923; the restricted period was the period between the end of the open period and January 1, 1933; and the closed period was the period after January 1, 1933.

In 1947 and 1948 when the regulations described above were issued, the annual "Foreign Relations" volumes for 1932 were being completed. Therefore, the closed period of the files (after January 1, 1933) was essentially the period in advance of "Foreign Relations". But the special "Foreign Relations" volumes "Peace and War: United States Foreign Policy 1931-1941" and "Japan: 1931-1941" which featured documents through 1941 had already been published in 1943, at a time when the "restricted" period of access under Departmental Order 955 of July 18, 1941 terminated with December 31, 1920, and when the records in the National Archives were not open beyond 1910.

The Division into three periods of access (open, closed, and restricted) remained a permanent feature of the Department's regulations on access to records until January 1972.

In regulation 183.21-2 of January 4, 1951 the open period was defined as the period prior to January 1, 1926. In January 1, 1942, and each year thereafter until January 1, 1955, the terminal date of the open period was to be advanced automatically one year.

The period described as "restricted" in the regulations of 1948 was now designated "limited-access" period and defined as the ten-year period immediately following the open period. Use of the records of this period was to be confined to "qualified researchers and other persons demonstrating a legitimate need for the information requested".

The period following the "limited-access" period was designated the "closed" period. Records of that period were not made "normally" available to non-governmental researchers. Exceptions to this rule were to be limited to "mature scholars" undertaking research regarded by the Department as being "desirable in the national interest". These regulations also contained detailed provisions on the "limitations on the use of records", i.e., on various restrictions applying to specific categories of records, and on the clearance of notes taken by researchers.

Regulations 183.21-183.26 were revised on July 8, 1953. There was no change with respect to the "open" period. Its terminal date was January 1, 1928 and it was to be advanced one year each January 1 until 1955 as had been anticipated in the regulations of 1951. But the "limited-access" period was now defined as the period from the end of the "open" period to January 1, 1942. Thus, the terminal date of the "limited-access" period was advanced four years beyond the date which would have been reached under the automatic ten-year period established in 1951. The "closed" period was the period after January 1, 1942. The "larger portion of the records of the closed period" was not available to non-governmental researchers, but exceptions could be made in the case of "qualified researchers undertaking broad studies regarded by the Department as desirable in the national interest and in the case of studies "more limited in scope involving non-sensitive and generally unclassified materials". The advance of the "limited-access" period through 1941 presumably reflected the use of the Department's files of the early phase of World War II by prominent historians who had been given special access to these materials.

The next revision of these regulations issued December 7, 1956 (185.41-185.45) eliminated the yearly advance of the terminal date of the open period. The "open" period ended with January 1, 1930 and the "limited-access" period still with January 1, 1942. Records subsequent to that date remained in the closed period, but the exceptions provided for in the regulations of 1953 still applied.

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 Between 1948 and 1956 the terminal date of the "restricted" or "limited-access" advanced beyond the date covered by the most recent annual volume of the "Foreign Relations" series. In 1951 the "limited-access" period terminated with December 31, 1936, while "Foreign Relations" was completing coverage for 1934. In 1953 when the "limited-access" period terminated with January 1, 1942, "Foreign Relations" had covered all of 1935 and was beginning to publish volumes for 1936. By 1956, with the "limited-access" period still terminating January 1, 1942, "Foreign Relations" had brought out all but one of the volumes for 1939. But the special "Foreign Relations" volume on the conferences at Yalta and Malta published in 1955 contained material of 1944 and 1945 and thus opened up highly significant materials that were not available to researchers in the "limited-access" period. The special volumes on the conferences at Cairo, Tehran, and Potsdam published in 1960 and 1961 put additional high-level diplomatic papers of the period 1943-1945 in the public domain.

Fifth Phase (Since 1963): Access Tied to "Foreign Relations"

On August 15, 1963, new regulations were issued (1854.2-1854.5) which introduced a significant change in the Department's policy on access to records. As explained in a memorandum of December 1963 by the Director of the Historical Office, the three different periods of access were retained but the fixed dates were replaced by a progressive opening of files tied to the publication of the "Foreign Relations" series. The "closed" period was now defined as the period in advance of the "Foreign Relations" series and its beginning date was to be revised automatically as the "Foreign Relations" volumes were being released. The "restricted" period (formerly "limited-access" period) was defined as the ten years in back of the "closed" period. The "open" period covered the years prior to the beginning date of the "restricted" period. The regulations of August 1963 no longer mentioned the possible exceptions with respect to access to records of the closed period.

Since "Foreign Relations" had published through 1942 when the revised regulations of 1963 were issued, the terminal date of the "restricted" period was advanced to January 1, 1943 and that of the "open" period to January 1, 1933.

On August 9, 1966 it was announced in Department of State press release 183 that the Department's records were now open in the National Archives up to 30 years from the current year. This flat 30-year rule meant that records which previously had been open through 1933 were now open to January 1, 1936. As "Foreign Relations" had completed coverage for 1943 by 1966, the restricted period extended from 1936 through 1943.

These changes were incorporated in regulations issued July 11, 1966 (1855.1-1855.4). It should perhaps be noted that the regulations of 1966 explicitly excluded foreign nationals from access to records of the "restricted" period.

The 30-year rule established in 1966 has remained a feature of the Department's access regulations to this day. The provisions applying to the "restricted" and "closed" periods did not change until January 1972. But a significant new element into the Department's regulations was introduced as a result of the passage of the Freedom of Information Act (Public Law 89-487) which came into effect July 4, 1967. Departmental regulations issued July 5, 1967 (5 FAM 480) and

slightly revised May 21, 1968 incorporated in Appendix A the provisions of 38 CFR 22, Part 6 which dealt with the availability of the Department's records to the public. Sections 6.1-6.8 contained provisions covering the right of members of the public to request copies of "identifiable" unclassified records from the Chief of the Department's Records Services Division in accordance with the Freedom of Information Act.

Another innovation of the regulations of 1967 was a provision permitting "former incumbents of senior positions" within the Department to have access to records "relating to their own activities" unless the Secretary determined that such access was not in the national interest. Persons who enjoyed such access which could extend to records of the "closed" as well as "restricted" periods were required to submit their notes or manuscripts for review by the Department prior to publication.

At the time when the revised regulations of 1967 were issued, "Foreign Relations" was about to complete coverage for the year 1944. Accordingly, the restricted period ended with 1944 and the closed period began with January 1, 1945.

On May 15, 1969, an announcement was made in press release 119 that the Department, while not changing its "standing regulation" for the opening of records 30 years old, had determined that the records of the years from 1939 through 1941 would henceforth be treated "as though they were in the 'open' period." Thus, the effective terminal date of the open period was moved from December 31, 1938 to December 31, 1941. As "Foreign Relations" had completed coverage of 1945 in the course of 1969, the closed period began with January 1, 1946 and the restricted period extended from 1942 through 1945.

No further changes in the access situation took place until 1972. On January 21 of that year the Department announced in press release 19 that it had declassified almost all of its foreign policy records for the years 1942-1945 inclusive. This action "taken by special administrative decision" was not intended, however, to void the Department's "standing regulation" providing for the opening of records 30 years old.

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This action by the Department eliminated for all practical purposes the "restricted" period of access and left in existence only an "open" and a "closed" period of the files. This became even clearer when the release of all the "Foreign Relations" volumes for 1946 was followed by an announcement by the Department in press release 193 of August 10, 1972, stating that the Department had declassified almost all of its foreign policy records through 1946. Like the earlier decisions regarding the records of the period 1942-1945, this opening of the files through 1946 was not to be interpreted as a departure from the standing regulation providing for the opening of the Department's records 30 years old. Moreover, by August 19 the opening of records after 30 years had become mandatory for all Government Departments under the terms of Executive Order 11652 of March 8, 1972, which became effective on June 1, 1972.

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