

Privacy & Confidentiality Roundtable Meeting
Minutes
Wednesday August 11, 2010
Room: Virginia C
3:15-5:15 PM

1. Welcome

The meeting opened at 3:15 with Heather Dean serving as chair of the meeting in place of Linda Long who was not able to attend. Dennis Meissner was introduced as the P&C's new council liaison. Steering Committee members were also introduced later in the meeting. Approximately 50 people attended the meeting.

2. Elections:

Paper ballots were distributed. This should be the last year of paper ballots. The slate was presented as follows:

- Vice-Chair/Chair Elect
 - a. Phoebe Evans Letocha
- Steering Committee
 - a. Laurel Bowen
 - b. Anne Ostendarp

3. Updates and Projects

Heather Dean provided an update on P&C projects

- P&C Handbook

P&C Handbook is meant to be a guide to best practices for P&C issues. It is currently in draft outline form and being spearheaded by Linda Long. P&C members will be encouraged to send in suggestions in their areas of expertise as well as additional topics they would like to see covered.

- P&C Bibliography

The P&C bibliography accessible as a wiki at <http://privacybiblio.pbworks.com/w/page/18593383/FrontPage?pwd=97xhqmUkcp> is currently out of date. Since SAA is moving roundtable content to Drupal, the bibliography could move to the new SAA Drupal site. P&C is soliciting a member to update the bibliography.

- Choose Privacy Week

Choose Privacy Week is a initiative of the American Library Association focused on issues related to privacy rights in the digital age. The website www.privacyrevolution.com has resources and information about how to host choose privacy week events. Archives are encouraged to participate as well as Libraries.

- Changes to HIPAA Privacy Rule

Phoebe Evans Letocha provided an update on the HIPAA Privacy Rule and potential changes to the rule. In the July 14, 2010 publication in the Federal Register, the Office of Civil Rights of the US Department of Health and Human Services issued its notice of proposed rulemaking (NPR) to implement privacy and enforcement provisions of the HITECH Act which would modify the HIPAA Privacy, Security and Enforcement rules. During the 60 day comment period archivists and others can submit comments on the proposed rules. Phoebe summarized

the changes, the most significant being the change in the definition of Protected Health Information of deceased persons.

Currently PHI of the deceased is protected in perpetuity. Under the notice of proposed rulemaking, PHI would be defined as no longer including individually identifiable health information of persons who have been deceased more than 50 years. Further, the proposed regulations specify that a covered entity must apply HIPAA to the PHI of deceased persons for a period of only 50 years after death. The NPR specifically mentions the concerns of archivists and refers to the testimony of archivists before the National Committee for Vital and Health Statistics.

A related concern came from a comment to the Archivist listserv from Paul R. Scott, Records Management Officer in Harris County, TX, who proposed excluding from the definition, PHI: "Regarding a person who has been deceased for more than 50 years or medical records that are over 75 years old, whichever is shorter." Paul Scott's list serve comment expressed a need and desire to specify a date at which all records could be opened based on presumption of death. Phoebe Evans Letocha raised the concern at the meeting that a 75 year old record date may not be long enough based on current average age of death in the US and encouraged those at the meeting to consider the issue so archivists' concerns are raised during the comment period.

4. Session Ideas for SAA 2011

The Roundtable discussed session ideas for the theme for the 75th Anniversary of SAA Archives 360 meeting in Chicago. Erin O'Meara suggested a session idea of privacy and born digital records, including such issues as how to serve up born digital records in a reading room vs web access, digital forensics and issues related to archives receiving hardware including unintended records. Laurel Bowen circulated a session idea on balancing privacy and access for public records in open records states.

5. Program: "Ethics for Processors."

Chair: Beth Davis Brown, Library of Congress

Panelists:

Tim Pyatt, Duke University, University Archivist

Paula Mangiafico, Duke University, Head, Collections Processing and Visual Materials Section

James Roth, John F. Kennedy Presidential Library, Deputy Director

Tim Pyatt opened the panel by providing background on the history of and proposed changes to the SAA Code of Ethics and how they address privacy and confidentiality.

Paula Mangiafico discussed how Duke University handles privacy and confidentiality issues to staff, with special attention to student employees and volunteers who do the bulk of the processing work. She described the interview, hiring, and training process and procedures in place at Duke, especially for student employees. Holding at Duke of particular sensitivity include women's history collections such as abortion clinic records and human rights collections with attorney correspondence and civil rights violation case files from groups such as the ACLU.

James Roth described the procedures in place at JFK Library including accessioning, assessment of declassification issues, appraisal, donor agreements, digitization, processing, creation of finding aids and reference. He discussed the role of library staff and library students from Simmons who adhere to processing plans, donor agreements when screening collection materials that must be closed for research and how researchers are informed that collections include classified, restricted or other sensitive information.

During the question period panelists were asked about use of employee confidentiality agreements, use of MPLP, what information was or was not included in finding aids, whether subjects of sensitive information can review and allow release of information, and archivists engagement with legal counsel in addressing the ethical issues of privacy in processing collections.

6. Election Results

The slate was approved as presented.

Minutes submitted by Phoebe Evans Letocha, Nov 6, 2010.