

# Archivist as “Legal Eagle”: Examining State Law and Access and Privacy Protocols for Institutional Records

PHYLLIS RESKE

**Abstract:** Very little scholarship examines the verbiage used in the access restriction portion of finding aids. The author conducted a content analysis on the access restriction portions of twenty-eight finding aids representing state and county institutional collections owned and maintained by the Wisconsin Historical Society (WHS). A critical finding from the content analysis is that the Wisconsin Statutes that are listed in the majority of the twenty-eight finding aids, and are used to justify limited access, are irrelevant to the collections. The central reason is that the cited Statutes are for records that are still owned and maintained by the record collection agency. There is a Statute that addresses the confidential nature and access parameters of state and county records transferred to, and then owned and maintained by the WHS, but none of the finding aids list this regulation.

Citing irrelevant Statutes as legal justifications for access restrictions is problematic. The state and county records may not be as restricted as the WHS finding aids state. Researchers may accept the legal justifications at face value and not question their validity. Access may be refused to researchers if they question the legalities. When archives contain sensitive information on historically marginalized people and third parties, archivists do have an ethical and legal duty to protect their privacy. Archive professionals are also obligated to provide these records to the public for research and accountability purposes, and that the privacy measures in place are relevant and reasonable. Precise access restriction language is needed to strike a better balance between access and privacy.

## About the Author:

*Phyllis Reske* is a graduate student in the MLIS/MA History coordinated degree program at the University of Wisconsin – Milwaukee (UWM). She’s working on her master’s thesis and interns in the archives department at UWM. Her research focuses on legal issues in the archives and providing access to records of a sensitive nature using best practices.