

# The Myths of Census

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Submission to the Expert Panel on Release  
of Historic Census Records

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Esteemed Members of the Expert Panel:

I am one of the leaders of a campaign on the Internet seeking to obtain continuing release to the Public, after a reasonable period of time, of Historic Census records. I have the pleasure, on behalf of many thousands of Canadians who have taken part in this campaign, of making the following submission.

I ask the Expert Panel not to be daunted by the weight of my submission. In addition to the points I make, I have provided for ease of reference, a number of appendices containing extracts of documents, and correspondences to which I refer. Additional support documentation is located on the CD that accompanies the printed submission.

The support documentation contains, among other things, extracts from the Debates of the House of Commons, and of the Senate in 1905 relating to The Census and Statistics Act (Chap. 5), and An Act to amend the Census and Statistics Act (Chap. 6.). These two Acts, when taken together along with a rearrangement of clauses, resulted in the Census and Statistics Act (Chapter 68) in the 1906 Revised Statutes of Canada. I was unable to find any debate in 1906, in either the House of Commons or the Senate referring to either Census or Statistics. The support documentation includes similar extracts of debates from 1918 relating to The Statistics Act (Chapter 43). They include also a number of correspondences between myself and Statistics Canada, the National Archives, and the Office of the Privacy Commissioner Bruce Phillips.

I have spent a considerable amount of time researching many aspects relating to Census, including Proclamations and Orders in Council, publications of the Canada Gazette, all Statutes relating to Census and Statistics, from CAP XXI - An Act respecting the First Census of Canada (assented to 12<sup>th</sup> May, 1870), up to the Statutes of the present day, and Instructions to Commissioners and Enumerators for nearly all of the Censuses that have taken place since 1871. In doing this research I have formed a number of opinions and conclusions in which I hope members of the Expert Panel will concur. I include these opinions and conclusions in the attached submission.

In making this submission I would advise that while I present it on behalf of many thousands (perhaps millions) of Canadians, I do not specifically represent any *official* organization.



Although many involved in our campaign, including myself, belong to various Genealogical and Historical societies across Canada, we are simply ordinary people seeking information regarding our ancestry.

I have had no education in Law, nor have I ever been employed in any capacity relating to Law. The research I have done relating to our campaign, and in preparing this submission, has been a completely new experience for me. In considering this submission you will forgive me, I am sure, for trying to read into the various statutes, proclamations, regulations, and Orders in Council, and other documentation, a little *common sense*.

While I make this submission from the point of view of a Genealogist (albeit an amateur), most of what I present has validity for Historians, Sociologists, and others. I have viewed the credentials of the Panel on the Statistics Canada website. While the credentials for each Panel member are varied and very impressive, I note that there is no mention of any connection to Genealogy. I would have been happier had there been at least one member of the Panel selected from the Genealogy community. I will however, trust the Panel to consider the needs of Genealogists in formulating their final report to the Hon. John Manley, Minister of Industry.

I would ask that you give similar weight to my submission as you do for those submitted by *official* organizations. The fact that I do not make this submission in the name of any official organization should, in no way, diminish the import of what I have to say. In your deliberation of my submission, and those of others being submitted, I am certain that you will come to the conclusion that release of Historic Census records, as permitted by clauses in the Privacy Act, *does not constitute an unwarranted intrusion into the privacy of individuals*. I am sure you will find also that the present position of Statistics Canada, and Privacy Commissioner Bruce Phillips, *does not represent a reasonable balance between Access to Information and personal Privacy*. Total closure of Historic Census records does not present any kind of *balance*.

Thank you for taking the time to read this letter and to consider my submission.

Sincerely,

Gordon A. WATTS



## Introduction

In preparing this, my submission to the Expert Panel on Release of Historic Census Records, I have had a number of things to consider. First, what is it that I want to say. Second, how do I want to say it – in other words, in what form do I present it to best advantage and to get my points across.

The first part will take care of itself as I proceed through this submission. In my research I tried to consider *what* has taken place in the past as regard to Census. The *what*, for the most part can be seen by researching the legislation and various other documentation, if one has the time and inclination to search for it. More important than *what* happened, in my mind, was to find the *reasons why* the *what* had taken place. The *reason why* is somewhat more difficult to find, as this is not as frequently documented and it becomes necessary, sometimes, to read between the lines, so to speak, in order to find it. I have tried to place myself in the time frame of the events and to find the *reasons* for the events of the past.

In regards to the second point, because of the volume of information involved, it would be futile to attempt presenting it in one part. I have therefore chosen to present the information in module form rather than trying to present it as a single entity. These modules, in some cases will contain extracts from Statutes and/or regulations, Proclamations, Orders in Council, etc. In other cases they will contain references to documents in the various appendices attached hereto.

A CD has been prepared to accompany the printed submission to the Expert Panel. The support documentation on this CD includes statutes relating to Census and Statistics from 1870 to the present, Instructions to Census Officers and Enumerators for many of the Censuses, and several extracted letters and/or email from Members of Parliament to constituents.



## Questions from the Expert Panel

I should perhaps begin my submission by attempting to respond to the questions posed by the Expert Panel in arranging the teleconference call of Wednesday 9 February 2000. I might say in regards the teleconference call that I was disappointed in the duration of this call. One hour was hardly enough to allow 12 or 13 participants from one end of the county to the other a chance to speak, let alone to allow members of the Panel to ask questions of the participants. I was disappointed also, when, having the opportunity to speak, I was cut off in mid-sentence when the call automatically terminated at the end of the one hour that had been booked. Due to the fact that the conference was late in starting, and Dr. Van Loon had indicated at the start that the call would be extended to about 15 minutes after the hour, it was a surprize when it was terminated exactly on the hour. It would have been prudent to have an operator check toward the end of the hour to determine if the call should be terminated, or be allowed to continue. I understand this is a common practice when a teleconference call takes place.

In any case, the questions asked of the participants to the teleconference call were as follows:

- How do genealogists use census records? A description of a typical genealogical search would assist the Panel Members to understand how the records are used.
- What are genealogists looking for in the census records? What is the information that census records provide?
- What non-census sources could be used? Specially, why are census records so necessary? Are there not alternative family information sources which could be used ?

Taking the questions in order:

- How do genealogists use census records?

How an individual uses census records is probably as varied as there are numbers of individuals using them. I take the question of the Panel to refer to the methods used by researchers in seeking information regarding their ancestors. Taking myself as typical, I would first have in mind an individual or family on which I was seeking information. I would likely have an idea of the Province, county or area, and possibly a city or town in which they might be found. Having this in mind I would conduct a systematic search of the smallest area in which I expect to locate my individual or family, i.e. the city or town. Not finding them there I would expand my area of search to the county or area, and not finding them there, expand my search to adjoining counties or areas. Once having found my individual or family in the Census record (and having my excitement at finding them settle down a little) I would record the information that I was seeking. Information such as names, location of residence, occupations, dates and places of birth, position in and relationship to the family group, information regarding immigration and naturalization, information regarding persons in the family having died in the previous twelve months and the cause of death, information giving clues as to the living conditions and social climate of the time,

and other such information as I found pertinent to my ancestral history. If facilities were available to do so I would take a photocopy for my permanent record.

Having found my individual or family in the records, I would do a systematic scan of the records before, and after, those found in my primary search. Particularly in earlier days, related families likely lived in the same area and would be found in the same group of Census records. Having found other individuals or families I believed to be related I would record information and take photocopies as done above for my primary search.

Finding someone specific in Census records is not an exact science. A researcher could study Census records for hours, days, weeks, months, or years without finding who they are looking for. The odds are very much against pulling out a book or micro-form of Census records and immediately finding information on those whom you seek.

- What are genealogists looking for in the census records?

This question has been partially answered above. The rest of the answer, for the most part can be included in the answers for the third question posed by the Panel.

- What non-census sources could be used? Specially, why are census records so necessary? Are there not alternative family information sources which could be used ?

Census is *unique* in the amount of varied information available in one place, at a given point in time, regarding not only an individual, but of a family to which that individual belonged. It is the *only* source that will provide information regarding a family, as opposed to an individual. Census is the *only* source in which information can be found regarding a previously unknown relative. Finding an entry within a family group or household, of someone having a different surname, and identified as “niece”, or “cousin”, etc. can give a clue as to the married name of a daughter, or a previously unknown sibling of the head of household.

On occasion, not finding an individual within a family group in census can be as significant as finding them. Not finding a person within a family group, that had been found within that group in a previous Census, could mean that the individual has died, or has left the household because of marriage, in which case they might be found within another household with another family. Not finding a person could mean that they have not yet been born. Following the family through successive census can show growth and dispersal of the family, patterns of migration, and possibly give clues for the reasons for that migration. Information regarding recently deceased persons, giving cause of death, can be vital to persons seeking information regarding genetically transmitted diseases.

While information in various other sources such as birth, marriage, and death records, newspaper articles and announcements, etc. can provide *piecemeal* information on persons about whom you *know*, they are of no use in providing information regarding someone about whom you do not know. Census is a *prime* source of information, rather than a secondary or tertiary source.

Finding information regarding an individual in census allows you to seek other information regarding them from other prime sources such as birth, marriage or death records.

In answering the third question posed by the Panel, and the balance of the second, I can do little better than quote from an article in *Archivaria* 45 (Fall 1998). The article, entitled *Counting Archives In: The Appraisal of the 1991 Census of Canada* was written by Jean-Stéphen Piché and Sheila Powell. The article, on page 32, states: (italics mine)

“We also accepted the recommendation of Terry Cook’s 1991 RAMP study, *The Archival Appraisal of Records Containing Personal Information*. This study states that “*the national census is the single most essential personal information record in terms both of research for many disciplines and for genealogists, and of providing the core demographic information vital to the design, delivery, and modification by the government of its own major programs.*” This conclusion was affirmed by a seven-country group of experts from the International Council on Archives, which clearly suggest that Canada’s perspective on the value of census records is shared by the international archival community.

From the outset, we and our managers were certain that, regardless of their form or format, the *census data to be preserved had to include identifying information in the form of names and addresses in order to permit future use that requires the identification of the providers of information*. Current experience with users of census records in the custody of the National Archives demonstrates that many users require identifying information in order to conduct a wide variety of research. *Genealogical research clearly requires that one be able to link the names and addresses of respondents to the data that they provided*; many other areas of research, such as studies of communities, health trends, and social migrations, also require address information in order to group relevant data together. Apart from pointing to known research methods, we noted that *archivists are not able to predict what new research types and needs may emerge in the future, or whether that research will require personal identifiers.*”

The article continued:

“Macro-appraisal analysis of other data collected by the federal and provincial governments led us to determine that the *census was the single most complete and uniform body of demographic data in Canada*. The provinces are responsible for maintaining records of births, marriages, deaths, adoptions, divorces, and changes of names. These records contain much of the data on individuals that has been traditionally sought by genealogical researchers: date of birth, date of death, names of parents, occupation of parents, residence, place of birth, cause of death, religious denomination, and date and place of marriage.

The *crucial difference* between provincial vital statistics and the census records is that the *provincial data is event-driven and thus recorded only at certain points in*

*an individual's life when these events occur, while the census collects data at regular intervals throughout the course of a person's life.* For example, provincial vital statistics on an individual who never married and who had no children would *be limited to those collected during registration of their birth and death.* On the other hand, census questionnaire forms would provide information at *regular five year intervals* on other aspects of a person's life, such as address, marital status, language, and the identity of the person who pays the rent or mortgage in the family. This information is collected on all individuals, and even more is collected on twenty per cent of the population through the long census form (Form 2B). This data is extensive, including information on ethnic origin and immigration data, aboriginal status, education, religion, labour force participation, income, housing, and disabilities.

Data is also collected by a number of other federal government programs. Taxation records and records maintained for the purposes of administering federal Income Security Programs, such as the Canada Pension Plan and Old Age Security, contain information on date of birth, place of residence, income, marital status, and other individual characteristics, depending on the type of program. *There is, however, no federal government system that contains all the types of data that are captured through the census.* For the departmental systems, specific data elements are collected for the purposes of administering and delivering specific programs within a limited period of time. The data is relevant only to those programs and the more limited needs of those citizens interacting with them, and it is maintained only so long as is necessary to the delivery of these programs. The census, by definition, covers all Canadians.”

## The Myths of Census

There are a number of misconceptions or *myths* relating to census. They are:

- There was a *promise* made by the government of Sir Wilfrid Laurier that confidentiality of Census was *forever*.
- Respondents to Census were *told* about this *promise*.
- The Census of 1906 was the first in which Rules and Regulations relating to Census and Statistics were subject to the “force of law”. The process by which secrecy of name-identifiable Census records coming under the “force of law” was a deliberate, well thought out result of the legislative process.
- Release of name-identifiable information in the distant future was a reason for confidentiality concerns of respondents to Census
- A *major intent* of early Census legislation was to ensure that Schedules of Census containing name-identified information would *never* be available for future historical or genealogical research.
- Without confidentiality that lasts forever, respondents will be reluctant to fill out Census or will not respond truthfully.



## Myth Number One

### **There was a *promise* made by the government of Sir Wilfrid Laurier that confidentiality of Census was *forever*.**

Statistics Canada has been consistent in stating that the government of Sir Wilfred Laurier, in 1906, made a *promise of confidentiality in perpetuity* relating to name-identifiable information provided by respondents to Census. Statistics Canada has widely released a document entitled *Access to 1911 and other Post-1901 Census Records*. In it they pose the question “Should Parliament declare, in effect, as invalid *the explicit guarantee of indefinite confidentiality* that was promised to Canadians when the data were collected?” The impression given by this document is that this *promise* or *guarantee* has been repeated for each Census since 1906. Privacy Commissioner Bruce Phillips has been quoted as saying “People who give information to the government under penalty of law on *an unqualified promise of confidentiality* are entitled to expect that that trust will be honoured.”.

While it is all well and good to state that there had been a *promise of confidentiality in perpetuity*, an *explicit guarantee of indefinite confidentiality*, or an *unqualified promise of confidentiality*, the fact is that there has been not one piece of documentary evidence produced to support these claims.

A number of documents relating to this matter have been studied, including *every* Statute relating to Census or Statistics since 1870 to the present, many Proclamations and Orders in Council, and the *Canada Gazette*. A list of documents studied is included in an appendix to this submission. I am by no means a lawyer, however I found nothing within any of these documents that would preclude the transfer of Post 1901 Census records to the National Archives, and their subsequent release to the Public in accordance with terms of the Privacy Act. Nothing was found that could be construed as a *promise* of never ending confidentiality. One would assume that such a *promise*, if in fact it was made, would have to be conveyed to the public by some means. No such conveyance has been found in any form of documentation. *A promise never made cannot be broken.*

On 25 September 1999 I directed an email to Ms. Louise Desramaux at Statistics Canada asking her to *show me the promise*. I asked the following:

“In regards to Census taken from 1906 to the present I wish to know the following:

- Specifically what clauses of what Acts spell out this never ending promise?
- The form (wording) of said promise of confidentiality in perpetuity.
- The specific means by which respondents were advised that said confidentiality would be **forever**. If possible I would like copies of such advice or references to where they might be found.”

In response to these questions Ms. Desramaux sent to me a copy of the 1906 Statute, Chapter 68, the *Census and Statistics Act*, with clause 9 highlighted. Clause 9 reads as follows:

“9. The Minister shall make and prescribe all rules, regulations, instructions and forms which he deems requisite for the work and business of the Office.

2. Such forms, rules, regulations and instructions, and any such tables of rates of remuneration or allowance, as aforesaid, when assented to by the Governor in Council and published in the *Canada Gazette*, shall have the force of law. 4-5 E. VII., c.5, s. 6.”

Also sent was a portion of the Proclamation for the 1911 Census with Clause 23 of the Instructions to Officers, Commissioners and Enumerators highlighted. It reads: (italics mine)

“23. Secrecy of Census information provided for. Every officer or other person employed in any capacity on Census work is required to keep inviolate the secrecy of the information gathered by the enumerators and entered on the schedules or forms. An enumerator is not permitted to show his schedules to any other person, nor to make or keep a copy of them, nor to answer any questions respecting their contents, directly or indirectly; and the same obligation of secrecy is imposed upon commissioners and other officers or employees of the outside service, as well as upon every officer, clerk or other employee of the Census Office at Ottawa. *The facts and statistics of the Census may not be used except for statistical compilations, and positive assurance should be given on this point if a fear is entertained by any person that they may be used for taxation or any other object.*”

Clauses identical to, or near identical to, the one above appear in *every* set of Instructions for Census from 1901 to 1946. The clauses in Instructions relating to 1936, 1941 and 1946 differ only in the insertion of two additional sentences:

“The custody of census and other statistical records pertains solely to the Bureau, the Act expressly stating that no individual report or return shall be published or divulged. Moreover, no officer or employee of the Bureau is permitted to make a search among the records for information relating to an individual return, except for purposes of verification under the Act.”

There is no *promise* here that confidentiality will last *forever*, either stated, implied, or even hinted at.

In reference to the clauses quoted above, I wrote an e-mail to Louise Desramaux of Statistics Canada. In that e-mail, dated 1 December 1999, I stated:

“The clauses quoted are all worded in the present tense. There are no time frames mentioned relating to confidentiality. There are no clauses that state Census

records may be transferred to the National Archives. There are no clauses that prohibit transfer to the National Archives. There is simply silence regarding time frames and transfer to the archives.

In my limited experience it has been my understanding that when one statute is silent on a particular matter while another is not, the statute that is not silent should govern. In this case the Privacy Act provides for transfer of Census records to the National Archives and it should govern.”

The response of Statistics Canada came from Mary Ledoux: (italics mine)

“Mr. Watts, further to your message below to Louise Desramaux, this is to inform you that Louise has recently retired from the Public Service of Canada. In her absence, I will attempt to expand on Louise's earlier response to your questions about the promise of confidentiality in perpetuity. The point you raise that "the Privacy Act provides for transfer of Census records to the National Archives and it should govern" is correct but only to a certain point. The provision that allows for such transfer is "subject to any other Act of Parliament" and the advice we have received from the Department of Justice is that the Acts under which authority censuses have been taken since 1906 take precedence.

There is nothing to suggest that the confidentiality provisions had any end date. There is a piece of legislation called the Interpretation Act that is used by lawyers in the interpretation of statutes and their meaning. Section 10 of that Act may be relevant to this discussion. It states:

‘The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, *so that effect may be given to the enactment according to its true spirit, intent and meaning.*’

Therefore, the advice Statistics Canada has received on this matter is that the legislation prevents disclosure and the Privacy Act does not compel Statistics Canada to disclose information to the National Archives.”

Statistics Canada obviously places credence upon the first part of Section 10 of the Interpretation Act, i.e. “The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise,” It appears, however, that they have not read, or place lesser credence on the remainder of the clause, i.e. “.... so that effect may be given to the enactment *according to its true spirit, intent and meaning.*”

David H. Flaherty, author of *Access to historic census data in Canada: a comparative analysis* (Canadian Public Administration, Fall 1977, Vol. 20, No. 3, pp 481 - 498) wrote on pages 491 and 492: (italics mine)

“The nineteenth-century censuses were collected without the benefit of statutory protections for the confidentiality of the information furnished by respondents. A brief prepared by the Canadian Historical Association in the fall of 1973 asserted that ‘the legislation under which the Canadian decennial censuses were collected prior to 1905 contained no secrecy provisions whatsoever.’ This is not to suggest that enumerators and custodians of census data during the nineteenth century were not concerned about confidentiality. The *various instructions* issued to officers employed in the taking of the early Canadian censuses *made explicit the concern with confidentiality. The primary concern was to instruct enumerators to keep secret the information they received from respondents. There were certainly no assurances that the census schedules would be kept secret in perpetuity.* An order-in-council issued by the Governor General on 31 March 1911, which perhaps owed its inspiration to the proclamation by President Taft in 1910 on the same subject, was in fact more explicit about confidentiality than any previous statement or directive in connection with Canadian Census:”

In this reference to the final sentence of Clause 23, above, Mr. Flaherty stated:

“One could hardly interpret this directive as prohibiting the release of individual census schedules at any later date.”

Elsewhere in this same document Mr. Flaherty quotes Congressmen Simon and McKay who spoke before a Subcommittee of the House of Representatives in the United States on 17 November 1975. Congressman Simon argued that the general populace recognizes some limits on confidentiality: ‘People expect some day records may be opened.’ Congressman McKay argued that ‘adequate confidentiality can be preserved at the same time census data is used for beneficial research and study.’ Congressman McKay stated further:

“Presidential proclamations introducing the taking of censuses have never promised complete secrecy. Rather, they have promised that the information would definitely not be used for such purposes as tax law enforcement, selection of juries by the courts, or induction into the armed forces. The proclamations also included a more general promise that the information would not be used to the respondent’s damage, detriment or disadvantage. Such language leaves open the possible future use of census data by groups with legitimate interests, provided that no harm is perpetrated on the enumerated.”

One might think that Congressman McKay had been reading the Instructions to Officers and Enumerators of Census in Canada, from as early as 1871.

Privacy Commissioner Bruce Phillips was asked the same questions as those asked of Statistics Canada. I asked him to *show me the promise*. I suggested that the promise did not exist, except in the minds of those who wished it to be. I asked him to prove me wrong. Unfortunately Mr. Phillips did not choose to respond himself but had Brian Foran, Director of Issues Management

& Assessment do it for him. Mr. Foran did little more than quote legislation that I was already aware of, and repeated what I had already heard from Statistics Canada. Nothing in his response showed the existence of the *promise*.

My letter to Privacy Commissioner Bruce Phillips, and the response from Mr. Foran appear elsewhere in this document.

I am still waiting to be shown the *promise*. No-one has shown it to me. **It does not exist!**



## Myth Number Two

### Respondents to Census were *told* about this *promise*.

There is absolutely no evidence that the people of Canada, until after the refusal of Statistics Canada to release Post 1901 Census, were told about a *promise* of confidentiality of Census that lasted *forever*. There has been nothing found in reference to such a *promise* in any of the Statutes, Proclamations, or Orders in Council. There have been no newspaper articles found that would have conveyed such a promise.

While *Instructions to enumerators* and others involved in the collection of Census contained clauses directing them as to the secrecy of the forms and schedules that they handled, there is no indication in these instructions that respondents were to be advised about that secrecy. The only reference to advising respondents about confidentiality was that the enumerators should, *if asked*, advise that “The facts and statistics of the Census may not be used except for statistical compilations, and positive assurance should be given on this point if a fear is entertained by any person that they may be used for *taxation* or any other object.”

This same reference has appeared in the Instructions to Officers, Commissioners, and Enumerators for *every* Census from 1901 to at least 1946. While worded differently, concern regarding *taxation* in connection with Census is evidenced in the Instructions to Officers for the First Census of Canada in 1871 and is repeated in the Instructions for the Census of 1886 and 1891. In reading the Instructions from successive Census it is observed that there is normally little or no change in the wording of clauses that relate to the same subject matter, i.e. *Secrecy*. The greatest change in the Instructions has been in the addition of new clauses, most notably in regards to additional information required in schedules regarding Agriculture, and the removal of Industrial and Manufactures Statistics following the establishment of a permanent Bureau of Statistics in 1918. Coincidentally, 1918 is the first year in which a clause titled “Secrecy” appeared in any Statute relating to Census.

Contrary to the idea that the people of Canada were *told* Confidentiality would last forever, there is some indication that respondents to Census were told information given was confidential *only if they asked* the enumerators about it. The same applied to informing respondents that the answering of questions in Census was compulsory.

Instructions pertaining to the Census of 1931 contained the following clause: (italics mine)

“18. Enumerator’s rights. An enumerator has the right of admission to every dwelling (including institutions) within his territory for the purpose of obtaining information required by the Statistics Act. He has the right to ask every question contained in the census schedules and to obtain answers to each and every one of them. *He is cautioned, however, not to mention or emphasize the compulsory feature of the enumeration unless it is necessary.* (See Statistics Act, Sec. 36 to 40, quoted in Appendix to these instructions.)”

Identical clauses, differing slightly only in the reference to the Statistics Act contained in parenthesis, are contained in Instructions pertaining to the Census of 1936, 1941 and 1946.

Instructions pertaining to the Census of 1931 also contained the following clause: (*italics mine*)

*“20. Should any person object to answering any question on the schedules, the enumerator should explain that the information is strictly confidential, that it will not be communicated to any person whatever, and that no use will be made of it which can in any way injuriously affect the interests of individuals. After all other means have failed, the attention of the person refusing to give information should be called to the penalty provided in sections 36 and 40 of the Statistics Act for refusal to give information. Should the person still refuse to give the information, or fail to fill out any form required in connection with the census, the procedure to be followed is clearly set out in the sections quoted from the Statistics Act, in the appendix to these instructions. All such cases should be reported immediately to the Commissioner.”*

As with the previous clause, this clause also appears in the Instructions pertaining to the Census of 1936, 1941 and 1946, differing only in the reference to the Statistics Act.

In reading the clauses above, in particular those parts emphasized by *italics*, it can be reasonably deduced that the public at large was *not informed* regarding *perpetual confidentiality*, and the compulsion in answering questions in Census. No Instructions advised enumerators to inform respondents prior to starting that information submitted was private, confidential, or secret. Rather, they advised enumerators to inform respondents *only on request*, or when they refused to answer questions.

A very good case could be made that all references to confidentiality or secrecy in Instructions to Commissioners and Enumerators were just that, i.e. Instructions to *Commissioners and Enumerators*, and as such were not widely communicated to the public. This is illustrated quite clearly in the Enumeration Manual for the Census of 1951. Clause 35 states, in part:

### **“35. Some Things You Must Not Do**

Some definite prohibitions are placed on your actions as a Census Enumerator by Act of Parliament. The disregarding of these make you liable for fine or imprisonment.

- (1) *You must not disclose to anyone except Census officials any information you receive in the course of your duties as an Enumerator.*
- (2) *You must not permit any unauthorized person, even those in your own family, to see your completed forms or questionnaires.”*

A clause contained in the Instructions for the 1871 Census, and repeated for the 1891 Census states:

“All documents sent to the Officers, Commissioners and Enumerators, are, in their nature, *private*, with the exception, of course, of the “Census Act,” the Manual, and such as have been published in the “*Canada Gazette*.”



## Myth Number Three

**The Census of 1906 was the first in which Rules and Regulations relating to Census and Statistics were subject to the “force of law”. The process by which secrecy of name-identifiable Census records coming under the “force of law” was a deliberate, well thought out result of the legislative process.**

In fact, confidentiality that had the *force of law* appeared in statutes as early as 1879, and perhaps earlier. It did not, however, relate to *individual identifiable persons* enumerated in Census, but to agriculture, commercial, criminal, and, in particular manufactures, *Statistics*.

A great deal of research was done in order to find reasons for making secrecy of personal name-identifiable information subject to law where previously it had not been. Attempts to find where this issue had been debated in the House of Commons met with failure.

In the *Debates of the House of Commons* for 1906 no reference was found to either Census or Statistics, either in the volumes of debate themselves, or the Analytical Index to the Debates. The Debates for 1905 were a different story. Hansard for 1905 contained considerable debate in reference to Bill 5 - an Act respecting the Census and Statistics presented by the Hon. Sydney Fisher, Minister of Agriculture in 1905. This Bill, with one amendment and some rearrangement of clauses, appears in the Revised Statutes of Canada for 1906 as Chapter 68, and it is the Statute under which the 1906, 1911, and 1916 Census were taken. It is under this Statute, Statistics Canada states, personal name-identifiable information became *secret* and subject of the *force of law*.

No direct debate regarding privacy, confidentiality, or secrecy relating to information regarding identifiable individuals was found in the Debates. There was no mention of these issues within the 1905/1906 Census and Statistics Acts. What they contained was a clause that stated:

"The Minister shall make and prescribe all rules, regulations, instructions and forms which he deems requisite for the work and business of the office; and such forms, rules, regulations and instructions, and any such tables of rates of remuneration or allowance, as aforesaid, when assented to by the Governor in Council and published in The Canada Gazette, shall have the force of law."

The Minister of Agriculture made the rules and regulations which were then Proclaimed by the Governor General acting with the advice of the Privy Council. There was no debate in the House of Commons regarding these Rules and Regulations. The elected representatives of the people had no opportunity to debate the issue of confidentiality of information relating to individual name-identifiable Census records – it was not a part of Bill 5 (1905) and as such would not have been subject to debate in the House. While debating Bill 5, the clause above passed virtually without comment. What comment there was had nothing to do with secrecy of name-identified information.

No Act regarding Census or Statistics actually had a clause regarding “Secrecy” until the Statistics Act (Chapter 43) of 1918. The clause on which Statistics Canada bases their position of non-disclosure of identifiable information from Census is contained in the "Instructions to Commissioners and Enumerators" proclaimed by the Governor General in Council and published in the Canada Gazette of Monday 21 May 1906. This clause states:

"26. Every officer or other person employed in any capacity on census work is required to keep inviolate the secrecy of the information gathered by the enumerators and entered in the schedules or forms. An enumerator is not permitted to show his schedules to any other person, nor to make or keep a copy of them, nor to answer any question respecting their content, directly or indirectly; and the same obligation of secrecy is imposed to commissioners and other officers or employees of the outside service, as well as upon every officer, clerk or other employee of the Census and Statistics Offices at Ottawa. The facts and statistics of the census may not be used except for statistical compilation, and positive assurance should be given on this point if a fear is entertained by any person that they may be used for taxation or any other object."

With the wording of the Statute clause, and the Regulation above, secrecy of name-identifiable records from Census could have been solely the idea of one person - the Honourable Sydney Fisher, Minister of Agriculture in 1905. The records however, do not show this to be the case. In fact, clause 26 of the Instructions for the 1906 Census was not a new clause. It is word for word identical to clause 23 contained in the Instructions for the Census of 1901.

In researching the various statutes, regulations and instructions relating to Census, and Debates found in Hansard I have come to the conclusion that applying *the force of law* to the Instructions regarding name-identifiable records and secrecy was *not a planned action*, but rather was a *coincidental side effect*.

The 1905 Debates contained no reference to confidentiality or secrecy of *personal* name-identifiable information in *Census*. The only reference to confidentiality or secrecy found was in reference *to industrial and manufacturing statistics*. These references were not in direct debate about confidentiality but as side issues re: compelling manufacturing, and industrial interests to fill out and return forms mailed to them for statistical information. Those involved in these interests would naturally be concerned about the possibility of competitors having access to current information regarding their operations. (“Current” in this regard seems relative as it appears that at that time it took 5 or 6 years to compile and publish the statistical information gathered in Census.) In the Debates, references regarding *industrial and manufacturing Statistics* would lead one to believe that confidentiality of these was nothing new, but a position of long standing.

The 1905 Bill (No. 5) sought to accomplish a number of things, one of which was to establish a permanent office from which to collect Census and Statistical information. It also sought to amalgamate three Acts from the Revised Statutes of Canada for 1886; Chapter 58 - *Census*,

Chapter 59 - *Statistics*, and Chapter 60 - *Criminal Statistics*. Chapters 58 and 59 both contained clauses giving the Minister the authority to make rules, regulations, etc., while Chapter 60 makes no mention of this. The difference between Chapters 58 and 59 is that Chapter 59 - *Statistics* includes the reference to those rules and regulations having *the force of law*, while Chapter 58 - *Census* does not. It appears that in the Statutes of 1886, secrecy regarding name-identifiable information in *CENSUS* was *not the same concern* as was the fear of those involved in industrial or manufacturing interests that their *STATISTICS* would be made *available to their competition*. No clause in any Statute prior to 1905, when applied to individual *Census* as opposed to *Statistics*, made any reference to *force of law*.

The Minister in 1905 sought the authority to collect various statistical information throughout the Dominion in years between the decennial Census years. He was proposing that for the most part these statistics would be collected by mailing forms and schedules to those from whom the information was required, rather than using enumerators to personally collect the information. Previous statutes gave the Minister the power of compulsion only for the decennial Census and he wanted that power continuously so that those *Manufactures* to whom the forms and schedules had been sent would be *required by law* to fill them out and return them. This then, was a major reason for wanting the *force of law* to apply to regulations.

It is interesting to note that while part of the purpose of Bill 5 (1906) was to amalgamate the separate Chapters 58, 59 and 60 of the 1886 Revised Statutes, Chapters 58 and 59 had in fact separated Census and Statistics which had been together in the previous Statute, Chapter 21. -- *An Act Respecting Census and Statistics* (1879).

Chapter 21 (1879) contains two clauses giving the Minister the authority to make rules and regulations (instructions). The first reads as follows: (italics mine)

"4. The Minister of Agriculture shall cause all forms, *and also all instructions* which he shall deem requisite *in respect of each census* to be duly prepared, printed and issued, for use by the persons to be employed in the taking thereof."

The second clause, under a separate heading of *STATISTICS*, reads: (italics mine)

"28. The Minister of Agriculture shall, from time to time, subject to the approval of the Governor in Council, *make such rules and regulations*, and prescribe such forms as may appear necessary and expedient *for the purpose of collecting, abstracting, tabulating and publishing vital, agricultural, commercial, criminal and other statistics*; and such rules, regulations and forms, when assented to by the Governor in Council, and published in the Canada Gazette, shall have the force of law so long as they are not repealed or superseded; and any printed copy thereof published by the Queen's Printer shall be evidence thereof."

Chapter 21 (1879), while an Act dealing with both Census and Statistics, obviously viewed the two as *separate and apart* insofar as having the *force of law* applied.

In the Regulations for the Census of 1911 however, in addition to "*Clause 23. Secrecy of Census information provided for.*", there is a much stronger clause regarding Secrecy under the heading of "MANUFACTURES, SCHEDULE No. 9". This reads as follows: (italics mine)

"228. Secrecy. The *enumerator is sworn to secrecy* in the matter of the Census, as are also all persons employed in the revision and compilation of the returns, and the information of the schedule may be used only in the compiling of tables in which the reports for many factories are brought together to make the totals for a district or province; and such totals for an industry will be used under its name only when the factories are three or more in number in a district or larger area. *As a further measure of secrecy the stub-end of the schedule containing the name of the owner, firm, company or corporation will be removed and filed away separately from the schedule by the officer in charge of the compilation work as soon as it is received at the Census Office, so that clerks or other persons cannot identify any single return if even they were so disposed.*"

The reason for the *force of law* here was obviously to ensure as complete as possible statistical information from *industrial and manufacturing* interests. A similar clause was not found in the Regulations for the 1906 or 1916 Censuses, however these were a Census only of Agriculture in Alberta, Saskatchewan, and Manitoba and did not include schedules for Manufacturing or Industrial interests.

It is interesting to note that in all Statutes prior to 1905, clauses pertaining to *Statistics* required Regulations and Instructions to be published in the Canada Gazette and made reference to such Regulations and Instructions having the *force of law*. Regulations and Instructions pertaining to *Census* were *not* required to be published, nor did Statute clauses referring to them require them to be subject to the *force of law*. In the Statutes prior to 1905, whether or not *Census* and *Statistics* were contained in the same, or in separate Statutes, it is obvious that they *were viewed as separate entities*, each requiring a different degree of confidentiality.

With the merging of Chapters 58, 59, and 60, wording giving the Regulations the *force of law* was included for reasons given above and *never with the conscious intention* to prevent release of *personal* name-identifiable records in the far future. Wording from previous Statutes relating to *Statistics* migrated to Bill 5 (1905), as did wording of Regulations and Instructions. *Census*, being included in the new Statute got caught by that migration of clauses. The previous clause relating to *Census* did not migrate. The confidentiality of personal name-identifiable records from *CENSUS* was therefore *coincidentally* brought under the same umbrella as was that of Manufactures *STATISTICS*.

It is ironic that the Statistics Act of 1918, while establishing the Dominion Bureau of Statistics, and separating the Census of Industry from that of the Census of Population and Agriculture, should for the first time, include a clause under the heading *SECRECY*. The main reason for secrecy regarding a combined Population and Manufactures census was no longer a part of it.



## Myth Number Four

### **Release of name-identifiable information in the distant future was a reason for confidentiality concerns of respondents to Census.**

In fact, it is unlikely that at the beginning of the Twentieth Century many citizens of Canada gave much, if any, thought to the possibility that personal information they provided to Census might be released for historical or genealogical research seventy-five or one hundred years in the future. They had to work too hard, making a living for themselves and their families to give much thought to this. If, at that time, records from any distant past Census had been made publicly available, it is likely that very few were aware of that fact. Access to such records, if available, would have been much more difficult than it is today.

Were citizens of Canada at the turn of the Twentieth Century concerned about personal privacy? Quite likely, however all indications point to the likelihood that their concerns about this were contemporary, rather than futuristic. To my knowledge, in 1906, no release of any Census had yet taken place. Certainly no Census of Canada had yet been released. That of 1871 would not be released until after 1941, many years in the future.

Then, as now, there was an inherent distrust of Government, and what their intentions were regarding information provided by respondents to Census. Much of that distrust had to do with the possibility that information provided to Census would be used against respondents by other departments of the Government.

Evidence that privacy concerns of respondents of the day were *contemporary* is reflected in the Instructions to Commissioners and Enumerators. As noted in the response to Myth Number Two, these Instructions for each and every Census from 1901 until at least 1946 contained, within the Clause regarding *Secrecy Provided For*, the phrase

“The facts and statistics of the Census may not be used except for statistical compilations, and positive assurance should be given on this point if a fear is entertained by any person that they may be used for *taxation* or any other object.”

Fear that information provided in Census might be used for *taxation*, or other purposes was not a new concept. The Instructions to Officers employed in the taking of the First Census of Canada (1871) contained the following statements:

"A census is taken for the purpose of ascertaining, as exactly as possible, the population and resources of a country, and thereby furnishing a sufficiently correct idea of its strength and capability.

A census is not taken for purposes of *taxation*, as, unfortunately, many persons imagine. None of the information contained in it could be turned to such account. The results it exhibits, like those of any other statistical enquiries, are directly connected with the science of government; which pre-supposes a general

knowledge of the wants and capabilities, the defects and advantages, numerically presented, of the population and the country.”

Elsewhere in the 1871 Instructions to Officers it states:

“Persons having apprehensions, or showing hesitation in giving their answers, must be assured that no information they may give; and that nothing taken down in the schedules, can, by possibility, injure, or in any way affect their standing or their business.”

Similar statements as above appear in the Instructions to Officers for the 1886 and 1891 Census.

Further evidence that respondents to Census were concerned about confidentiality in the *present time* is contained in a Proclamation directing the Census of 1931 and published in the *Canada Gazette* of 23 May 1931. This Proclamation contains the statement:

“The Census cannot be used in connection with taxation, with military or jury service, with the compulsion of school attendance, with the regulation of immigration or with the enforcement of any national, state, or municipal law or by-law.”

This statement is repeated in the Proclamation directing the Census of 1941 and published in the *Canada Gazette* of 26 April 1941. It is interesting to note that while an indication regarding additional concerns of the people was mentioned in these Proclamations, these additional concerns were not reflected by updating the wording of the clause in Instructions relating to Secrecy until 1951. A preface to the Enumeration Manual for 1951 stated, in part: (*italics mine*)

“Some of the people you interview may hesitate to answer some of your questions. This is an understandable reaction, because you will be asking them for information which they wouldn’t normally give to a stranger. However, you may put them at their ease by telling them –

All Census Enumerators have taken an oath of secrecy.

By Act of Parliament, *no information about individual Canadians recorded in the Census may be disclosed to other government agencies, such as income tax, national defence, etc., or to any private organization.*”

It is difficult to imagine any information given to Census causing difficulty to respondents in the distant future. All of the subjects referred to in the statements above would be of contemporary concern – not a concern for the distant future.

As indicated above, people, then and now, have an inherent distrust of Government and what they do with information provided them. As an illustration of that continuing distrust, I copy the following extract from Debates of the Senate (Hansard) for Thursday 18 February 1999. Privacy

Commissioner Bruce Phillips had just presented his Annual Report to the Senate, and was answering questions regarding it. The extract states: (italics are mine)

**“Senator Kinsella:** .....

.....It is my understanding that, under section 72(1) of the Privacy Act, all heads of the various government agencies have an obligation to submit reports to you as to how they are complying with the act. In your report, which is the subject of this Committee of the Whole, you present a table on page 48 of the top 10 departments by complaints that you have received. According to that table, from Human Resources Development Canada there *were 671 privacy complaints* and 356 from Revenue Canada. The number of complaints from all the other agencies drops way down to 20, 40, 19, et cetera.

Based upon what you tell us in that table, you are in constant communication with Revenue Canada and Human Resources Development Canada. What is the problem?

**Mr. Phillips:** First let me say, senator, that I do not know whether we have an inside man at the Senate or you have an inside man in my office, but in any case it is very useful.

Yes, that very high number of complaints from those two departments *relates to one particular issue*, namely, the *data match* in which Revenue Canada supplied the Customs forms from returning travellers to HRDC for the purpose of *matching up against unemployment insurance claimant lists*, in order to find people who were out of the country while receiving benefits. *That particular issue has triggered one of the largest body of complaints we have ever had on a single problem.”*

The report mentioned here was obviously an interim report as the figures mentioned differ from those shown in the Annual Report of the Privacy Commissioner presented to Parliament in July 1999, covering the period from 1 April 1998 to 31 March 1999. In that report the figures for Privacy Complaints for HRDC and Revenue Canada were 913 and 480 respectively.

Once again, the extract above illustrates that privacy concerns of the people of Canada are contemporary, not futuristic. While more difficult to do in the early part of the Twentieth Century than it is today, cross matching of information was *the major concern* of respondents to Census. Information being cross matched between government departments, such as that mentioned above, would certainly be detrimental to the individual in contemporary terms, but it is difficult, if not impossible, to visualize how it could do harm to someone 92 years in the future. It is even more difficult to visualize that information being harmful to someone who has been long deceased.

Something of note regarding the Annual Report of the Privacy Commissioner is the fact that it shows, for the period covered by that report, Statistics Canada had a total of only twenty complaints investigated. Of those twenty complaints, four were considered well founded; one well founded and resolved; eight were not well founded; six were resolved; and one was settled. While specifics of the complaints were not given, there is no indication that any complaint had to do with the release of personal name-identifiable information from Census after 92 years.

Specific questions were asked of Statistics Canada and the National Archives about complaints regarding release of personal name-identifiable information from Census, 92 years after collection. In responding to these questions both Louise Desramaux of Statistics Canada, and Marta Khan of the National Archives, indicated that there had *never* been a complaint in this regard. Copies of the correspondence regarding this appears elsewhere in this document.

The experience in the United States in this regard has been similar to that of ourselves.

## MYTH NUMBER FIVE

***A major intent of early Census legislation was to ensure that Schedules of Census containing name-identifiable information would never be available for future historical or genealogical research.***

To the contrary, there is documentary evidence contained within Instructions to Commissioners and Enumerators for successive Census from at least 1901 to 1941 that it has *always* been the intent that Schedules for Census *should be deposited in the National Archives and to be made available for historical research at some point in the future*. The following extracts have been taken from the Instructions issued for the Census of 1901. Clauses identical, or nearly identical, to clauses 15, 31 and 33 below were contained within Instructions for successive Census up to at least 1941. The same applies to clause 30 below, up to 1921. The statements emphasized by *italics* (mine) have remained constant throughout Instructions for all of these Census.

**15. Rural and village enumeration to be kept separate.** If an unincorporated village is included in the enumerator's district he should take the Census of it separately from the rural portion proper, but on the same schedule. A short line drawn across the left hand margin above the number of the first family and another below the number of the last family of the village as entered on the schedule, will be a sufficient mark of separation. But if the village have a distinct name it should be written along the left hand margin of the schedule, between the upper and lower lines, on each page until the enumeration of such village is completed. This separation will facilitate the tabulation of the statistics, *and it will have value as a record for historical use in tracing the origin and rise of future towns in the country*. The census of unincorporated villages, however, will be included as heretofore with the statistics of rural sections.

**30. Grouping of Townships or parishes.** In some sparsely settled regions several townships or parishes may be grouped to form one polling subdivision or unit of enumeration assigned to one enumerator, and where this occurs the name of each township or parish should be entered in the blank line. *But in every such case the name of each township or parish should also be written by the enumerator on the left hand margin of the sheet as required in No. 15 of these Instructions in order that the Census of each may be kept separate and distinct.*

**31. In the case of united townships.** Where two or more townships or parishes are united to form one municipality the same instruction should be followed *for the purpose of future reference and comparison* when each one of such townships or parishes may become organized as a distinct municipality.

**33. Clear and legible records.** The enumerator is required to make all entries on the schedules in ink of good quality, and every name, word, figure or mark should

be clear and legible. If a schedule cannot be read, or if the entries are made with a poor quality of ink, or in pencil, or if they are blurred or blotted, the work of the enumerator may be wholly wasted. *The Census is intended to be a permanent record, and its schedules will be stored in the Archives of the Dominion.* See Instruction No. 52.

Clause 26 of the Instructions for the 1946 Census states:

**26. Clear and legible records.** The Enumerator is required to make all entries on the schedules in black or blue-black ink of good quality, and every name, figure or mark should be clear and legible. Ditto marks are not to be used except in Column 8 of the Population Schedule. *The Census is a permanent record, and its schedules will be carefully preserved for future reference.*

The emphasized portions of the clauses above would appear to be a clear recognition that at some time in the future users would be granted access to the individual census schedules.

The coincidental merging of clauses from Chapter 58 - *Census* (1886), and Chapter 59 - *Statistics* (1886) that brought Instructions relating to *Census* under the *force of law* in Chapter 5 - *Census and Statistics* (1905) makes no difference to the *intent* conveyed in the Instructions. The simple fact that these clauses remained within the Instructions relating to Census long past legislation passed in 1905 that gave those Instructions the *force of law*, should illustrate this conclusively.

If clauses relating to *secrecy* contained in the Instructions from 1906 have the *force of law*, so then, do clauses contained in those *same* Instructions which state that schedules of Census *have value as a record for historical use, are intended to be a permanent record, will be stored in the Archives of the Dominion, and will be carefully preserved for future reference.* The *Secrecy* clause cannot be considered in isolation. It must be considered in context, and at the same time as all other clauses in the Instructions. Either *all* Instructions have the *force of law*, or *none* of them do. *Statistics Canada cannot pick and choose* which of the Instructions they want to have the *force of law* and which they do not.

## Myth Number Six

### **Without confidentiality that lasts forever, respondents will be reluctant to fill out Census or will not respond truthfully.**

Once again, there is no documentation to back up this concern. Statistics Canada is simply speculating that this will happen. When discussion relating to release of Census took place in the United States several years ago, all of the same arguments used by Statistics Canada were used by their counterpart in the US. The end result in the United States has been that they open their Census to the Public 72 years after collection. Not only do they open the Census to the Public, but it is my understanding that they do so with great fanfare and parades to a ribbon cutting. To my knowledge there has been no change in the degree of co-operation of respondents to Census in the US since the opening of Census to the Public.

While Census in Australia has traditionally been destroyed immediately following statistical compilation, changes have been made recently that would allow for retention of the Census schedules. Starting in 2001, Census schedules in Australia will be retained, with release in the 100<sup>th</sup> year following collection, provided that the respondent checked a box on the schedule allowing that to be done. This is *not* the choice Genealogists and Historians would like to see for Canada's Census as the end result would be a *fragmented* and *incomplete* history. The Australia Bureau of Statistics (ABS) expressed the same concern that respondents would be reluctant to provide full and honest information if the Census schedules were retained and subsequently released to the Public. The Standing Committee of the Australian House of Representatives commissioned to study release of Census records discounted this concern as being unlikely, or of minimal effect. The conclusion reached by this committee reads, in part: (italics mine)

The effects of retaining name-identified information from the census.

**7.3** As discussed above in Chapter 3, the Australian Bureau of Statistics (ABS) was the principal proponent of the argument that name-identified information from census forms should not be retained. Other government agencies and statistical bodies supported this view. ABS argued that the primary purpose of the census – the collection of accurate statistical data – would be jeopardised if name-identified information were retained. Public cooperation with the census would decline if people knew that their information would be kept and released in the future. Non-response rates would rise and the information provided would be less accurate. The level of non-response and the accuracy of data provided for small geographic areas or particular sub-groups of the population would vary. Data at these levels, such as regional estimates, would be less reliable.

**7.4** Data quality was the primary focus of the ABS in its arguments to the Committee. ABS concluded that a reduction in data quality of the census would

adversely affect users of census data and population estimates, electoral redistribution's and Commonwealth grants processes.

**7.5** ABS also concluded that other collections conducted by ABS would be adversely affected. Sample selection and benchmarking of other collections from census data would be affected. A liberalisation of the policy on the retention of name-identified census information could undermine confidence in the community, or in parts of the community, about the confidentiality of other information collected by ABS. This could lead to a rise in non-response rates in these other collections or a decline in the accuracy with which respondents answer the questions.

**7.6** ABS cited instances in overseas countries where censuses had been adversely affected by privacy concerns.

**7.7** In rebuttal of these arguments, a number of genealogical and academic researchers put the views that there would be no, or only a minimal, effect on the data quality of the census or of other ABS collections because most people would probably continue to complete a census for, and do so accurately, as good public citizens. It was suggested that many people do not understand that name-identified information is not currently kept and that therefore a change in policy would not be likely to adversely affect response rates.

**7.8** Indeed, it was suggested that some people would be more likely to complete a census form or to provide accurate information if they knew that name-identified records would be retained for the future.

**7.9** It was argued that any possible public concerns about the retention of name-identified census information could be managed by an appropriate public education program at the time of the next census. It was also suggested that the compulsion powers of the *Census and Statistics Act 1905* could be used to enforce high response rates even if there were some public resistance to a change in retention policy.

**7.10** The committee accepts that there may be some possible risk of a reduction in data quality of the census and of other ABS collections if census forms were retained. This possible risk to data quality might arise, because some people concerned about privacy, might give less accurate or comprehensive responses, or refuse to complete a form. *The Committee was not persuaded by the evidence that such an effect would be significant or substantial.*

**7.11** *The Committee has considerable reservations about some evidence presented by ABS from attitudinal surveys conducted on its behalf. The Committee formed the view that attitudinal surveys in general, and these surveys in particular, do not provide a sound basis for judgement. The Committee also*

*believes that influence had been brought to bear by ABS on other government organisations to support its view.*

**7.12** *On balance, the Committee considers that the evidence that data quality of the census and other ABS collections would be adversely affected is not conclusive. The Committee considers that a properly managed and comprehensive public education program, promoting the benefits to the community of form retention for future research, would assist in eliminating any potential reduction in public cooperation with the census because of concerns about privacy. The Committee considers that a legislated closed period of a significant number of years would also reassure the public about the confidentiality of personal information.*

Statistics Canada feels that release of Historic Census records 92 years after collection, as provided for in the Privacy Act, would adversely affect the full and honest completion of Schedules of Census even though they have no evidence that would happen. Genealogists, on the other hand, view things differently. Many have expressed the opinion that if Census records were *not* to be released for their descendants to access in the future, they see little reason why they should answer questions in Census either fully, or honestly. Some have gone so far as to suggest a boycott of the Census.



## Undue Influence of Statistics Canada on Others

In Australia, the House of Representatives Standing Committee on Legal and Constitutional Affairs, in their report on the inquiry into the treatment of name-identified census forms, expressed concerns regarding what they considered the undue influence of the Australian Bureau of Statistics (ABS) upon the opinions and testimony given by some government agencies. In their report *Saving Our Census and preserving our history* (May 1998), they stated: (italics reflect emphasis of the Committee)

- 3.104 The Committee was concerned about the evidence provided by some government agencies. Many government agencies (both Commonwealth and State departments) advised the Committee about the risks to their program delivery if data quality of the census or of other collections should decline. *However, many of these agencies also said that they had been persuaded by the evidence available to them that data quality would decline if census forms were to be retained.*
- 3.105 *The Committee formed the impression that the submissions from these agencies were drafted principally at the impetus of a letter sent to them by ABS highlighting its fears that data quality of the census would decline. The Committee noted that many of the submissions used expressions like those contained in the ABS letter. While a similar practice was apparent to a greater extent amongst genealogical associations, the Committee was concerned that what it regards as virtually solicitation and collusion should occur amongst government agencies.*
- 3.106 *The Committee was also concerned that DEETYA did not initially declare that it had used the services of an outposted ABS officer to prepare its submission. The Committee considered that the submission had been influenced by the views of ABS. In responding to these concerns, DEETYA stated that the views expressed were its own. Nonetheless, the Committee questions the independence of DEETYA's expressed views.*
- 3.107 The Committee also had some concerns about the independence of the ASAC from ABS. The Committee observed that ASAC is based in the same offices as ABS and that its secretariat is drawn from officers of ABS. ASAC's chairman, Mr. John Macleod, advised the Committee that ASAC is quite independent. Nonetheless, the Committee holds reservations about its impartiality.
- 3.108 The Committee's final conclusions are discussed in Chapter 7 of this report.

In Chapter 7 they state:

7.11 The Committee has considerable reservations about some evidence presented by ABS from attitudinal surveys conducted on its behalf. The Committee formed the view that attitudinal surveys in general, and these surveys in particular, do not provide a sound basis for judgement. *The Committee also believes that influence had been brought to bear by ABS on other government organisations to support its view.*

As much as the Committee in Australia felt the ABS had undue influence upon the opinions and decisions of Government agencies and others, so has Statistics Canada wielded similar influence here in Canada. In responding to questions from their constituents, Members of Parliament sought information and advice from Statistics Canada. Statistics Canada, in their turn produced information sheets, one of which was titled *Access to 1911 and other Post-1901 Census Records*.

Among others, this particular information sheet has been quoted verbatim, both partially, and in its entirety, in letters and email sent by many Members of Parliament to constituents who have petitioned them for release of Historic Census records. Obviously those MPs seeking information from Statistics Canada accepted what they were told without question. Accepting this without question, they passed on that information and in so doing perpetuated the *MYTHS* regarding “confidentiality in perpetuity”, “an explicit guarantee of indefinite confidentiality that was *promised* to Canadians when the data were collected”, and “release of individual census records is explicitly prohibited by law for all censuses following 1901”. As evidence of what I say, I can, on request, produce a number of letters and e-mail sent by MPs to their constituents..

Privacy Commissioner Bruce Phillips, and his staff, have obviously bought into what Statistics Canada have promoted, without questioning the veracity of what they were told regarding the *promise* and *never-ending* confidentiality. Letters from Brian Foran, Director - Issues Management & Assessment, on behalf of Privacy Commissioner Bruce Phillips, widely quote information provided by Statistics Canada. His letters frequently use phrases such as “*it is the position of Statistics Canada*”, “*according to the agency*” (i.e. Statistics Canada), “*Statistics Canada has indicated*”, “*Statistics Canada has consistently interpreted*”, and “*Statistics Canada states*”. In an email sent to Mrs. Muriel M. Davidson, dated 24 February 2000, Mr. Foran directly quoted the above named document in stating:

“Like any law, the Statistics Act can also be amended to permit the release of individual census records after 92 years. But there is an important principle of privacy protection that comes into play – is it right to alter retroactively the conditions under which information was provided by Canadians? Should Parliament declare as invalid the explicit guarantee of indefinite confidentiality that was promised to Canadians when the data were collected?”

Statistics Canada has been the source of statements regarding the *promise* - a *promise* that does not exist. This non-existent *promise* has infiltrated even into the *Terms of Reference* of the Expert Panel which state: (italics mine)

“On the one hand, the assurance of confidentiality of individual responses to the census was a *promise* made by the government to Canadians at the time of the 1906 and subsequent censuses and it is, *apparently*, a legally binding commitment.”

The members of the Expert Panel should not blindly accept the existence of this *promise*. The entire position of Statistics Canada is based on this *promise*. If the *promise* does, in fact, exist, there *must* be some *documentary proof*. To date, such *proof* has not been forthcoming. Members of the Expert Panel are urged to ask of Statistics Canada and Privacy Commissioner Bruce Phillips to “*show us the promise!!*”

The key word in the statement above, aside from the reference to the *promise*, is “*apparently*.” Statistics Canada’s position is based on a number of legal *opinions* that to date have not been tested in a court of law. *Opinions* that had a variety of reasons for reaching the conclusions they did, and that in fact differ as to *when* they state *secrecy* of name-identified records became a factor. *Opinions* that considered *only one clause* of regulations *that existed prior to the statute* that gave them the *force of law*, rather than all clauses of those regulations. Clauses which state that schedules of Census *have value as a record for historical use, are intended to be a permanent record, will be stored in the Archives of the Dominion, and will be carefully preserved for future reference.*

Has Statistics Canada exerted undue influence on the opinion and position of other Government departments, and many Members of Parliament? The answer is a resounding **YES!!**



## PRIVACY - and SELLING THE CENSUS

Statistics Canada maintains that they do not provide name-identified information from Census or Surveys which they conduct. A *Survey of Household Spending* recently sent out by Statistics Canada Atlantic Region stated: (italics mine)

“Please remember that all information you provide is kept strictly confidential according to the requirements of the Statistics Act. *No one can identify you or your household from the results of the survey. It is never possible to identify individuals or households in the survey results.*”

An enclosed newsletter displayed a notice that states:

“CONFIDENTIAL. The law protects what you tell us.

Your information is kept strictly confidential. No one, not the courts, Revenue Canada or even the RCMP, can access your information. Your information cannot be made available under any other law such as the Access to Information Act.

Statistics Canada is careful to keep your information strictly confidential. All Statistics Canada employees are required by law to take an oath of secrecy, and there are legal repercussions if the employee breaks that oath. Only those employees who need to see questionnaires have access to them. *We never release any information that could identify a particular individual or household.*”

Before reading further, go back and re-read the paragraphs above, paying particular attention to those parts emphasized in italics. Now read on.

On 30 January 2000, the CBC television program *Undercurrents* aired a segment entitled “Selling the Census”. *Undercurrents* has an internet website located at

<<<http://www.tv.cbc.ca/undercurrents>>>

Clicking on the link for the program of 30 January 2000 takes you to a page describing the program segment *Selling the Census*. The write-up for the show states:

Statistics Canada conducts 173 annual surveys a year and all but 4 are mandatory, and then there is the long form census. Every five years, twenty percent of the Canadian population or 4 million households fill out the long form census with eighty questions on things like religion, whether you rent or own a home, what your mortgage payments are, and how many bedrooms you have.

“We go out of our way to reassure them that the data are confidential - cause we need people confident in Statistics Canada,” states Susan McMillan of Statistics Canada.

But how confident would people be if they knew it wasn't just the government that had its hands on this information --- that Statscan sells nearly everything it collects about you except your name and exact address. Businesses love it. It is the kind of comprehensive, private data they can't get anywhere else.

Scott Cornell of Vancouver, British Columbia got so upset after being asked to take part in a Statscan survey that he started to ask questions and discovered that his answers would be sold.

“I would assume that the only information that a country would seek that is so important that they take away my right to refuse is information which is purely of use to government,” Cornell says, “And if you look at the breadth of the surveys that they do, it makes you wonder who guides the questions.”

Businesses can purchase information directly from Statscan or go to companies like Compusearch, which as Statscan's largest corporate client, specializes in data mining for business. When Compusearch purchases information from Statscan it is already broken down into 45,000 neighbourhoods, as small as 125 homes, with information such as income level, age groups - all the characteristics of each neighbourhood. Compusearch's clients include car companies, banks, and most national retail chains.

“You try to end up with maybe 50, 60, 70 group; they've got to be something that a marketer can work with,” says Compusearch's Jan Kestle, “Then we have a bunch of people who sit around and name them and we come up with names like Canadian Establishment, the Affluentials, Mortgaged in Suburbia, Boomers and Teens, Suburban nesters. So the data itself drives the classification scheme.

*“I think what's happening now, with the ability to do enormous computations with large amounts of data and large computer systems, it's possible to maintain simultaneously that your not releasing uniquely identifiable information,”* states University of British Columbia Science Professor and privacy advocate Richard Rosenberg. *“But with other information added into the picture, you can almost uniquely identify people.”*

This webpage included links to other websites containing relevant information, such as the Total Address File of Desktop Mapping Technologies Inc. This page states:

The Total Address File provides you with a geographic point location for each municipal address in the province of Ontario, Canada.

Developed with the precision of CanMap and GeoPinpoint, DMTI's Total Address File is an excellent database to help you carry out accurate geocoding, data matching, or to form the basis of a customer/prospect file for database marketing.

#### Features

This comprehensive database provide you with the following attributes:

- Name of property owner or tenant
- Addresses (parsed and un-parsed)
- Property type, use and size
- Legal description, tax assessment, and school support
- Municipality in which the property is located
- Latitude and longitude of the address point
- Geocoder precision result code

In cases where there are multiple units at the same street address (for example, apartments or condominiums) there is a unit count field, along with a relationally linked table with a record for each unit, including the unit number.

The different types of property included in this file are: residential, commercial, industrial, government, institutional, special purpose, agricultural and vacant land.

#### Benefits

This database is a rich source of information to the Province of Ontario. Benefits include:

- Comprehensive provincial address database
- Accurate address locations based on CanMap and GeoPinpoint
- Ability to geocode, clean or flag errors within your database
- *Nests with census and expenditure data for profiling, targeting and site analysis*
- Compiled for ease of use in leading GIS and database software environments

Other links take us to an Elections Canada website containing a News Release regarding an agreement with Statistics Canada to merge databases to create a National Geocartographic Database, and to another page that discusses the problem of privacy in relation to Geographic Information Systems (GIS).

Information on these pages is extremely interesting. It is eye-opening to realize the extent of private, personal information that can be "reverse engineered", so to speak, from the supposedly anonymous data that Statistics Canada sells to these various companies.

It is enlightening to realize that by using *current information from Census* that StatCan sells, in combination with unrestricted information freely available from other sources, it is possible to pinpoint an address down to its latitude and longitude, municipality, name of the property owner, address, property type, use and size, legal description, tax assessment, and school support.

The comment of Professor Richard Rosenberg, i.e. “I think what’s happening now, with the ability to do enormous computations with large amounts of data and large computer systems, it’s possible to maintain simultaneously that your not releasing uniquely identifiable information .....but with other information added into the picture, you can almost uniquely identify people” is particularly interesting.

This would appear to make the position of Statistics Canada, in refusing to allow release of 92 year old Census Records for Historical and Genealogical research, somewhat hypocritical. Statistics Canada can point with pride to the fact that they have not released name-identified information. The information they have supplied, however, has been used in data-matching to provide a great deal of personal information that might be considered an intrusion on the privacy of citizens in the present time.

## Release of Historic Census is Not a New Issue

In researching this subject one becomes aware that Release of Historic Census records has been a subject of some discussion for at least thirty years. While apparently not widely known to the public, the discussion has been going on since at least the early 1970s. As early as 1977, David H. Flaherty, in his report *Access to historic census data in Canada: a comparative analysis* (Canadian Public Administration, Fall 1977, Vol. 20, No. 3, pp 481-498) recommended release of Historic Census records after seventy-five years. In his summation Professor Flaherty stated: (italics mine)

“The experience of other countries suggests that *Canada will have to fashion a reasonable rule for granting access to historic census records* under controlled conditions for research and statistical purposes. As discussed above, the current agreement between the American Bureau of the Census and the National Archives *permits access to individual census records* on the basis of written data use agreements *after seventy-two years have elapsed*. *The resemblance between the American and Canadian controversies is rather striking*; the former are simply much closer to settling the issue permanently. Swedish censuses remain closed for *only twenty years*, although there have been no requests to date for access to the 1950 census. However, the current proposals for revision of the Secrecy Law envision an increase to a maximum of fifty years before individual census records can be utilized by outsiders.

In England and Wales the Office of Population Censuses and Surveys had operated under a *one-hundred-year* rule on access even before the Lord Chancellor made a formal rule under the Public Records Act of 1967 providing for the permanent preservation of census records, but forbidding their utilization by outsiders until the passage of one hundred years, *despite all the previous unqualified pledges of confidentiality*. From 1966 to 1971 this rule was not even applied to bona fide historical and sociological researchers, who were able to establish a legitimate interest in individual returns from the less recent censuses, anonymized in part by the removal of names and addresses. Scotland subsequently followed the lead of the Lord Chancellor in adopting a one-hundred-year rule. But under previous Scottish practice, the censuses up to and including the year 1891 had already been opened. During the 1920s the Registrar-General for Scotland had made available the census records of 1871 to bona fide researchers. The 1881 and 1891 censuses were opened in 1955.

*It seems unlikely that Statistics Canada will be unwilling to follow the lead of other Western nations in permitting access to census records after a period of seventy-five or at most one hundred years.* The proclamation by the Governor General for the 1911 Canadian census instructed enumerators to keep ‘clear and legible records,’ because ‘*the Census is intended to be a permanent record, and its schedules will be stored in the Archives of the Dominion.*’ *This would appear to be a clear recognition that at some future date users would be granted access*

*to the individual census schedules.* For certain types of research involving the linkage of data from one census to another, historians require access to individual census returns in identifiable form. Even an expensive public use sample from historic censuses would not satisfy this particular need. Since the Canadian censuses taken prior to the first Statistics Act in 1918 did not enjoy the protection of a secrecy clause, *Statistics Canada should make available the pre-1918 censuses after the lapse of seventy-five years. This will allow time to fashion a solution for opening up the post-1918 censuses when the appropriate time arrives; the simplest solution may be an amendment of the secrecy clause of the 1971 Statistics Act. If Statistics Canada continues to ignore this particular issue, the research community in Canada may have to take strong initiatives toward a reasonable solution.* This will have to be in line with the trends in English-speaking countries in recent years toward freedom of information, as well as reductions in periods of absolute secrecy to thirty years or so, even for military and intelligence secrets. As the Royal Statistical Society testified before the Data Protection Committee in the United Kingdom in the fall of 1976, *‘with the passage of time the need to preserve confidentiality, even of the most sensitive data, becomes less pressing.’*

Recommendations were made at least twenty-three years ago to release Historic Census records after seventy-five years. Statistics Canada did not act upon them. Instead they chose to ignore the problem, hoping that it would go away. It will not go away. We will not let it.

On 26 May 1981, C. Rosen, Legal Advisor to Statistics Canada, sent a Memorandum to Dr. Ivan Fellegi, head of Statistics Canada. The subject of this Memorandum was *Public Access to Data from Historical Census Questionnaires*. Its purpose was to give a legal opinion on the effect of Bill C-43 which was proposed to enact the Access to Information and Privacy Acts. This document stated that 1881 Census questionnaires had been turned over to the National Archives in 1979. The opinion was given that from 1911 there were “legislative regimes that insulate census information from public exposure and impose on officials of Statistics Canada obligations not to disclose. At that time, only common law and equitable principles appear to be in operation and those at best may only give rise to a possible right of confidentiality to those who are still alive.”

This may have been part of the reason that the Census of 1881, 1891 and 1901 Census were released to the public, however the important part of this Memorandum was contained in the closing paragraphs:

“The access to information legislation will not force the Minister to make the pre-1911 census questionnaires available but section 8 of the Privacy Act puts you back to the present situation where it becomes a *policy decision to be made by Statistics Canada*. However, we must consider the purpose and intent of Bill C-43. *The Bill is designed to give greater access to government records and the government has taken the position that the spirit and intent should be followed by government departments.*

In the Committee hearings, there have been concerns raised that *the new legislation should not, in fact, turn out to be more restrictive than the present access that is enjoyed by the public, even without special legislation*. There will likely be a good deal in the way of directives to grant access and dispense with formalities as much as possible. This leads me to the view, at this time, that by not relying on section 19 of the Access to Information Act, and giving full weight to the permissive exceptions in section 8 of the Privacy Act, *Statistics Canada would be showing the utmost good faith in the carrying out of the will of Parliament. Furthermore, the singling out of the Public Archives and persons or bodies for research or statistical purposes would give both the Archives and the researchers a very sympathetic case if their attempts for access were blocked by a hard-line position taken by Statistics Canada.*

It may be early at this time to evaluate the atmosphere that will prevail when the Bill is enacted but, Statistics Canada could take the position that the privacy legislation does not protect pre-1911 census questionnaires but opens these files to the Archives and researchers and, therefore, *in keeping with the intent and spirit of the legislation* the agency will deposit those questionnaires with the Public Archives and will refer any enquiries for research or statistical purposes to the Archivist so that he may apply paragraph 8(2)(j).”

Bill C-43 (1980-81-82-83) was proposed, debated and passed, enacting the Privacy Act and the Access to Information Act. The Members of Parliament, in approving a clause in the Privacy Act (Subsection 8 (3)) allowing personal information under the control of the National Archivist to be “disclosed in accordance with the regulations to any person or body for research or statistical purposes”, did so with the full knowledge of the “Secrecy” clauses contained in the Statistics Act. Subsection 6 (d) of the Privacy Regulations allowed personal information from Census to be transferred to the control of the National Archives for archival purposes 92 years following collection. This fact alone should illustrate that legislators of the day had reviewed and discussed the various implications of the release of name-identifiable information from Census. Obviously these legislators, in their wisdom, felt that a period of 92 years following collection was sufficient protection of the privacy of respondents to Census. The Regulations did not distinguish between Census taken before or after 1911 or 1918.

As noted above, the purpose and intent of Bill C-43 was “*designed to give greater access to government records and the government has taken the position that the spirit and intent should be followed by government departments.*” Statistics Canada, rather than acting “*in keeping with the intent and spirit of the legislation*”, has made every effort to circumvent the legislation and avoid transferring control of Historic Census to the National Archives so that the public might subsequently be given access to it.

At least five Memoranda containing legal opinions on release of Census records were written between 26 May 1981 and 22 April 1985. They were authored by:

C. Rosen, Legal Advisor, Statistics Canada (Dept. of Justice)	26 May 1981
Warren Black, General Counsel (Statistics Canada)	21 April 1982
Mary D. Temple, Counsel (Statistics Canada)	28 Sept. 1983
M.H. Zazulak, Counsel (Statistics Canada)	20 Sept. 1984
Jill Wallace, Senior Counsel (Dept. of Justice)	22 April 1985

Reference was made in these memoranda to other correspondence of which I do not have copies. I have been advised, however, that members of the Expert Panel have received copies of the memoranda listed above. As might be expected of five different members of the legal profession, at least five different opinions were expressed within these memorandum. Some of these opinions were that Census prior to 1918 were not protected by law and were eligible for release to the public. Other opinions applied the same reasoning to Census prior to 1911. Yet other opinions were that all Census from 1871 had the protection of law and should not be released. The one common thread was the opinion that from 1918 the Secrecy clause in the Statistics Act prevailed, regardless of the wording of clauses in the Privacy Act and Privacy Regulations.

In at least two of these memoranda, it was suggested that Statistics Canada might take steps to have legislation changed to allow release of Census under the provisions of the Privacy Act. Warren Black, in his memorandum (21 April 1982) to D. A. Warton, Assistant Chief Statistician stated:

“In my opinion, legislation would be desirable if you wish to grant access to these census records. Since, as you stated in your paper of March 3, 1982, “the potential sensitivity of individual census records is a direct function of their age”, access to census records collected 70 - 90 years ago might not be controversial and might possibly be included in the next Miscellaneous Statute Law Amendment Bill.”

Mary D. Temple (28 Sept. 1983) in her memorandum to Lorne Rowebottom, Assistant Chief Statistician, stated:

“Since section 16 of the Act makes no provision for release solely on the basis of age of the data, the so-called “100 year rule” has no legal validity and disclosure based on that “rule” would be contrary to section 16 of the Act.

Legal release of data on the basis of its age could be provided by a suitable statutory provision. The most obvious location would be section 16 of the Statistics Act. In my opinion such an amendment could not be considered non-contentious and so would not be appropriate for inclusion in the next Miscellaneous Statute Amendment Bill but would have to be processed in the usual way through Parliament following acceptance by Cabinet and drafting by the Department of Justice.

I would be pleased to discuss strategy and contents in more detail with you at your convenience, but take note that the time required from initiation of the process to the enactment of an amendment would most likely be several years.”

It is likely unnecessary to point out to the Expert Panel that these memoranda contain legal “opinions” that have not been tested in the courts and as such are not “law”. Should, however, legislative changes to allow release of Historic Census in accordance with provisions of the Privacy Act and Regulations not be effected, there are those who have indicated a willingness to challenge the non-disclosure of Historic Census in the courts of the land.

It is obvious that Statistics Canada, in spite of recommendations from various sources going back at least thirty years, and suggestions from legal counsel from whom they sought advice, has no intention of voluntarily taking the steps necessary to allow access to the public of Historic Census records.

I have read the submission to the Panel made by Privacy Commissioner Bruce Phillips, and listened to radio interviews on which he appeared in both Nova Scotia and British Columbia. It is my considered opinion that in his position on the Release of Historic Census he far exceeds his mandate of administering the Privacy Act. In the radio interviews mentioned I might go so far as to suggest that he was “scare mongering”, giving the impression that there are hordes of individuals with sinister motives just itching to get their hands on “his” personal information. His interviews give the impression that genealogists and historians are seeking to get their hands on *today’s* information rather than that collected 92 years earlier.

Mr. Phillips submission to the panel consistently referred to the *promise* for which neither he, nor Statistics Canada have been able to provide any documentary proof, and which he, and they, consider in isolation rather than in conjunction with other clauses that state the records will be kept in the National Archives for future historic and research purposes. His submission stated:

“Second-guessing Parliament, trying to determine what Parliament intended when it legislated, is tricky ground, where judges walk with great care. So should historians. Not one of the historians or genealogists who has publicly spoken to this issue has offered evidence in support of the proposition that the promise made to Canadians by Parliament, in regulations and in legislation, meant anything other than what it said.”

It is felt that in my submission I have not only proven that the *promise* is non-existent but that the intent was, and always has been, to make Census record available for research at some point in the future.

Mr. Phillips quoted from the Census form for 1996. He stated:

“Compare this with what was promised in the last census, in 1996: “The confidentiality of your census form is also protected by law. All Statistics Canada staff take an oath of secrecy, and only employees who work with census data see

your form. Your personal census information cannot be given to anyone outside Statistics Canada – not the police, not another government department, not another person. This is your right.”

Even this statement gives no indication that confidentiality will last *forever* and examples of possible concern are contemporary rather than futuristic. Rather than having to remove this “clear undertaking” from future censuses as Mr. Phillips has suggested would be necessary, this statement could be modified to make it clear that Census records would be released for Historical and Genealogical research after the 92 years provided for in regulations of the Privacy Act.

Mr. Phillips, a number of times, referred to having the debate on the Release of Historic Census “open and public, that every Member of Parliament address the issue”. Proponents of release could not agree more – it is what we have been seeking. It has been our understanding right from the start that release of Census would entail legislative amendments and, as such, it would be openly debated in the House of Commons and the Senate. We have made no secret of our purpose and have taken every opportunity to inform the public of our campaign.

The Honourable John Manley, Minister of Industry, because many thousands of Canadian Citizens, and Historical and Genealogical societies have urged changes in legislation to allow release of Historical Census, commissioned the services of the Expert Panel to make recommendations. Genealogists and Historians seek retroactive changes to legislation to allow Public Access to Historic Census after a reasonable period of time, on the same basis as Census for 1901 and earlier have been released.. They seek this not only for Post-1901 Census already taken, but for all future Census as well.

I urge the Expert Panel to give the most careful consideration to my submission, and also the submissions from others concerned with this issue. In doing so, I am sure that you will come down with recommendations that will meet the concerns of the estimated 7.5 million Canadians seeking information on their ancestors and about their heritage. **Do not allow the history of the past century in Canada, and that of the future to be lost forever.** Thirty years of debate is more than enough! It is time to settle this now!

Gordon A. Watts

## **Appendix 1.**

### **E-mail Correspondence**



From: Gordon A. WATTS  
Date: Monday, 03 May, 1999 8:01 AM  
To: felligi@Statcan.ca  
Subject: Complaints re: Personal Information released in Census up to and including 1901

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Dr. Ivan Fellegi  
Chief Statistician of Canada  
120 Parkdale Avenue  
Ottawa, Ontario, K1A 0A6

Dear Sir

In view of the current campaign by genealogists and historians to effect the release of Post 1901 Census information after 92 years, I am looking for some information. I am unsure at this time whether you can supply the information I am after, or if I might have to apply via Access to Information. Kindly advise if I should use the Access to Information Request Form, and if I should be directing my request to a department other than Statistics Canada.

I wish to know specifically how many complaints, if any, have been registered about personal information that has been released via Census, 92 years after the date of collection, i.e from 1901 and prior Census collections.

I wish to know the basis of such complaints, if any. I do not require the identity of those making the complaint.

Thank you in advance for any assistance you can provide in answering my questions.

Sincerely,

Gordon A. WATTS

From: Desramaux, Louise - DACS/SACD  
Date: Wednesday, May 12, 1999 10:05 AM  
To: Gordon A. Watts (E-mail)  
Subject: 1911 Census

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Dr. Ivan Fellegi has asked me to respond to your e-mail of May 3, 1999, in which you ask how many complaints, if any, have been registered about personal information that has been released from the 1901 and prior census collections, and how to go about obtaining that information..

It is not necessary for you to make a formal request under the Access to Information Act for this information. As Access to Information and Privacy Co-ordinator for Statistics Canada, I can tell you that this Agency has not received any such complaints. It is possible, however, that because the 1901 and earlier census records were released to the public by the National Archives of Canada in accordance with the Regulations under the Privacy Act that the National Archives could have received some complaints.

You may wish to contact the National Archives directly on this matter. I would refer you to Ms. Marta Khan, who is Director of the Access to Information and Privacy Division at National Archives. Her e-mail address is as follow:

[mkhan@archives.ca](mailto:mkhan@archives.ca)

I trust this will be satisfactory.

Louise Desramaux  
Access to Information and Privacy Coordinator  
Statistics Canada

From: Gordon A. Watts  
Date: Thursday, 13 May 1999 3:45 PM:  
To: Marta Khan  
Subject: Complaints re: release of personal information from Census

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Ms. Marta Khan, Director,  
Access to Information and Privacy Division,  
National Archives of Canada.

Dear Ms. Khan:

You may be aware of the current campaign by genealogists and historians to effect the ongoing release of Post 1901 census information on the same basis as the 1901 and prior Census information has been released in the past.

As part of my involvement in this campaign I wish to obtain certain information as follows:

Please advise how many complaints, if any, have been received by the National Archives, regarding the release after 92 years of personal information from 1901 and prior Census reports.

Please advise also the nature of such complaints, if any. I do not require the identity of the complainants.

If it is necessary for me to make a formal request under the Access to Information Act, please advise to whom such a request should be addressed.

Thank you.

Gordon A. WATTS  
1455 Delia Drive  
Port Coquitlam, BC  
V3C 2V9

From: Marta Khan  
Date: Monday, 31 May, 1999 5:34 AM  
To: Gordon A. WATTS  
Subject: re: Complaints of personal information from Census

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Good morning Mr. Watts: Upon verification, it has been determined that no complaints have been received about the release of personal information from census reports, by either the Offices of the National Archivist or Assistant National Archivist, or by the ATIP Division. If I can be of any further assistance please let me know.

Marta Khan  
Access to Information and Privacy Division /  
Division de l'accès à l'information et de la protection des renseignements  
personnels  
mkhan@archives.ca Tel. (613) 947-1532

From: Gordon A. WATTS  
Date: Saturday, 25 September, 1999 5:01AM  
To: Louise DESRAMAUX  
Subject: Promise of Confidentiality in Census

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Dear Ms. Desmaraux

I find myself once again asking you for information relating to Post 1901 Census questions. As you have been very helpful regarding my previous questions I hope the same will be true at this time.

Statistics Canada, through Dr. Felligi and yourself, have been consistent in advising the many citizens of Canada concerned about the release of Post 1901 Census information that there was a **promise of confidentiality in perpetuity** made to Census respondents from 1906 to the present.

In regards to Census taken from 1906 to the present I wish to know the following:

Specifically what clauses of what Acts spell out this never ending promise?

The form (wording) of said promise of confidentiality in perpetuity.

The specific means by which respondents were advised that said confidentiality would be **forever**. If possible I would like copies of such advice or references to where they might be found.

I have studied a number of documents relating to this matter, including the 1906 Proclamation directing a census of population and agriculture for the Provinces of Manitoba, Saskatchewan, and Alberta (Canada Gazette 21 May 1906, Orders in Council) ; The Statistics Act (Chapter 43) assented to 24 May 1918; the consolidated online versions of the current National Archives of Canada Act, Access to Information Act, Privacy Act, and Statistic Act; and the Census forms of 14 May 1996. While I am by no means a lawyer, I personally see nothing within any of these documents that would preclude the transfer of Post 1901 Census records to the National Archives and their subsequent release to the Public.

**The Privacy Act — Chapter P-21** states, in part (emphasis in bold italics mine):

**"Disclosure of Personal information.**

**8. (1)** Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution *except in accordance with this section*.

**Where personal information may be disclosed.**

**(2)** Subject to any other Act of Parliament, personal information under the control of a government institution *may be disclosed*

(i) to the National Archives of Canada for archival purposes;"

The Privacy Act continues

**"Personal information disclosed by National Archives**

(3) Subject to any other Act of Parliament, personal information under the custody or control of the National Archivist of Canada that has been transferred to the National Archivist by a government institution for archival or historical purposes *may be disclosed in accordance with the regulations to any person or body for research or statistical purposes.*"

For the purposes of the Privacy Act, Census records qualify as "personal information under the control of a government institution", i.e. Statistics Canada

The *Proclamation* directing the Census of 24 June 1906 states, again in part:

**"Instructions to Commissioners and Enumerators**

26. Every officer or other person employed in any capacity on census work is required to keep inviolate the secrecy of the information gathered by the enumerators and entered in the schedules or forms. An enumerator is not permitted to show his schedules to any other person, nor to make or keep a copy of them, nor to answer any question respecting their contents, directly indirectly; and the same obligation of secrecy is imposed to commissioners and other officers or employees of the outside service, as well as upon every officer, clerk or other employee of the Census and Statistics Offices at Ottawa. The facts and statistics of the census may not be used except for statistical compilation, and *positive assurance should be given on this point if a fear is entertained by any person that they may be used for taxation or any other object.*"

The above, as indicated by the title, are *instructions* to Commissioners, enumerators and others involved in census work, and at this time were not codified into law. Regardless of whether these instructions had the force of law or not, I read nothing here, or in any other clauses of this Proclamation, that precludes transfer of this Census to the National Archives after the prerequisite period of time.

The pertinent section of **The Statistics Act of 24 May 1918** reads:

**"SECRECY.**

15. (1) No individual return, and no part of an individual return, made, and no answer to any question put, for the purposes of this Act, shall, without the previous consent in writing of the person or of owner for the time being of the undertaking in relation to which the return or answer was made or given, be published, nor, except for the purposes of a prosecution under this Act, shall any person not engaged in connection with the Census be permitted to see any such individual return or any such part of any individual return.

(2) No report, summary of statistics or other publication under this Act shall contain any of the particulars comprised in any individual return so arranged as to enable any person to identify any particulars so published as being particulars relating to any individual person or business."

Again I read nothing here that prohibits transfer of records to the National Archives.

Finally the current **Statistics Act --- Chapter S-19** reads:

**"SECRECY**

**17. (1)** Except for the purpose of communicating information in accordance with any conditions of an agreement made under section 11 or 12 and except for the purposes of a prosecution under this Act but subject to this section,

no person, other than a person employed or deemed to be employed under this Act, and sworn under section 6, shall be permitted to examine any identifiable individual return made for the purposes of this Act; and

no person who has been sworn under section 6 shall disclose or knowingly cause to be disclosed, by any means, any information obtained under this Act in such a manner that it is possible from the disclosure to relate the particulars obtained from any individual return to any identifiable individual person, business or organization."

Ms. Desramaux, again I read nothing in the forgoing that would prohibit transfer of identifiable individual Census records to the National Archives following the prescribed 92 years. The Privacy Act provides for transfer of *personal information under the control of a government institution* to be transferred to the National Archives.

In our research regarding Post 1901 Census we have found no indication that Privacy concerns of the day had to do with descendants seeking family information. To the contrary, concerns seemed to centre on the possibility that other Government departments would use Census information for other purposes, i.e. taxation. Even today, Bruce Phillips, Privacy Commissioner, in his address to the Senate 18 February 1999, indicated that one of the major complaints received by his Office was that of cross indexing of personal information between different Government departments. I do not recall his stating that his Office had received any calls relating to identifiable Census information released after 92 years. Both yourself, and Marta Khan of the National Archives indicated to me that you had not had a single complaint of this nature.

It would appear that even Statistics Canada recognizes the concern re: cross indexing between different Government departments. Both the short and long Census forms of 1996 contained the following statement.

"The confidentiality of your census form is protected by law. This means that only Statistics Canada employees who work with census data and have taken an oath of secrecy see your form. Your personal census information cannot be given to anyone outside Statistics Canada --- not the police, not another government department, not another person. This is your right."

Again, I see no indication here that the confidentiality mentioned will be until the end of time.

People are of course entitled to their privacy. I would suggest however that for the most part, people are concerned about that privacy in the present time, not 30, 60, or 92 years down the road.

The document **Access to 1911 and other Post-1901 Census Records** widely circulated by your office contains the following sentence.

"Should Parliament declare, in effect, as invalid *the explicit guarantee of indefinite confidentiality* that was promised to Canadians when the data were collected?"

If I may be allowed to be flippant or facetious for a moment I would refer you to the dictionary definitions of the key words emphasized above. In doing so this could be read as

"a straightforward pledge of confidentiality for a period of time having no exact limits"

Merriam-Webster's Collegiate Dictionary - Tenth Edition defines **in-def-i-nite** as *adj.* Not definite: as **a** : typically designating an unidentified, generic, or unfamiliar person or thing **b** : not precise : vague **c** : having no exact limits **d** : *of floral organs* : numerous and difficult to ascertain in number.

The definition does not mean forever, or having no limitations. In the context of release of Census information **indefinite** could be interpreted as meaning "**until changed**".

I apologize for the length of this message and look forward to the answers to my questions above at your earliest convenience. Thank you again for your assistance.

Sincerely

Gordon A. WATTS

From: Desramaux, Louise - DACS/SACD  
Date: Wednesday, 29 September, 1999 7:57 AM  
To: Gordon A. Watts (E-mail)  
Subject: Promise of confidentiality in Census

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Mr. Watts, this is further to your e-mail of September 25, 1999, on the subject of post-1901 Census records. The answers to your questions about the "promise of confidentiality in perpetuity" lie in the Act and Regulations that were in force at the time the Census was taken. For example, the 1906, 1911 and 1916 Census were taken under the authority of the Census and Statistics Act, R.S.C. 1906, c.68. Section 9 of that Act provided as follows:

"The Minister shall make and prescribe all rules, regulations, instructions and forms which he deems requisite for the work and business of the Office.

2. Such forms, rules, regulations and instructions... when assented to by the Governor in Council and published in the Canada Gazette, shall have the force of law."

So that you may satisfy yourself as to the contents of this Act, I will send you a copy by regular mail. As well, I will send you a copy of the Census Instructions that were issued for the 1911 Census. These Instructions, as set out in section 9 of the Act, had the force of law at the time they were put in place and continue to do so today. To give you further insight as to the interpretation of the various provisions, I will also be sending you by mail a copy of the 1985 legal opinion from the Department of Justice on the confidentiality of historical census records.

While it is not usual to have legal opinions released to the public because of solicitor-client privilege, Statistics Canada decided that, in the spirit of openness and transparency, it would be beneficial to all concerned to make this opinion accessible. It remains, however, subject to Crown copyright which simply means that it cannot, for example, be copied and posted on the Internet.

I hope you will find the documents I am sending you to be of interest. Should you have any further questions, I would be most pleased to try to answer them.

Sincerely,

Louise Desramaux  
Privacy Coordinator

From: Gordon A. WATTS  
Sent: Sunday, November 21, 1999 3:35 AM  
To: Desramaux, Louise - DACS/SACD  
Subject: Re: Promise of confidentiality in Census

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Dear Ms. Desramaux

As seems to be my failing I find that I am once again long overdue in thanking you for the documentation you sent to me.

I studied it with great interest and care. While it adds to statutes and documentation that I have already gathered (much of which I detailed in my correspondence of 25 September 1999) I do not find that it answers my questions as to the promise of confidentiality in perpetuity.

I agree that the 1906 Census and Statistics Act, Section 9. gives the instructions to Officers, Commissioners and Enumerators the force of law. I further agree that those instructions contain clauses of confidentiality. The applicable clause (23) in the instructions for the Census of 1911, with the exception of an added opening sentence, is identical to that contained in the proclamation of 15 May 1906 directing the 1906 Census of the Provinces of Manitoba, Saskatchewan, and Alberta (clause 26). Section 15 of The Statistics Act of 1918 details Secrecy, as does Section 17 of the current Statistics Act.

The clauses quoted are all worded in the present tense. There are no time frames mentioned relating to confidentiality. There are no clauses that state Census records may be transferred to the National Archives. There are no clauses that prohibit transfer to the National Archives. There is simply silence regarding time frames and transfer to the archives.

In my limited experience it has been my understanding that when one statute is silent on a particular matter while another is not, the statute that is not silent should govern. In this case the Privacy Act provides for transfer of Census records to the National Archives and it should govern.

Documentation produced by Statistics Canada refers variously to the explicit guarantee of indefinite confidentiality that was promised to Canadians when the data were collected or a promise of confidentiality in perpetuity. It is my considered opinion that this explicit guarantee or promise does not exist except in the minds of those who wish it to be.

To paraphrase a line from a movie of a couple of years ago, Show me the Promise!

In regards to Census taken from 1906 to the present I repeat my request to know

Specifically what clauses of what Acts spell out this never ending promise?

The form (wording) of said promise of confidentiality in perpetuity.

The specific means by which respondents were advised that said confidentiality would be forever. If possible I would like copies of such advice or references to where they might be found.

If you are able, could you give me a time frame where the Census and Statistics Act of 1906 would have been discussed in the House of Commons and where this discussion might be found in Hansard.

Thank you.

Sincerely,

Gordon A. WATTS

From: Ledoux, Mary - DACS/SACD  
Date: Thursday, 09 December, 1999 7:57  
To: Gordon A. WATTS (E-mail)  
Subject: Promise of Confidentiality in Census

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Mr.. Watts, further to your message below to Louise Desramaux, this is to inform you that Louise has recently retired from the Public Service of Canada. In her absence, I will attempt to expand on Louise's earlier response to your questions about the promise of confidentiality in perpetuity. The point you raise that "the Privacy Act provides for transfer of Census records to the National Archives and it should govern" is correct but only to a certain point. The provision that allows for such transfer is "subject to any other Act of Parliament" and the advice we have received from the Department of Justice is that the Acts under which authority censuses have been taken since 1906 take precedence.

There is nothing to suggest that the confidentiality provisions had any end date. There is a piece of legislation called the Interpretation Act that is used by lawyers in the interpretation of statutes and their meaning. Section 10 of that Act may be relevant to this discussion. It states:

"The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning."

Therefore, the advice Statistics Canada has received on this matter is that the legislation prevents disclosure and the Privacy Act does not compel Statistics Canada to disclose information to the National Archives.

Finally, I'm sorry but I have no specific references as to when the Census and Statistics Act of 1906 would have been discussed in the House of Commons. The only reference I have would be the date the Census Instructions were published in the Canada Gazette which was April 22, 1911, for the 1911 Census and May 26, 1906, for the 1906 Census.

My apologies for the delay in replying to you. Although there was an automatic reply message on Louise's e-mail system to let people know she had left, it only works with messages received from within Statistics Canada, not outside! We will keep a closer check on her in-box in future.

Best regards.

Mary Ledoux  
Statistics Canada

From: Gordon A. WATTS  
Sent: Thursday, December 9, 1999 1:26 PM  
To: Ledoux, Mary - DACS/SACD  
Subject: Re: Promise of confidentiality in Census

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Dear Ms. Ledoux

Thank you for your response to my message to Louise Desramaux. If you are able please extend my congratulations to her on her recent retirement from Public Service. I trust that the influx of messages from those of us concerned with release of Post 1901 Census records did not precipitate her retirement <]:-) . I myself discovered that work was a four letter word some three years ago.

While not happy with the answers given I will accept your response and continue in my efforts to see change effected in legislation. One question that I submitted to Louise however has not been answered. That question was

" The specific means by which respondents were advised that said confidentiality would be forever. If possible I would like copies of such advice or references to where they might be found."

While at my current age of 58, my interest in Census has been specific only since my becoming involved in Genealogy some 9 years ago, I have been aware of the collection of Census for most of my life. I believe the majority of Canadians, like myself, had assumed that Census would eventually be released as has been done in the past. It has only been in the past few years that the population has become aware that legislation originating in 1906 would prevent that release. I cannot recall ever having been advised by a Census enumerator that information given would NEVER be released. Information on the 1996 Census form certainly does not state this.

Statistics Canada has made statements to the effect that if the confidentiality of Census was not kept forever that it could have a detrimental effect in that some respondents would not answer fully or truthfully. While this might be a slight possibility the opposite is also possible. As one of the leaders in the campaign to obtain release of Post 1901 Census records I have seen many comments from others that if the Census were not to be released after a reasonable period, so that their descendants would not have access to their information, they saw no reason why they should respond fully and truthfully, or in fact why they should participate at all (except that the law requires them to). Some in fact, have suggested that a boycott of Census might be in order. I would not presently advocate such action and tell you this only so that you may be aware of "the other side of the coin"

If you are able to I would appreciate an answer to my question as above. Thank you for you email. I will address any other questions I might have to you. Thank you again.

Sincerely

Gordon A. WATTS

From: Ledoux, Mary - DACS/SACD

Date: Thursday, 09 December, 1999 11:58 AM  
To: Gordon A. WATTS  
Subject: RE: Promise of confidentiality in Census

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Mr. Watts, I would be most happy to pass on your congratulations to Louise when I am next in touch with her. And, although she may have developed writer's cramp from signing responses to the many letters we have received on the issue of access to post-1901 census records, I don't believe it was the reason for her retirement!

As you may already be aware, the earlier censuses were conducted somewhat differently than they are today. Forms were completed by the census-takers, not the householder, and I am not aware of any documentation that would have been provided to the householder concerning confidentiality. However, with respect to the confidential nature of the information being collected, as set out in Instruction 23 of the 1911 Census Instructions, "...The facts and statistics of the census may not be used except for statistical compilations, and positive assurance should be given on this point if a fear is entertained by any person that they may be used for taxation or any other object."

Those Instructions had the force of law and I would refer you to my earlier note and the reference to the Interpretation Act which states: "The law shall be considered as always speaking.....so that effect may be given to the enactment according to its true spirit, intent and meaning."

You are correct in your observation that on the 1996 Census questionnaire, the word "forever" was not included in the message about confidentiality. It does say, though, that "by law, no one, except employees of Statistics Canada, is allowed to see the personal information you provide." I believe that the same interpretation of statutes would have to be applied to this later Census information as to the earlier records. It may also be debatable whether the "majority of Canadians.....had assumed that Census would eventually be released". In any case, Statistics Canada must abide by the law as it currently stands.

Mr. Watts, I know you will agree with me on one point, which is that the issue of access to historical census records raises many questions that one could debate long into the night!

Regards

Mary Ledoux

From: Gordon A. WATTS  
Date: Monday, 22 November, 1999 4:11 PM  
To: privcan@fox.nstn.ca  
Cc: Senator Lorna MILNE; Rosemary MacLELLEN; Murray CALDER - MP  
Subject: Show me the Promise!!

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22 November 1999

Mr. Bruce Phillips  
Privacy Commissioner

As one of those leading the campaign to obtain release of Post 1901 Census records to the public, I have been concerned with statements in the press attributed to you in opposing the release to the Public of Post 1901 Census records. You have been quoted as stating

"The issue here is privacy. It's having control of your own information – and not having people with a vested interest in getting into your personal information, without your consent, deciding what the rules are."

I submit to you, Sir, that information in Census relating to my ancestors belongs to me, and to my brothers, sisters, cousins, Aunts, Uncles, and every other relative that I have. This information belongs to me by right of inheritance. It belongs to me by right of the taxes my ancestors paid to have the Census collected. If wishing to know the names, birth dates and places, relationships, places of residence, living conditions, religion, country of origin, time of immigration, etc. of my ancestors causes me to have a vested interest, then I plead guilty.

As things stand today, I do not have control of my information – you do! I am not deciding what the rules are – you are! You are deciding those rules on the basis of a misinterpretation of 93 year old legislation.

You have been further quoted as stating (emphasis mine)

"People who give information to the government under penalty of law *on an unqualified promise of confidentiality* are entitled to expect that that trust will be honoured."

Statistics Canada in the past few years has produced various documents that have made reference to a *promise of confidentiality in perpetuity*. They have widely circulated a document entitled **Access to 1911 and other Post-1901 Census Records**. Many MPs, in responding to letters from their constituents, have quoted much of this document verbatim in a poor attempt to explain why Post-1901 Census records cannot be released to the Public. This document, which I am sure that you have seen, included the question (emphasis mine)

"Should Parliament declare, in effect, as invalid *the explicit guarantee of indefinite confidentiality* that was promised to Canadians when the data were collected?"

I have spent considerable time in researching and studying various statutes, proclamations, Instructions to enumerators, etc. from the early part of the century to the present day. I believe that I have studied most of the legislation and documentation relevant to collection of Census since 1906. Have you? Or have you taken at face value what Statistics Canada has been saying about promises and guarantees?

Nowhere in my research have I found any reference to a *promise of confidentiality in perpetuity* or of an *explicit guarantee of indefinite confidentiality*. There are of course, clauses referring to confidentiality. These clauses are written in the present tense and contain no reference to any time frame. I feel that if legislators of the day intended that Census records would never, ever be released, they would have included wording that would make that intent very clear.

With the exception of the Privacy Act, I found no clauses that allow transfer of Census records to the National Archives. More to the point, I found no clauses that would prohibit that transfer. There is simply silence in reference to any time frame for confidentiality, or for transfer of Census records to the National Archives.

In my limited experience with the law it has been my understanding that when one statute is silent regarding a particular issue while another statute is not, the statute that is not silent would govern. The Privacy Act provides for transfer of Census records to the National Archives 92 years after collection. As the Census Act, in its various incarnations, has been silent regarding transfer of Census records to the National Archives, the provisions for transfer in the Privacy Act should prevail.

The citizens of Canada are of course entitled to their privacy. I would suggest however that they are concerned about that privacy in the present time, not 92 years down the road. Much has been said about striking a balance between privacy and access to information. In your letter to the Chief Statistician of Canada (11 January 1999) you referred to certain proposals to amend the Statistics Act to allow for the transfer of identifiable census returns to the National Archives. Your letter stated

"It will come as no surprise to you that this Privacy Commissioner has not been persuaded that it represents an acceptable balance between the preservation of individuals' privacy rights and the interests of researchers and genealogists."

Mr. Phillips, you appear not to believe in any such balance as your public position advocates total secrecy of Census records for ever and a day. If this is your idea of balance I would not wish to be on the end of your teeter-totter. Our legislators at some point obviously thought that 92 years was sufficient to protect the privacy of respondents to Census. Otherwise, they would not have included a clause in the Privacy Act that allowed transfer of Census records to the National Archives 92 years after collection

Our research has found no indication that respondents concern about privacy in Census had to do with descendants seeking information on family 92 years down the road. All indications are that concerns had to do with a distrust of the government and a fear that information from Census may be cross-indexed by other government departments. This is borne out by the inclusion of a

statement in Instructions to Officers, Commissioners and Enumerators for the censuses of both 1906 and 1911 that

"The facts and statistics of the Census may not be used except for statistical compilations, and positive assurance should be given on this point **if a fear is entertained by any person that they may be used for taxation or any other object.**"

An article in the Calgary Herald of 26 May 1931 elaborated on this by stating that information from Census would

"have nothing to do with **taxation, military service, school attendance, the regulation of immigration, or the enforcement of any law.**"

Mr. Phillips, in your 18 February 1999 report to the Senate, you responded to questions from Senator Kinsella. You indicated that the greatest number of complaints received by your department had to do with data matching (cross indexing) of information between government departments. Most notable were those between Human Resources Development Canada (671 privacy complaints) and Revenue Canada (356 privacy complaints). You indicated these were related to one particular issue. That issue had to do with data matching between Revenue Canada and HRDC in order to find people who were out of the country while receiving unemployment insurance benefits. It would appear that even today, distrust of government, and fear of cross indexing of information between government departments has been justified.

Nowhere in your report to the Senate, or in your Annual Report, did you indicate that you had received a single complaint regarding release of individual identifiable information from Census 92 years after collection. Responding to specific questions regarding release of individual identifiable information from Census Reports, both Louise Desramaux of Statistics Canada, and Marta Khan of the National Archives indicated these departments had never received a single complaint of this nature. I would suggest that more than 98 years with no complaints regarding release of individual information from Census is a pretty good record.

Relating to the purported promise or guarantee of confidentiality forever, some weeks ago I asked Statistics Canada to provide me with information as to where this promise appeared, how it was worded, and how this promise was conveyed to respondents of Census. Specifically I asked

"In regards to Census taken from 1906 to the present I wish to know:

Specifically what clauses of what Acts spell out this never ending **promise**?

The form (wording) of said **promise of confidentiality in perpetuity**.

The specific means by which respondents were advised that said confidentiality would be **forever**. If possible I would like copies of such advice or references to where they might be found."

Statistics Canada, while very co-operative, to date has been unable to provide specific answers to my specific questions as above. As you appear to have based your position re: release of Post 1901 Census records upon this *promise* I would ask of you the same questions I have asked of Statistics Canada. Show me the promise.

It is my considered opinion, and I submit to you Sir, that **this *promise of confidentiality in perpetuity* does not exist except in the minds of those who wish it to be.** A promise that was never made cannot be broken. If you can prove me wrong, please do so. I say again, show me the promise.

Thank you.

Gordon A. WATTS  
cc. Lorna Milne, Senator  
Rosemary MacLellan, Senator  
Murray Calder, MP

From: Brian Foran  
Date: Thursday, 16 December 1999 12:53 PM  
To: gordon\_watts@telus.net  
Subject: Show me the Promise (response of your letter dated Nov. 22, 1999)

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December 16, 1999

Dear Mr. Watts

The Privacy Commissioner has asked me to reply to your e-mail of November 22, 1999.

In your e-mail you explained that you have studied most of the legislation and documentation relevant to the collection of Census since 1906. You stated that nowhere in your research have you found any reference to a *promise of confidentiality in perpetuity* or of an *explicit guarantee of indefinite confidentiality*. You added that while there are clauses referring to confidentiality, these are written in the present tense and contain no reference to any time frame. You are of the view that if the legislators of the day intended that Census records would never be released, they would have included wording to make that intent very clear.

The use and access to existing census records is covered by a series of legislation including the *Census Act* of 1886, the *Census and Statistics Act* of 1905, the *Census and Statistics Act* of 1906, the *Statistics Act* of 1918, the *Statistics Act* of 1948 and the *Statistics Act* of 1970-71-72. Census records up to and including those of 1901 are not covered by legislated prohibitions on access. Copies of those records are under the control of the National Archives of Canada and are available to the public for research and statistical purposes.

As I understand it, the *Census and Statistics Act* of 1905 (Chapters 5 and 6 of the Statutes of Canada, 1905) and the *Census and Statistics Act* of 1906 (Revised Statutes of Canada, 1906, c. 68) empowered the Minister to make regulations under the legislation. Such regulations made under this provision, and subsequently approved by Order-in-Council and published in the Canada Gazette, have the force of law. In 1906 and 1911, regulations were issued under this provision requiring that officials:

"...keep inviolate the secrecy of the information gathered by enumerators and entered on the schedules or forms. An enumerator is not permitted to show his schedules to any person, nor to make or keep a copy of them..."

These provisions were extended to "every officer, clerk or other employee of the Census Office at Ottawa."

Although microfilm copies of the records have been made for administrative purposes, Statistics Canada has consistently interpreted these Ministerial Orders to mean that data from the 1906 and 1911 censuses are not to be made available for research in such a way that individuals could be identified. Consequently, the microfilm copies have not been transferred to the National Archives and no public access to the data from those censuses has been permitted.

Subsequent legislation (1918, 1948 and 1970-71-72) specifically prohibits the public disclosure or use of the personal data gathered as part of the census-taking process during the years from 1921 to the most recent census in 1996. Statistics Canada states that those confidentiality requirements are such that when information is released, it must not be possible to relate anything on a return to an individual respondent.

As regards to the *Privacy Act*, it is paragraph 8(2)(i) of the Act that allowed the transfer of the 1871, 1881, 1891 and 1901 census records to the National Archives of Canada for archival purposes. Statistics Canada states that the legislation authorizing those earlier censuses did not contain any confidentiality protections having force of law. When collecting the information, census-takers were instructed to protect the confidentiality of the records, but those instructions had no legal basis. In accordance with subsection 8(3) of the *Privacy Act* and subsection 6(d) of the *Privacy Regulations*, the National Archives was allowed to make those historical census records available to the public for research or statistical purposes after 92 years have elapsed following the taking of the respective census.

The disclosure provisions in subsections 8(2) and 8(3) of the *Privacy Act*, however, are subject to any other Act of Parliament. This means that these provisions do not take precedence over specific statutory prohibitions that exist in other federal statutes regulating the disclosure of personal information. Where other acts provided specific protection to personal information, the provisions of such acts prevail. In this regard, it is the position of Statistics Canada that the legislation under which the 1906 and later censuses were taken contains strict confidentiality provisions that do not have any time limitation and continue to have the force of law today. Consequently, the specific provisions of the *Privacy Act* and its regulations allowing the release by the National Archives of personal information 92 years after the taking of a census are subject to these confidentiality provisions and cannot be used to authorize disclosure of post-1901 census records.

Given the statutory prohibitions that apply to the disclosure of census personal information, Statistics Canada has indicated to us that it would be only through legislative amendments that records from any census taken after 1901 could be transferred to the National Archives for subsequent public release.

We have since learned that, at the request of its responsible Minister, Statistics Canada has developed options for amending the legislation to allow access to Census records. As it stands, there are two possibilities: the first option contemplates amending the *Statistics Act* to allow records, starting with the 2001 Census and carrying on from there, to be transferred to the National Archives of Canada to be subsequently made available to the public; the second option is to retroactively change the confidentiality provisions of the *Statistics Act* to allow the 1911 and all censuses taken thereafter to be eventually placed in the public domain. Both of these options are being given careful consideration but no decision has yet been taken by the government. The question of access to historical census records raises a number of complex issues that must be considered, not just from a statistical point of view, but from an archival and privacy perspective as well. A full public airing is necessary. This is a debate not only for historians and privacy advocates – it is a debate for everyone.

You may be interested to know that on November 12, 1999, the Minister of Industry and Minister responsible for Statistics Canada, the Honourable John Manley, appointed an expert panel of imminent Canadians to study the issue of access to historical census records in all its complexity. We look forward to all citizens presenting their views.

To find out more about the Expert Panel on Access to Historical Census Records, please visit the web site at [www.statcan.ca](http://www.statcan.ca) , or contact Jennifer M. Sloan, Press Secretary, Office of the Minister of Industry, at (613) 995-0001.

In closing, I would like to thank you for taking the time to make your comments. I hope the information provided here is of some help in answering your questions.

Yours sincerely,

Brian Foran  
Director  
Issues Management & Assessment  
Tel: (613) 995-0836  
Fax: (613) 947-6850  
E-mail: [bforan@fox.nstn.ca](mailto:bforan@fox.nstn.ca)



## **Appendix 2.**

### **Extract from Archivaria**



# Counting Archives In: The Appraisal of the 1991 Census of Canada

JEAN-STEPHEN PICHE and SHEILA POWELL\*

**Abstract** This article is a detailed study of the circumstances, methodology, and findings of the National Archives of Canada's archival appraisal of the data resulting from the 1991 Census of Canada. The authors provide an analysis of the census data in both anonymized and name identified form - in paper, microfilm, and electronic media. Through their research into the creation and uses of demographic data, the collection of census data from Canadians, and the manipulation of the data by Statistics Canada to render it valid for statistical use, the authors determined that it was necessary to preserve the name identified data provided on census forms by individual Canadians, the anonymized data that is made widely-available for research by Statistics Canada, and evidence of the changes made to the data by Statistics Canada in order to render it statistically "clean." The authors conclude with a discussion of their final appraisal recommendations and the agreement reached between the National Archives of Canada and Statistics Canada to preserve data.

## *Introduction*

Canadian archivists are familiar with these words of Arthur Doughty, the second Dominion Archivist: "[archives] are the gift of one generation to another and the extent of our care of them marks the extent of our civilization." The care and attention given to census records by national archives could be said to mark the extent of a national archival "civilization." Few classes of records are viewed as more valuable or lead to more discussion about the proper role of archives in preserving and making personal information available on individuals. In recent decades, a number of countries have publicly debated whether census forms containing information - such as names and addresses that allows individuals to be identified should be made available to researchers, whether the forms should be preserved after the anonymized census data has been captured in automated format, and even if censuses should continue to be taken at all. Australia, which destroys all individual census forms after tabulation has been completed, is re-examining this practice. In Canada, conflicting views on the permanent preservation of census records for research use have offered a unique opportunity to analyze the processes that result in the creation of statistically valid census data and to examine the decisions which determined what data should be preserved for future use.

In early 1995, the authors -- archivists in the Records Disposition Division of the National Archives of Canada (NA) -- conducted an archival appraisal of the data collected, in paper, microfilm, and electronic media, by the 1991 Census of Canada,

including, most importantly, name identified data. It occurred in response to a disagreement between the National Archives of Canada, which was seeking to preserve name identified census records, and Statistics Canada and the federal Privacy Commissioner, who were opposed to long-term preservation.

This article will examine the circumstances, methodology, and findings of the appraisal of the 1991 census data. We must emphasize at the outset that the main subject of both the appraisal and this article was and is census records that contain information which identifies individuals, specifically names and addresses of respondents. While the appraisal took into account all forms of data created as a result of the 1991 census, including anonymized data, the primary focus was on determining how to preserve the name identified data.

Moreover, there are a number of important archival issues relating to the census that are not addressed in this article: there is no detailed discussion of the legal issues surrounding the protection of personal information, of the ethics of its preservation in archives, or of its release to researchers.<sup>2</sup> Nor do we enter into the debate over whether creators of electronic records should be allowed to maintain custody of such records for archival purposes beyond the end of their administrative use or discuss related decisions pertaining to the 1996 census, which was appraised at the same time.

### *The Genesis of the Archival Appraisal*

Prior to Confederation in 1867, the French and British colonial administrations both took censuses; the first census was taken in 1666. A decennial census was established by law in 1852, with the next census taken in 1861, and every ten years ever since. The quinquennial, or mid-decade census, was first held nation-wide in 1956. The 1871 census, the first to be taken after Confederation, was also the first employed to determine representation by population in the federal House of Commons. Canadian census data is now used to set the boundaries of federal electoral districts, to calculate transfer payments from the federal government to provincial governments, and to provide federal, provincial, and municipal governments, academics, and businesses with data used in a vast array of programs.<sup>3</sup>

The first evidence of the acquisition of a Census of Population of Canada by an archives is found in the acquisition register of the Public (now National) Archives of Canada for the year 1917. The register contains the brief notation "1851, 1861 Census rolls, from the Dept. of Agriculture, Jan 11, 1917."<sup>4</sup> This acquisition coincided with plans to create the Bureau of Statistics in 1918; the parent Department of Agriculture likely decided to transfer pre-Confederation censuses to the Public Archives because they no longer had an operational need to retain them and did not wish to store them indefinitely. Despite the confidentiality clauses in the Statistics Act, also of 1918, the 1871 census returns were transferred to the archives in 1941 after an accord was reached between the Chief Statistician and the Dominion

Archivist, who agreed that the returns would be available only for scientific research in the social sciences. This agreement was short-lived, because subsequent Chief Statisticians did not support the availability of census returns for any kind of research outside the purview of Statistics Canada. In the late 1970s, pressure from the genealogical and academic communities for the release of additional census returns mounted, and there was the threat of a private member's bill in the House of Commons to force Statistics Canada to transfer the returns to the Public Archives. In 1985, Statistics Canada bowed to what was called the "Roots Syndrome" -- the explosion of interest in family history that resulted from the American television mini-series *Roots* - and transferred returns from the 1881, 1891, and 1901 censuses to the NA.<sup>5</sup>

Two contradictory pieces of federal legislation govern access to census records and their transfer to the National Archives. The current Statistics Act restricts the use of census records which contain nominal information to Statistics Canada employees only, which technically prevents the transfer of such records to any other agency of the government, including the National Archives. Statistics Canada applies this legislation retroactively to all census information back to 1906.<sup>6</sup> This practice is in direct conflict with the intentions of section 6(1) of the National Archives of Canada Act, which states that all government records appraised as having archival value must be transferred to the NA.<sup>7</sup>

This disagreement between the National Archives of Canada Act and the Statistics Act is at the root of a complex relationship between Statistics Canada and the National Archives regarding the disposition of census records. It has manifested itself throughout the twentieth century as various acquisition and custodial issues have repeatedly surfaced and resurfaced. Debate over the conflicting authority of the two acts has occurred over research use, privacy of personal information, transfer of records, and the broader cultural issue of public interest and historical relevance.

In 1993, Bruce Phillips, the Canadian Privacy Commissioner, publicly expressed concern over the intrusive nature of the 1991 census, and the potential threat the census posed to the privacy, of Canadians. The Privacy Commissioner is an ombudsman, appointed by, the federal Parliament, who acts as a watchdog in matters of the collection, use, and disclosure of personal information by the federal government as these relate to federal employees and participants in federal government programs. Phillips' involvement in the debate over the census and the protection of privacy was prompted by thirty-three complaints received by his office relating to the 1991 census, most of which involved protests against the intrusive nature of some of the questions, particularly those on religion and fertility, and against the use of neighbours as census takers.<sup>8</sup> Phillips responded to these complaints by taking the stand that any census is, by its very nature, a threat to personal privacy.<sup>9</sup>

In May 1994, the National Archives received a letter from Phillips, informing the NA that the issue of the preservation of census questionnaires in the National Archives had come to his attention as a result of investigations by his office into complaints against the 1991 census. Phillips wrote that he believed that the transfer of census questionnaires to the National Archives and their preservation therein was an inappropriate use of census data.<sup>10</sup> Phillips went on to say that the destruction of name identified data would eliminate any risk of that data being used against individuals or groups, and intimated that he was seeking the concurrence of the National Archivist in the destruction of the census records.

As a result of this letter, senior officials of the National Archives met with representatives of Statistics Canada and the Privacy Commissioner's Office to discuss the situation. Michael Swift, Assistant National Archivist, then prepared a draft report that set out the viewpoints of the three parties on the preservation and destruction of the census returns, outlined the legal issues involved, and proposed three possible options for action.<sup>11</sup> The first option was to do nothing, with Statistics Canada continuing, as it did, to store the microfilm for the 1911 to 1986 censuses and the microfilm and original census returns for the 1991 census. The second option was for the National Archivist to agree to the destruction of all microfilmed and original census returns. The third option (and the one recommended by Swift for adoption by the three parties) was to transfer all name identified census records from 1911 to 1991 to the National Archives, where they would be preserved, but not made available for research.

Statistics Canada rejected the National Archives proposal, specifically, that all microfilmed census returns dating from the 1911 to 1991 censuses be transferred to the NA, stating that the only feasible option open to them was to seek authority for the destruction of the 1991 census records. This constituted Statistics Canada's formal request for authority to dispose of the records, and in late March 1995 we embarked on the appraisal of the name identified census returns in paper and microfilm format, as well as the databases containing anonymized census data. Our instructions were to report back to the National Archivist by the end of April 1995.<sup>12</sup>

The terms of reference for the appraisal were established in collaboration with Statistics Canada. It was agreed that the appraisal would concern only the data on individual Canadians and households collected by the 1991 Census of Canada. The records consisted of the census forms completed in all Canadian households (and maintained by Statistics Canada in paper format for all forms and on microfilm for a portion of the forms), the visitation records completed on paper by Census Representatives (better known as census takers), and the electronic databases created for purposes of processing and anonymizing the census data. Excluded from the appraisal would be all policy and operational records, and any other Statistics Canada records relating to the census in general, to census-taking procedures, to the financing of the census, to decisions on changes to the questionnaires, and to the publicizing and use of the census; these records would be the subject of later

appraisals. It was also decided that the report would provide not one, but a series of options for the long-term preservation of the 1991 data, outlining the advantages and disadvantages of each, including completeness of information and resource implications.

The use of the word preservation rather than acquisition is deliberate. Knowing Statistics Canada's reluctance to relinquish any of its sensitive records to the control of another agency and the Privacy Commissioner's crusade to destroy all name identified census records, we refrained from broaching the subject of transfer in discussions with staff of Statistics Canada and in our appraisal report to the National Archivist. By dealing with the issue of preservation rather than transfer, the NA avoided becoming bogged down in issues of security and access, and left itself open to possibilities of distributed custody of the archivally-valuable census records.

### ***The Appraisal Hypothesis***

Our research began with two assumptions that were unshaken during the course of the appraisal: that the data resulting from the 1991 census was of archival value, and that the inclusion of personal identifiers in the census records was integral to its value. Our conclusions regarding the census' value stemmed in part from our knowledge of the extensive use, by many varieties of researchers, of the 1851 to 1901 censuses already in the custody of the NA. It was assumed that the assumption of archival value could be applied automatically to the 1991 census records. Since the National Archives had already informed Statistics Canada and the Privacy Commissioner of its conclusion that the records were of unquestionably high archival value, it was unnecessary to expound any further on the value of the 1991 data. We also accepted the recommendation of Terry Cook's 1991 RAMP study, *The Archival Appraisal of Records Containing Personal Information*. This study states that "the national census is the single most essential personal information record in terms both of research for many disciplines and for genealogists, and of providing the core demographic information vital to the design, delivery, and modification by the government of its own major programs."<sup>13</sup> This conclusion was affirmed by a seven-country group of experts from the International Council on Archives, which clearly suggests that Canada's perspective on the value of census records is shared by the international archival community.

From the outset, we and our managers were certain that, regardless of their form or format, the census data to be preserved had to include identifying information in the form of names and addresses in order to permit future use that requires the identification of the providers of information. Current experience with users of census records in the custody of the National Archives demonstrates that many users require identifying information in order to conduct a wide variety of research. Genealogical research clearly requires that one be able to link the names and addresses of respondents to the data that they provided; many other areas of research, such as studies of communities, health trends, and social migrations, also require

address information in order to group relevant data together. Apart from pointing to known research methods, we noted that archivists are not able to predict what new research types and needs may emerge in the future, or whether that research will require personal identifiers.

Our final assumption, that the most useable census records are in electronic form, resulted from the sheer number of individual census forms - over ten million forms in 1991. It is no longer feasible, given the huge number of records, to sort and analyze data manually. It is only in electronic form and through electronic processing that the records can be used in a meaningful way and to their highest potential by researchers.

Macro-appraisal analysis of other data collected by the federal and provincial governments led us to determine that the census was the single most complete and uniform body of demographic data in Canada. The provinces are responsible for maintaining records of births, marriages, deaths, adoptions, divorces, and changes of names. These records contain much of the data on individuals that has been traditionally sought by genealogical researchers: date of birth, date of death, names of parents, occupation of parents, residence, place of birth, cause of death, religious denomination, and date and place of marriage.

The crucial difference between provincial vital statistics and the census records is that the provincial data is event-driven and thus recorded only at certain points in an individual's life when these events occur, while the census collects data at regular intervals throughout the course of a person's life. For example, provincial vital statistics on an individual who never married and who had no children would be limited to those collected during registration of their birth and death. On the other hand, census questionnaire forms would provide information at regular five year intervals on other aspects of a person's life, such as address, marital status, language, and the identity of the person who pays the rent or mortgage in the family. This information is collected on all individuals, and even more is collected on twenty per cent of the population through the long census form (Form 2B). This data is extensive, including information on ethnic origin and immigration data, aboriginal status, education, religion, labour force participation, income, housing, and disabilities.

Data is also collected by a number of other federal government programs. Taxation records and records maintained for the purposes of administering federal Income Security Programs, such as the Canada Pension Plan and Old Age Security, contain information on date of birth, place of residence, income, marital status, and other individual characteristics, depending on the type of program. There is, however, no federal government system that contains all the types of data that are captured through the census. For the departmental systems, specific data elements are collected for the purposes of administering and delivering specific programs within a limited period of time. The data is relevant only to those programs and the more limited needs of those citizens interacting with them, and it is maintained only as

long as is necessary to the delivery of these programs. The census, by definition, covers all Canadians.

It became evident as we began our census research that our focus was not on each single census record or on the one big database of census records. Rather, we realized that taking a census constitutes a business function that involves several processes ranging from data gathering and processing to dissemination. These processes result in the creation of a number of different types of records in various forms and media. It also became clear that in order to preserve census records that will meet the future needs of government and of researchers, it was crucial to capture data at each step of the census activities and, *as well*, preserve evidence of the many ways in which the data changes throughout the entire census process. Above all, we feared that if nothing but the final product of the census, the Dissemination Database, was permanently preserved (though this, in itself, is significant as the primary source of data used by government, business, and researchers to conduct analysis), the use of editing techniques to alter attributes of records or even to create entirely new records in order to make the data clean for statistical research would mean loss of information. The data available to future researchers would not necessarily reflect real individuals and their households accurately. With this acquired perspective, we changed our initial appraisal hypothesis, which had focused on how to "save" the paper census returns, to one of preserving, first, the data that is initially provided by Canadians on their census forms, including name identified information, and second, the final "clean" census database. We also believed it was necessary to preserve, in electronic form, the data originally supplied by respondents and loaded onto computer databases; that is, in cases where Statistics Canada had modified records in order to render them statistically valid, we wanted to ensure that the original data supplied by respondents was still preserved.

Our desire to preserve the data provided on the original census forms along with the personal identifiers was consistent with the traditional conception of the census as a treasure trove of discrete records on individual Canadian households. We also saw the census as a single, vital store of information that informed, through its use by all levels of government in Canada, as well as the business, academic, and other communities, the most important social and economic policy decisions taken in Canada in the 1990s. We believed that it was crucial to preserve the data in the same format and with the same interfaces that were present when the data was used in research leading to government and private sector policy decisions; users in the future, whether governmental or not, must be able to have access to the same 1991 census data that was used make policy decisions in the 1990s.

It became clear, as the appraisal proceeded, that it was also important to preserve evidence of the changes that the data undergoes at the hands of the statisticians as they create statistically valid data. These complex processes result in the final, anonymized, statistically valid data that is used by governments, business, research bodies, and eventually the general public, through statistical analyses and micro and

macro socio-economic studies, to create an image of our country, a collective impression of who we are, and where we are as a society. Statistics is a social science subject to error and bias. Canadians eventually must have original evidence available in order to be able to challenge and critique conclusions that were based on the statistical analysis of “polished” or “edited” census data. We believe that this is best achieved through the ability to gain access to evidence of the changes the data underwent at the hands of the statisticians.<sup>14</sup>

With our revised goal to preserve the data provided by Canadians, evidence of the processing stages, and the final census database, we jumped into a brief, but intensive period of research into the census records. The following section provides an overview of the processes of collecting, processing, and disseminating census data.

### ***The Census Records***

There are significant differences between the raw data that is collected from individuals via the census questionnaire forms, and the statistical data that is disseminated to users as the final, "clean" product. A number of steps are taken between the collection and dissemination phases that render the data accurate and useable as statistics; we refer to these steps as processing (See Figure One).

Figure One

Figure not included here.

### ***Collection***

Collection consists of the steps involved in acquiring the raw data on individuals and households on census questionnaires. At this stage, personal identifiers are included in the records. (Personal identifiers, such as names and addresses, are removed during the processing stage, described below.) The most important records resulting from data collection are the completed paper census returns, mainly forms 2A and 2B. The 2A forms, filled out by eighty per cent of the population, contain strictly demographic information such as age, sex, marital status, and housing unit. The 2B forms collect additional socio-economic information for twenty per cent of the population, such as place of birth, citizenship, ethnic origin, religion, languages, labour force activity, income, fertility, and population mobility. The physical extent of the forms for 1991 is enormous: over ten million forms, the physical extent of

which is approximately 19,000 linear metres, or 60,000 one foot boxes. In addition to the census returns, a "visitation record" is created, which contains the names and addresses of citizens living in one particular Enumeration Area (the primary unit of collection of forms). There were 46,000 such areas across the country for the 1991 census. Statistics Canada, in conformity with its practice for previous censuses, had started to microfilm the completed census forms, but had halted the project for cost reasons. Statistics Canada completed filming of forms, and verifying the quality of the film, from the provinces of Newfoundland, Nova Scotia, New Brunswick, and Prince Edward Island. Forms from Quebec and parts of Ontario were filmed, but no verification was carried out. The forms from the remaining provinces and the two territories were not microfilmed.

Census questionnaires are distributed, filled out by citizens, and mailed back to a Census Enumeration Area unit where they are verified against a visitation record. Census enumerators use the visitation record to help contact citizens who have not completed their census forms. Once this operation is completed, records are shipped to a regional processing centre.

### ***Processing***

The processing stage consists of the measures, including coding, editing, and imputation, that are taken to transform the raw data into statistically valid data. The data at this stage is generally not considered ready for use in generating statistical reports or research. *Coding* is the process of transforming the raw data into numeric codes in a succession of processing databases. It is performed either manually or by an automated process. *Editing* applies in a general sense to a number of steps that are taken to ensure that the data is free of errors and other incongruities and inaccuracies that could render it statistically invalid. *Imputation* is a complex stage of editing that entails the creation of one or more values in a record where no values existed or replacing a statistically unacceptable value in a census record with an acceptable value derived from one or more other similar records. (Examples follow later.) If the imputation software detects anomalies in the values of certain responses on a questionnaire, imputed values are substituted.

Initial processing, which is the transformation of data from the paper census forms into electronic format, in the Data Entry Database, is performed on the premises of the Revenue department by contract employees working for Revenue Canada under the auspices of Statistics Canada.<sup>15</sup> It is important to note that the names and addresses of individuals whose data is recorded on the paper census forms are not captured electronically, but are replaced by an anonymous personal identifier code, called the "PROV-FED-EA-HOUSEHOLD-PERSON" number (this number is drawn from each paper census form). This anonymous personal identifier allows for the protection of the privacy of individuals when census information is available to the public.

Once regional processing is completed, the electronic data is forwarded to headquarters along with all the paper census returns. The electronic data is entered into the Structural Edit Database, where the first level of verification and editing of data values is performed. Various verification routines are run, including the detection of potential errors during the original enumeration of the population, e.g., in the relation between number of individuals and number of dwellings. All records containing errors are then edited manually, and the incorrect values are replaced with values from the paper forms or with values that are structurally valid.

Next, all textual attributes of records maintained in the Structural Edit Database are downloaded into the Autocoding Database. This database performs a routine to convert all textual fields into numeric fields. The values are merged

Figure Two

Figure not included here.

back into the Structural Edit Database, and the records are then ready to be processed in the Edit and Imputation Database.

The Edit and Imputation Database runs a series of in-house statistical programs against the data in order to determine if any values in individual records should be imputed. One program (SPIDER) analyzes records and replaces values that do not meet criteria set in the various decision tables, as we have noted above. If, for example, the content of an attribute field is empty or is outside the parameters of the decision tables, the program will identify a similar record elsewhere in the database that is called a "donor" and will borrow the required value and copy it back to the attribute field of the record where an error was detected. As a hypothetical example, if a census form indicates that an individual's income was one million dollars, that he or she had ten children, and in the rest of the person's neighbourhood the average income was \$40,000 a year, and the average number of children per family 1.5, then the software would calculate a more likely income and number of children, based on the responses of the other "average" households in the neighbourhood, and substitute it in the census database for the original response, even if the original response was completely correct. If there was no completed census questionnaire at all for an individual household, *all* of the data on that household would be imputed at this stage.

Each record can contain both imputed and unimputed data. The rate of imputation in the census varies from one to thirty per cent, depending on the variable. The records

from the Edit and Imputation Database are downloaded into the Retrieval Database, which performs querying routines to generate subsets used for thematic statistical research. The key characteristic of the Edit and Imputation Database is that it not only contains all the census data, but all the imputed *and unimputed* values of variables. When the data is transferred into the Retrieval Database, the unimputed values are dropped where the changes have been made: as a result, if imputation has been performed on any variables in a record, only the imputed values will appear in the Retrieval Database. The data has now been cleansed of errors and omissions that could cause inaccuracies when used for statistical purposes. This "clean" data is made widely available, at the dissemination stage, to all of Statistics Canada's users within the public and private sectors.

### ***Dissemination***

In order to optimize the querying and speed capabilities of research on census data, as well as to ensure the protection of the data through technological change, Statistics Canada has opted for the migration of census data from the Retrieval Database into a Sybase relational database resting on a Unix platform, called the Dissemination Database. This database is a client-server application that allows users to formulate requests for data and obtain quick responses. The Dissemination Database also incorporates data dictionaries, access rules, and transaction logs, and a library database, which is used to manage requests. This database is also attached to another database containing all census geographic variables, which allows researchers to specify requests based on geographical location.

### ***Appraisal Recommendations***

Our revised appraisal hypothesis was to capture, first, the data that is initially provided by Canadians on their census forms, including personally identifying information, and second, the final "clean" census database. And, in cases where Statistics Canada had modified database records in order to render them statistically valid, we wanted to ensure that the original data supplied by respondents was still preserved in electronic form. Once we had a thorough understanding of the processes that resulted in the collection and alteration of data, we were ready to determine what data should be preserved.

Our terms of reference required us to present to the National Archivist a series of preservation options for further deliberation within the National Archives and to use in negotiations with Statistics Canada. We provided three distinct preservation options, each of which recommended the preservation of the Dissemination Database along with one of the three forms of the census documentation providing name identified information from the collection stage: the original questionnaires, the microfilmed questionnaires, and the visitation records. A fourth option proposed both the preservation of the Dissemination Database and the creation by Statistics Canada of an electronic database of the names and addresses of all individuals represented in

the Dissemination Database. The creation of this database would obviate the need for preservation of the paper or microfilmed questionnaires, and would render the records searchable by name.

We knew, however, that this option was not likely to be adopted: Statistics Canada had promised Canadians that it would not create an electronic database of the names and addresses of census respondents, and the Privacy Commissioner would almost certainly have opposed the creation of such a database.

In order to satisfy our goal to preserve evidence of the changes that the data underwent as it was processed, we also recommended for all options that the unimputed values of variables that had been altered as a result of the imputation process -- located in the Edit and Imputation Database -- be preserved, and that these values be added and linked to the records to which they relate within the Dissemination Database. This addition will not prevent future users from viewing the Dissemination Database in its original form. We also recommended that Statistics Canada be required to provide the National Archives with the algorithm to convert the identifying code for each record in the Dissemination Database to the original identifying code used on the census questionnaire and other databases.<sup>16</sup>

The National Archivist considered these recommendations, and determined that the preservation of all of the paper census forms and the “enhanced” Dissemination Database (that is, the Dissemination Database with the addition of the unimputed values from the Edit and Imputation Database) was the best option for capturing as complete a record of the census as possible. Once the National Archivist decided on the preservation option, he was obliged to negotiate the physical transfer of the paper forms to the NA, and the preservation, by Statistics Canada, of the enhanced Dissemination Database on their own premises.

### *The Agreement with Statistics Canada*

The National Archives of Canada and Statistics Canada concluded their agreement on the disposition of the records of the 1991 Census of Canada in December 1995, and the records disposition authority was issued by the NA the same month.<sup>17</sup> Because the National Archives did not press for legal control of the census records, but instead asked for continued preservation by Statistics Canada on NA premises, Statistics Canada was able to concur in the agreement. As a result, the records disposition authority allowed Statistics Canada to destroy the paper forms that had been microfilmed, on the condition that the quality of the microfilm had been verified and that the master version of the microfilm be stored on National Archives premises. The legal control of these records, however, remains with Statistics Canada, as does the application of access and privacy legislation. In essence, the National Archives is the custodian of the 1991 census paper or microfilmed forms, but cannot make them available to the public, even after the expiry of the period of ninety-two years prescribed by the Privacy Act regulations; the records are still the

property of Statistics Canada, and for now are subject to the restrictive "never release" clauses of the Statistics Act.

Statistics Canada agreed to preserve the Dissemination Database on its own premises and at its own expense. It also agreed to preserve all unimputed values of modified attributes in the Edit and Imputation Database, as well as the unique PROV-FED-EA-HOUSEHOLD-PERSON number, which could eventually serve to link names and addresses to records within the anonymized Dissemination Database. The National Archives will monitor Statistics Canada's adherence to these requirements on a regular basis.

The National Archives is now faced with the dilemma of storing millions of census forms that it does not legally own, and that it will not be able to provide to researchers for the foreseeable future. It is currently investigating means of reducing the extent of the forms that must be maintained, while at the same time preserving the name identified information from the forms. One possible solution is the microfilming or digitizing of the two pages of the form that contain the names and addresses of the members and the identifying code of each household. This is also an expensive venture, but could be the only means of releasing prime archival storage space to other archival records while at the same time preserving the vital data from the paper forms.

### *Conclusion*

The appraisal of the 1991 Census of Canada and the agreement for preservation that was reached with Statistics Canada has opened up a new understanding of the census and of the census-taking and census-creating processes and has created new roles for both the National Archives and Statistics Canada in preserving and making available census records. We believe that the agreement with Statistics Canada will enable us to capture for future users some of the transactionality of census data gathering and processing, which is necessary to reconstruct the context surrounding the creation of the single most important source of demographic information on the Canadian population. The groundwork has been laid for pursuing a continuing joint initiative to perform macroappraisal on the entire function of statistics gathering by the federal government.

Our relationship with Statistics Canada will no doubt lead the National Archives into further explorations of non-custodial or distributed approaches to the preservation of statistical data, and provision of access, in cases where acquisition by the NA is not possible, and a new role for the NA in the dissemination and description of statistical records. To some, this means the death of archives; to others, it means a brave new archival world. We feel that our main accomplishment in conducting this research was that we took an approach to the census that saw it as more than a store-house of data on individuals and families. We saw the processes relating to the census as a complex, on-going relationship between the Canadian government and the Canadian

population, a relationship that is becoming increasingly problematic as the state's legitimate need for accurate demographic information collides with a growing fear of the erosion of the rights to privacy of the individual and the protection of personal information. The National Archives and Statistics Canada share a common mandate to foster research into Canadian society and to provide the raw materials for that research; at the same time, these two institutions must also ensure that personal information on Canadians is not used in an inappropriate manner. Our challenge now within the National Archives is to increase our understanding of the remaining conflicting issues of privacy protection and access to data, and to serve in a sensitive manner as the brokers between these two competing interests. Finally, we believe that, regardless of the mechanics of how the records of the 1991 census are preserved and made available, we have contributed a new, archival interpretation to our understanding of census records, and fulfilled our role of ensuring that future researchers eventually have access to the only body of records in which all Canadians are named and numbered.

## Notes

\* This article is a much-revised version of a paper given at the 1996 Annual Conference of the Society of American Archivists in San Diego, California. We would like to thank Terry Cook, formerly of the National Archives of Canada and now of the University of Manitoba, for his comments on this article and his constant encouragement. Opinions expressed by the authors are not necessarily those of the National Archives of Canada.

1 Introduction to Arthur G. Doughty. *The Canadian Archives and Its Activities* (Ottawa, 1924), p. 5. Doughty immediately went on to write:

Each day that passes is a triumph for an archive, for each day some mere scrap of paper permits justice to prevail, And yet while so much of our happiness and safety as individuals, and as a people, is inseparable from archives, the average man bestows little thought either upon their commercial or their historical value. Indeed those who are deeply concerned about these matters are not infrequently accorded scant sympathy. Serious minded people often question the wisdom of preserving records, and the fiat is issued for their destruction. Nor is this altogether surprising. For twenty years or more, perchance, no one has required them. Why should they be kept?

Decades later, Doughty's words remain relevant to archivists, especially those who advocate the preservation of records whose continued survival is deemed needless or inappropriate by some members of society.

2 For a comprehensive discussion of access issues relating to the census see David H. Flaherty, "Access to Historic Census Data in Canada: a Comparative Analysis," *Canadian Public Administration* (Winter 1978), pp 481-98.

3 This information on the history of the Canadian census is taken from Statistics Canada, *Census Handbook* (Ottawa, 1992), pp. 7-12.

4 National Archives of Canada, Manuscript Division, *Acquisition Register 1* (1908-1937), p. 64.

**5** National Archives of Canada, RG 37, vol. 29, file 60-3-DBS and National Archives of Canada, file 9430-50/S5, vol. 2.

**6** A confidentiality directive as passed as an Order-in-Council on 31 March 1911 (P.C. 646). Because the 1906 statistics legislation stipulates that all rules and instructions related to the census set out by the Governor-in-Council have force of law. Statistics Canada interprets the 1911 confidentiality provision to apply to the 1906 census and all subsequent censuses.

**7** Access to census records is governed by the *Privacy Act*. Depending on who is the custodian of the records, the regulations to the *Privacy Act*, which provide guidelines for the application of the *Act*, govern access to census records differently. If census records are in the custody and under the control of the National Archives, they can be released after 92 years (*Regulations to the Privacy Act*, Section 6d). Because no post-1901 census records have been transferred to the National Archives, this means that all census returns currently at the National Archives are open to researchers. As for post-1901 nominal census records held at Statistics Canada, there are no provisions in the regulations to the *Privacy Act* for making these records available to the public.

**8** The Privacy Commissioner of Canada, *Annual Report. 1994-1995* (Ottawa, 1995), pp. 33-38. Of the thirty-three complaints received by, the Privacy Commissioner, seven were "not well founded" or were discontinued.

**9** Speech by, Bruce Phillips, Privacy Commission of Canada, to the National Statistics Council, Ottawa, 26 November 1993. Transcript provided by the Office of the Privacy Commissioner.

**10** Bruce Phillips, Privacy Commissioner, to Jean-Pierre Wallot, National Archivist, 29 April 1994, File EX6237-50/S5, Vol. One.

**11** "Census Records, Privacy Issues and the Preservation of Canadian Heritage," A Draft Discussion Paper Prepared by Michael Swift, Assistant National Archivist, June 1994, File EX6237-50/SS, Vol. One.

**12** Under normal circumstances, the National Archives would have entered into an agreement, known as a Multi-Year Disposition Plan, with Statistics Canada. This agreement would have set out joint priorities for the disposition of Statistics Canada's records; each priority would be the subject of a formal request by Statistics Canada for authority to dispose of records. Following a request for authority to dispose of a specific body of records, the National Archives performs an archival appraisal, which is informed by an analysis of the records by a National Archives Information Systems Analyst. In the case of the 1991 census appraisal, the appraisal took place outside of the context of Statistics Canada's Multi-Year Disposition Plan, and was required to be completed in such a short time that two people were assigned to it: an archivist, Jean-Stephen Piche, and his supervisor at the time, Sheila Powell. Technical advice was also provided by Rick Schnarr of the Electronic Special Projects Division of the NA. For more information on the National Archives approach to the disposition of federal government records, see Bruce Wilson, Systematic Appraisal of the Records of the Government of Canada at the National Archives of Canada," *Archivaria* 38 (Fall 1994), pp. 218-3 1.

**13** Terry, Cook, *The Archival Appraisal of Records Containing Personal Information: A RAMP Study With Guidelines* (Pans. 1991), p. 22.

**14** The 1840 US census serves as an example of why it is valuable to have a first hand look at how the answers to the census questions are recorded, or more significantly, misrecorded and misinterpreted. The final results of the 1840 census showed an alarming rate of insanity and idiocy, among the African-American population of the northern states, which proponents of slavery held up as proof that freedom led to insanity among former slaves. The statistics, however, were wildly inaccurate due to a problem with the format of the census form that led information to be recorded in

the wrong category. For a discussion of the problems with the 1840 and other American censuses, see Margo J. Anderson, *The American Census: A Social History* (New Haven and London, 1988).

**15** Revenue Canada employees involved in census processing are sworn in as employees of Statistics Canada, and are therefore allowed to view census records. The authors were also sworn in as Statistics Canada employees in order to conduct their appraisal.

**16** While the Dissemination Database does not contain the names and addresses of census respondents, it does contain a code that can be converted into the unique identifying code (the FED-PROV-EA-HOUSEHOLD-PERSON number) used on the original census forms and in the other processing databases. In this way, the names and addresses of respondents from the forms can eventually be linked to the corresponding census data in the Dissemination Database.

**17** Records Disposition Authority Number 951024.

## **Appendix 3.**

**Extract from Canadian Public Administration**



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**Access to historic census data  
in Canada: a comparative  
analysis**

**Abstract.** Statistical agencies are vitally concerned with protection of confidentiality in order to maintain high response rates to national surveys. Researchers are thus confronted with restrictions when seeking access to historic census records which are seventy-five to one hundred years or more old. A bill passed by the House of Representatives in 1976 represents the leading American effort to come to grips with this basic problem. Its purpose was to make census schedules available for medical, genealogical, and historical research after the passage of fifty to seventy-five years. Despite the defeat of this bill in the Senate, the 1952 agreement, whereby the National Archives agreed with the Bureau of the Census to release census information after the lapse of seventy-two years, remains in effect. Access to census schedules occurs under controlled conditions.

Statistics Canada has adopted a policy of strict confidentiality for censuses after 1871. The Canadian Statistics Act of 1918 contained a strict secrecy clause prohibiting the use of information outside the statistical organization, which Statistics Canada applies retroactively. Opposition to this position has arisen from a variety of sources. A system is needed whereby historic census data can be released for research and statistical purposes, while maintaining the right to individual privacy. The availability of U.S. census records has illustrated that this can be done without negative results. The type of controls exercised by the National Archives in the United States would seem to be a useful model.

Statistics Canada should be willing to follow the lead of other Western nations in permitting access to census records after a period of seventy-five years. Some types of research require access to individual census returns in identifiable form. An amendment to the secrecy clause of the 1971 Statistics Act may be necessary for censuses taken after 1918. At any rate, action must be taken by Statistics Canada or the research community will have to take strong initiatives towards a reasonable solution. This would be in line with the increasing trend in English-speaking countries towards freedom of information, as well as a reduction in absolute secrecy.

Confidentiality is the lifeblood of statistical organizations in modern industrial societies. In order to continue successfully collecting personal information from respondents in national surveys, agencies such as Statistics Canada devote considerable efforts to the maintenance of an unblemished reputation for the protection of confidentiality. The debates over personal privacy during the 1970s have heightened this level of concern and have had negative consequences for researchers in various disciplines, including the social sciences and the health sciences, who require access to individual data in some form for their work. As the demand for access to government microdata for research and statistical purposes has increased, the channels for making data available have been constricted. This essay will address the particular problems confronted by researchers in various disciplines seeking access to historic census records which are seventy-five to one hundred or more years old. The issue is a microcosm of the central question of balancing concern for personal privacy and freedom of information. If the custodians of census data absolutely refuse access to identifiable individual returns from current or recent censuses, and if they are even initially reluctant to disseminate anonymized individual data from the same sources, their preliminary reaction to the idea of the complete opening up for inspection of the individual returns from historic censuses has also been negative. This problem will be analysed and illustrated in a comparative context in the following pages. The aim will be to suggest that some liberalization of access to historic census returns for legitimate researchers is in order in Canada.

For purposes of comparison it is instructive to begin with a review of the current situation in the United States with respect to access to historic census returns. On 7 April 1976 the House of Representatives passed H.R. 10686, which was designed to make available individual returns from decennial censuses on a regular schedule and under controlled conditions. Congressmen Paul Simon of Illinois and Gunn McKay of Utah had introduced the bill in the House of Representatives on 11 November 1975. The Senate followed the House of Representatives in permitting the release of census data held by the National Archives after seventy-five years for genealogy and other research, but wanted to release personal data for medical research 'as soon as practical!'<sup>1</sup> Senator Charles H. Percy of Illinois effectively buried the House bill in three Senate committees, because of his concern about its implications for personal privacy. He also acted with strong prompting from the Bureau of the Census. On the other hand the bill to open up census records after a certain period attracted strong support from the then Speaker of the House, Carl Albert, who has an interest in genealogy, and Senator Frank E. Moss of Utah, who reflected the strong concern of the Church of Jesus Christ of Latter-day Saints (the Mormons).

H.R. 10686 represents the leading American effort to come to grips with some basic problems. The House bill provided for the regular transfer to the National Archives of all schedules for a particular census within fifty years after the actual date of the census. These schedules could be made available at once for medical research, and after seventy-five years for genealogical or historical purposes. In each instance the

Archivist of the United States has to determine the intent of the researchers: ‘The Archivist shall insure that such persons are bona fide researchers engaged in legitimate scholarly, genealogical, or scientific pursuits. In no case shall information furnished under the authority of this section be used to the detriment of the persons to whom such information relates.’<sup>2</sup> This stipulation introduces the important principle of the exercise of supervisory control over researchers, who are also cautioned against using the individual information to harm the original respondent.

Since H.R. 10686 sought to ‘enact into law the terms of the present agreement between the Bureau of the Census and the National Archives concerning the availability of census records for research purposes,’ the defeat of the measure in the Senate nevertheless leaves in effect the terms of the present agreement, which are quite beneficial for researchers.<sup>3</sup> The Federal Property and Administrative Service Act of 1950 (Federal Records Act) imposed a fifty-year limit on restricting access to records of executive agencies, unless the Archivist determined that they should remain closed for a longer period. The National Archives thus received explicit authorization to open census records when they became fifty years old.<sup>4</sup> In 1952 the incumbent Director of the Census approached the Archivist of the United States with a proposal that ‘after the lapse of seventy-two years from the enumeration date of the decennial census, the National Archive Record Service may disclose information contained in these records for use of legitimate historical, genealogical, and other worthwhile research provided adequate provisions are taken that the information disclosed is not to be used for the detriment of any of the persons whose records are involved.’<sup>5</sup> The Archivist accepted this arrangement in a letter dated 10 October 1952.

The acting Archivist of the United States recently pointed out that the National Archives intends to release the 1910 individual census records in 1982. During these same hearings Vincent Barabba, then the Director of the Bureau of the Census, recognized that under the existing agreement there was a schedule to release census data through the year 2022.<sup>6</sup> Since the justice Department in June 1973 determined the legality of the 1952 agreement, the Census Bureau has no legal basis to invalidate the existing arrangement. The National Archives has in its physical custody on microfilm all of the census questionnaires through 1950.<sup>7</sup> Unless this 1952 agreement is abrogated, such as by a specific act of Congress, the 1950 individual schedules will be released by the National Archives in 2022.

The 1900 individual census schedules became available to researchers under controlled conditions in 1973. Although some of the stringent conditions initially imposed on users have been relaxed because of the large number of complaints, they constitute an important precedent. In the first instance, ‘persons authorized access must demonstrate in a written data use agreement that they are engaged in legitimate historical, legal, or genealogical research or other research deemed worthwhile by the Archivist and agree to the conditions of use of the record data.’<sup>8</sup> Secondly, the restrictions establish three categories of researchers: the general historical researcher,

the biographical researcher, and the genealogical or legal researcher. An historian is someone 'who uses the census data as statistical evidence in formulating hypotheses on historical trends of all or segments of the U.S. population.' An historian's reputation as a research worker and his connection with an established institution of learning or research establishes the legitimacy of a particular piece of research: 'Researchers in this category agree that in any use made of the census data they will not publish or otherwise disclose in any manner the identity of any person enumerated in the census.'

A biographical researcher is defined as someone 'whose use of the census data relates to the discovery of factual biographical information about a recognized historical personage enumerated in the census,' and is subject to the criteria outlined above in determining the legitimacy of a particular piece of research.<sup>9</sup> Biographical researchers 'agree not to publish or otherwise disclose in any manner any information about persons not specifically identified in the stated scope of their authorized research, and agree not to use information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy of a living person.'<sup>10</sup> This last 'Invasion of privacy' criterion could easily create difficult problems of interpretation in a litigated situation.

A genealogical or legal researcher is defined as one who uses census data to discover information about a particular person or family. A genealogist must establish a connection with the individuals in question either through family relationship or by authorization. A legal researcher must establish a position as an officer of a court or tribunal that requires data to determine inheritance or to adjudicate a controversy. Genealogical or legal researchers have to 'agree not to publish or otherwise disclose in any manner any information about persons or families not specifically identified in the stated scope of their authorized research, and to use only the specific information that they are authorized to obtain about persons or families being researched.' The provisions in these regulations for genealogists or legal researchers are perhaps the most liberal of the three categories. A request by mail for a particular family record may result in the receipt of an entire page from the 1900 census, which contains information for about ten other families as well. Fortunately, the restrictions imposed by the National Archives raise the prospect of barring a researcher in any category from access to population schedules or other records in the National Archives in any case of failure to comply with the rules for using the 1900 census schedules.<sup>11</sup>

The Bureau of the Census actively opposed H.R. 10686. As the incumbent Director, Vincent P. Barabba, testified on 17 November 1975, the Census Bureau views 'the issue as one of honoring commitments made to the American people. In its simplest terms, a promise is a promise. The Government, through the census statute and the Presidential proclamations, has made a promise of confidentiality regarding census information obtained particularly in the census of population and would compromise its integrity if it did not extend every conceivable effort to uphold the promise.'<sup>12</sup> The Bureau relies particularly upon a series of presidential proclamations, beginning in

1910 with President Taft, concerning the confidentiality of the census. Barabba was prepared to argue that complete access to individual schedules should be shut off, 'except where the individual consents to the release.'<sup>13</sup> This advocacy of the principle of informed consent is a strong point, given its development in the Health, Education and Welfare report on privacy in 1973 and in the Privacy Act of 1974.<sup>14</sup> At a conference in Sweden in March 1976 Barabba further argued that failure to maintain these promises of confidentiality would harm the current high rate of participation by respondents.<sup>15</sup>

The Bureau of the Census claims to have entered into the agreement with the National Archives 'at a time when there was much less concern than there is today with the right of privacy, the uses of government information, and the capabilities of computerized record systems.' When it came time in 1972 to open the 1900 census records, the Census Bureau argued that the 1952 agreement 'was not valid because the Director through the agreement created a situation in which he could no longer fulfill his responsibility under title 13 to safeguard census records which were obtained under a promise of confidentiality without a time limitation.' The Department of justice subsequently determined that the 1952 agreement permitted the release of the 1900 census records.<sup>16</sup>

The Bureau of the Census is particularly concerned about the potential impact on respondents to the 1980 census of its existing arrangements with the National Archives. Under the terms of the Privacy Act of 1974, the Bureau believes that it has an obligation to inform respondents in 1980 that information furnished by them will be made available to researchers in 2055. The Census Bureau can legitimately argue that it does not know how such a notice on census forms will affect the response rate of different groups in the population.<sup>17</sup> It argues that further action in this area should await the results of its commissioned study of privacy and confidentiality as factors in survey response being completed by a panel of the Committee on National Statistics of the National Academy of Sciences. The study, directed by Dr. Edwin D. Goldfield, involves two small-scale exploratory surveys; one is a survey of attitudes about surveys, and the other an attempt to measure respondent behaviour under differently perceived conditions of confidentiality. The second nation-wide survey includes 2,500 households, each of which is given one of five different statements concerning the duration of confidentiality of information furnished by respondents, before answering standard census-type questions on population and housing. This duration extends from no confidentiality to twenty-five years, to seventy-five years, to forever. The fifth alternative is to test whether there is any reaction from respondents to the absence of a statement about confidentiality. According to the director of the study, 'at the conclusion of the interview the respondent is asked to recall the terms of confidentiality, if any, that were stated to him at the outset. If the respondent had answered all or nearly all the survey questions and then failed to remember a previously-stated specific condition of confidentiality, it would suggest that that respondent was not exceedingly concerned about confidentiality.'<sup>18</sup> This study may find out that after a certain lapse of time, respondents are no longer

concerned about the privacy of census data. The Census Bureau would be prepared to accept the prevailing rules on access to individual census schedules, if the current study showed that its fears in this area were unrealistic.<sup>19</sup> The study results are due to be reported publicly by 30 September 1977.

The National Archives has strongly argued for continued access under controlled conditions to individual census schedules. It claims that only criticism of the Census Bureau during the conduct of the 1970 census inspired the request not to release the 1900 individual returns until at least the year 2000.<sup>20</sup> The Archives recognizes that the constantly changing focus of research activities requires access to individual schedules at some point in time, because all of the efforts of the Bureau of the Census in publishing summary information cannot anticipate the variety of concerns of scholars.<sup>21</sup> At the same time the Archives emphasizes that 'there has never been a complaint from any individual that his privacy had been invaded because records of the National Archives were opened to researchers. To a large extent, this is true because genealogists, historians, and others engaged in research are not interested in focusing upon individuals for the sake of sensation or ridicule, and their findings are usually concentrated on their own families or are presented in general or quantitative terms.'<sup>22</sup>

In hearings before a Subcommittee of the House of Representatives on 17 November 1975 the only two congressmen to testify were the proponents of H.R. 10686. Congressman Simon argued that the general populace recognizes some limits on confidentiality: 'People expect some day records may be opened.'<sup>13</sup> Congressman McKay, who is a Mormon, argued that 'adequate confidentiality can be preserved at the same time census data is used for beneficial research and study.'<sup>24</sup> He attacked the Bureau of the Census' reliance on the presidential proclamations beginning in 1910:

Presidential proclamations introducing the taking of censuses have never promised complete secrecy. Rather, they have promised that the information would definitely not be used for such purposes as tax law enforcement, selection of juries by the courts, or induction into the armed forces. The proclamations also included a more general promise that the information would not be used to the respondent's damage, detriment or disadvantage. Such language leaves open the possible future use of census data by groups with legitimate interests, provided that no harm is perpetrated on the enumerated.<sup>25</sup>

On the issue of access by historians, Congressman McKay made the general point that the National Archives has never received any complaints about the release of census data.<sup>26</sup>

To understand the problems of access to historic census records by researchers, it is initially useful to recognize that the National Archives and the Bureau of the Census

simply have conflicting roles in this area. But despite the close association of the National Archives with the interests of researchers, the Bureau of the Census has an obligation that has been somewhat neglected in the past. One of the ways of justifying the massive efforts of the census authorities in collecting information from respondents is to ensure that the data is put to good uses. The position of the National Archives that a seventy-two year period is sufficient for the protection of individual privacy seems reasonable, especially if individual records are thereafter only released under controlled conditions. It is difficult to argue that there is an invasion of privacy involved in such a form of release. The dissemination of hospital or psychiatric records after such a time period might be a much more sensitive issue. At the same time, given the current climate of concern for personal privacy, it might be just as difficult to justify a shorter period of time, such as twenty-five years, before the release of individual census records.

It seems desirable for custodians of sensitive data, such as individual census schedules, to impose certain restrictions on potential users. Those in force for access to the 1900 census include written agreements on data use, the establishment of credentials for researchers, and utilization of information in such a way that no detriment should result to the original respondent. The acceptance in H.R. 10686 of a fifty-year release date for medical research further suggests that at some future date other researchers may benefit from a comparably short time period before actual release.

Researchers are also pursuing the possibilities of sampling from historic census records. Vincent Barabba, then the Director of the Bureau of the Census, suggested during congressional hearings that it might be possible for a public use sample to be prepared from the old censuses, as is currently done for the 1960 and 1970 censuses of population. On 29 March 1976 Barabba further mentioned the possibility of preparing special tabulations for researchers instead of furnishing them with identifiable data.<sup>27</sup> However, the acting Archivist of the United States suggested in response to questioning that even a 10 per cent sample of the population would not be useful for historians, which is too strong a statement.<sup>28</sup> Although researchers require access to identifiable returns to link the records of a particular individual from one census to another, samples and special tabulations from historic census records can serve useful purposes, especially if the original individual returns are not accessible. Professor Samuel H. Preston, Director of the Center for Studies in Demography and Ecology at the University of Washington, is preparing a one-in-one-thousand public use sample from the 1900 census, which will enable researchers to test the utility of such an undertaking.<sup>29</sup> The proponents of the public use sample for 1900 argue that it will be useful for the study of fertility and mortality, the demographic history of American blacks and women, household structure, and ethnicity and occupational stratification. Sociologists from the University of Wisconsin have in an advanced state of preparation a major proposal for public use samples from the 1940 and 1950 censuses of population.<sup>30</sup>

## The Canadian experience

Statistics Canada believes that the opening up of the 1871 census to researchers was an accident which should not have occurred. Apparently the 1871 census schedules were transferred to the Public Archives of Canada for research purposes following the 1941 census and thereafter opened to the public as a matter of course. Although there is no evidence to suggest that the availability of this first federal census has ever created anxieties among Canadian citizens, Statistics Canada has in recent years adopted the policy that all census questionnaires from the 1881 census and thereafter are confidential in perpetuity under the various Statistics Acts beginning in 1918. This position has, if anything, stiffened in response to approaches by Committees on Statistics of the Canadian Historical Association and the Social Science Research Council of Canada seeking access to the 1881, 1891, and 1901 censuses for researchers. Formal and informal approaches have occurred on several occasions since 1973. Public debates over privacy and confidentiality during the 1970 census and thereafter have simultaneously encouraged the statisticians to take stands against opening up the census data.

The current policy of Statistics Canada has the advantage from an institutional point of view of being a clear-cut decision. It also seems to be an inevitable one, if a statistical agency is left to its own resources on such a matter. Catering to the needs of researchers, especially those interested in historic census data, is hardly a high priority item within the broad mandate of Statistics Canada. To date there has been little public pressure for Statistics Canada to adopt a more liberal position on the issue of access to these old records; private pressure from such sources as the Public Archives of Canada has been unsuccessful. It would probably be easier to work out a compromise if, as in the United States, the original census schedules produced since 1871 had previously been transferred to the Public Archives of Canada. It seems probable that these have now been destroyed and that only microfilm copies are in the custody of Statistics Canada.<sup>31</sup>

Central statistical agencies fear that granting access to historic censuses will cause problems in collecting information from respondents in future. If, as seems inevitable, an agency has to notify respondents that replies will only be confidential for a period of perhaps seventy-five years, there is indeed some question of the initial impact on accuracy and response rates. However, Senator Eugene Forsey, a leading Canadian civil libertarian, has suggested that 'very few people are likely to take fright if they are told that seventy-five years from now something may be told about them.'<sup>32</sup> There is at least the possibility of more problems arising in the handling of some of the sensitive data on marital status and legitimacy, for example, in the rather eclectic late nineteenth-century censuses. An unscrupulous and unprofessional user might easily produce some sensational results from historic census data which could embarrass living persons. The utility of written agreements on data use should be apparent here.

Statistics Canada refuses to grant access to the manuscript census schedules after 1871 on the basis of its interpretation of the various Statistics Acts enacted in the twentieth century. The nineteenth-century censuses were collected without the benefit of statutory protections for the confidentiality of the information furnished by respondents. A brief prepared by the Canadian Historical Association in the fall of 1973 asserted that ‘the legislation under which the Canadian decennial censuses were collected prior to 1905 contained no secrecy provisions whatsoever.’<sup>33</sup> This is not to suggest that enumerators and custodians of census data during the nineteenth century were not concerned about confidentiality. The various instructions issued to officers employed in the taking of the early Canadian censuses made explicit the concern with confidentiality. The primary concern was to instruct enumerators to keep secret the information they received from respondents. There were certainly no assurances that the census schedules would be kept secret in perpetuity. An order-in-council issued by the Governor General on 31 March 1911, which perhaps owed its inspiration to the proclamation by President Taft in 1910 on the same subject, was in fact more explicit about confidentiality than any previous statement or directive in connection with Canadian censuses:

The facts and statistics of the census may not be used except for statistical compilations, and positive assurance should be given on this point if a fear is entertained by any person that they may be used for taxation or any other object.<sup>34</sup>

One could hardly interpret this directive as prohibiting the release of individual census schedules at any later date.

The first Canadian Statistics Act of 1918 was revised in 1948 and 1971. The very strict clause on secrecy in 1918 simply provided that no individual return or any part thereof could be published or utilized by anyone outside of the statistical organization.<sup>35</sup> Statistics Canada applies this provision retroactively to earlier censuses. When the Committee on Statistical Research of the Canadian Historical Association testified before a joint House of Commons and Senate Committee on freedom of information on 15 June 1976, the late Professor Donald Kerr, the leading spokesman for the group, appeared to accept the legal interpretation adopted by Statistics Canada. At one point Kerr suggested that ‘the only recourse would seem to be amendment of the present legislation.’<sup>36</sup> The same committee learned of a claim by a Chief Statistician to the Social Science Research Council of Canada that he or she had no authority to release the historic census schedules ‘because the 1948 Act is retroactive to all the previous censuses.’<sup>37</sup> The reference to the 1948 Statistics Act is typical of considerable confusion surrounding this issue, since the 1948 Act was repealed by the 1971 revision. Nevertheless Jan Loubser, the current director of the SSRCC, was prepared to debate the retroactive aspects of the 1918 Statistics Act before the joint House-Senate Committee:

It is not retroactive to those censuses and there is nothing in the statute that would indicate so, but then we were told by their [Statistics Canada] legal advisors that it is a common criterion in the interpretation of statutes that unless specifically repealed, it applies to previous activities of the same sort and that is where we stand.<sup>38</sup>

After pointing out to the committee that those seeking access to individual census schedules were faced with a legal opinion and not a specific statutory provision, a member of Parliament proceeded to call this particular legal opinion of Statistics Canada ‘ridiculous and absurd.’<sup>39</sup>

Much of the discussion of retroactivity would appear to be redundant, given the repeal of previous Statistics Acts by the revised statute which went into force in 1971. In fact, the strict secrecy clause in the 1918 and 1948 statutes was one of the main reasons for the revision. The secrecy clause in the current Statistics Act simply forbids the release of individual information from censuses, if the data identify a particular person.<sup>40</sup> This 1971 statute permits Statistics Canada to release samples of non-identifiable information from the 1971 census of population for research use. Nevertheless, the Committee on Statistical Legislation of the Dominion Bureau of Statistics, the predecessor of Statistics Canada, did not explicitly settle the issue of access to old census records during its more than five years of deliberations. The records of the committee suggest an awareness that this question required settlement. It is difficult to determine the intent of the committee since none of the draft Statistics Acts, nor the finished version, made any explicit mention of access to historic census data. Perhaps the issue was simply too minor, yet too thorny, in the context of the major issues facing the revisors.

The question of access to individual census schedules from the nineteenth century poses in acute form several interests requiring some form of balance in this context. The granting of access requires the revelation of microdata about individuals in identifiable form, even if the end product of the use by researchers is anonymized or statistical in character. As a member of the joint House-Senate Committee observed during a discussion of this issue on 15 June 1976, ‘one of the basic difficulties that we are going to be meeting is the formulation of the system whereby information can be released so that the scholars would have access to it and by the same token the right of individual privacy is maintained.’<sup>41</sup> Researchers have made clear their need for access to individual data and their simultaneous concern to protect personal privacy. In addition to the brief submitted to the Parliamentary Committee by the Committee on Statistical Research of the Canadian Historical Association, a subcommittee of the SSRCC prepared a substantial ‘Report of the Working Group on Historical Census Microdata Research,’ which was also presented to the joint House-Senate Committee.<sup>42</sup> During the discussion another member of Parliament made the claim for privacy: ‘The real question, surely, is, what right does the scholar have to go back into my family background or to expose any records of my family that are not already in the public weal, legitimately in the public weal?....Why should

my family not have the privilege of privacy?<sup>43</sup> It will obviously be necessary to compromise such divergent views. It will also be essential to stimulate the leadership of Statistics Canada to take seriously into account the demonstrated needs of researchers in the social science disciplines for access to old census information.

Access can be granted to historic census returns with little risk to the privacy of living individuals. The U.S. census of 1900 has been available under controlled conditions since 1973 with no negative results. It is almost absurd to argue that an invasion of privacy will occur if researchers obtain access to individual returns from a Canadian census which is at least seventy-five years old, since almost no one will be alive who was an adult at the time of the particular census; those surviving from this particular category will be at least ninety-six years old. Other elderly people aged seventy-five to ninety-six would have been children or teenagers when the census was taken; the census primarily records their existence as members of a household. It is especially difficult to envision how harm or detriment can occur to a particular living person with a seventy-five year rule. (Given the underdeveloped state of the law of personal privacy in Canada for living persons, one can hardly postulate a recognized legal right of privacy for *deceased* persons.)

A reasonable resolution of the current difference of opinion on access to historic census data will involve an important role for the Dominion Archivist and the Public Archives of Canada. The latter and Statistics Canada currently have a working group meeting regularly to develop a satisfactory policy in regard to access to statistical data. Although Canada does not have a Records Act, such as exists in the United Kingdom and the United States, Cabinet Directive No. 46, dated 7 June 1973, governs the transfer of public records to the Public Archives of Canada. The current Dominion Archivist, W. I. Smith, discussed this directive in an appearance before the joint House-Senate Committee on freedom of information on 16 March 1976. As in the United Kingdom, there is a general thirty-year rule in Canada concerning access to any public record that has been transferred to the Archives.<sup>44</sup> Under the definitions of this directive, access means 'permission to members of the public to view, copy and use a public record for research purposes.' Smith indicated that there were no real practical consequences of this particular provision, suggesting that 'if somebody comes in, wants information and we have it, they get it.'<sup>45</sup> This condition applies only to public records older than thirty years, which do not fall within any of the exempt categories listed in the cabinet directive. Access conditions imposed by directive or by originating departments are strictly observed.<sup>46</sup> The type of controls exercised by the National Archives in the United States over researchers seeking access to the 1900 census schedules would seem to be a useful model for the use of census data in particular.

The cabinet directive of 7 June 1973 specifies a series of exempted records which do not have to be transferred to the Public Archives of Canada and opened up for public access. Records are exempted from release which 'might violate the right of privacy of any individual,' although it is further specified that personnel files cease to be

exempted records after a period of ninety years.<sup>47</sup> Personnel files are hardly any less sensitive than census records. Deputy ministers have to justify to the Dominion Archivist any exemptions for records over the thirty-year period. The Archivist can then agree or appeal a disagreement to the cabinet with the understanding that it was the intention of cabinet in this directive to liberalize access to information.<sup>48</sup> Since an appeal cannot be taken to cabinet for public records which are exempt from access by law, the legal opinion prevailing at Statistics Canada on the issue of access to historic census records has effectively tied the hands of the Dominion Archivist. His route of attempting to reach a tacit agreement with Statistics Canada on this issue does seem to be the most intelligent course available.

During the hearings before the Committee on Freedom of Information on 15 June 1976, there was considerable support for the view that a seventy-five-year rule would be appropriate for access to individual census schedules. A member of the committee, Senator John Godfrey, viewed seventy-five years as an acceptable time period for access, and wondered what information could be so sensitive as to remain secret after that time.<sup>49</sup> Professor Fernand Ouellet, a former president of the Canadian Historical Association, advocated the complete opening of census information after seventy-five years, and a partial opening for research purposes after fifty years, if the names of individuals were not mentioned, presumably in the publication of research results: 'For my part, I feel that information contained in a seventy-five-year-old census is no longer confidential. There is absolutely no difficulty in revealing the names of the individuals involved.'<sup>50</sup> A member of the committee suggested that some presumably non-sensitive data from censuses should be available to researchers much more quickly: 'It would seem to me a shame that you have got to wait for thirty or forty or fifty years for some very basic information that could not possibly bother anybody to be made available.'<sup>51</sup>

Jan Loubser of the SSRCC did suggest to the committee that many individuals would not be too keen on the release of the names attached to individual census data before a period of approximately seventy-five years had elapsed. Loubser made the additional point that all social scientists regularly have to protect the confidentiality of research data. Thus it should be possible to work out a system of access to individual data which will include protections for confidentiality at an appropriate level. Loubser suggested that researchers be sworn to secrecy under certain circumstances, and that data be laundered to remove identifiable information before publication.<sup>52</sup> Professor Kerr reminded the committee that although historians need the names of respondents to the census for purposes of data linkage, the information could easily be reviewed to remove proper names before publication: 'We are not interested in the individual information at all.'<sup>53</sup> Toward the end of the hearings before the committee, Gerald Baldwin, the M.P. who has been the most ardent proponent of legislation on freedom of information, raised the question of specific provisions that could be written into a freedom of information bill to make census data available under controlled conditions.<sup>54</sup> Presumably the type of restrictions on

data use imposed by the National Archives in the United States would be appropriate here.

The experience of other countries suggests that Canada will have to fashion a reasonable rule for granting access to historic census records under controlled conditions for research and statistical purposes. As discussed above, the current agreement between the American Bureau of the Census and the National Archives permits access to individual census records on the basis of written data use agreements after seventy-two years have elapsed. The resemblance between the American and Canadian controversies is rather striking; the former are simply much closer to settling the issue permanently. Swedish censuses remain closed for only twenty years, although there have been no requests to date for access to the 1950 census. However, the current proposals for revision of the Secrecy Law envision an increase to a maximum of fifty years before individual census records can be utilized by outsiders.<sup>55</sup>

In England and Wales the Office of Population Censuses and Surveys had operated under a one-hundred-year rule on access even before the Lord Chancellor made a formal rule under the Public Records Act of 1967 providing for the permanent preservation of census records, but forbidding their utilization by outsiders until the passage of one hundred years. These census records became open after one hundred years, despite all the previous unqualified pledges of confidentiality. 'The aim of the one hundred years rule was to ensure that census forms would relate to only minimal numbers of living people when released, thus giving the maximum degree of confidentiality.'<sup>56</sup> From 1966 to 1971 this rule was not even applied to bona fide historical and sociological researchers, who were able to establish a legitimate interest in individual returns from the less recent censuses, anonymized in part by the removal of names and addresses.<sup>57</sup> Scotland subsequently followed the lead of the Lord Chancellor in adopting a one-hundred-year rule. But under previous Scottish practice, the censuses up to and including the year 1891 had already been opened. During the 1920s the Registrar-General for Scotland had made available the census records of 1871 to bona fide researchers. The 1881 and 1891 censuses were opened in 1955.<sup>58</sup>

It seems unlikely that Statistics Canada will be unwilling to follow the lead of other Western nations in permitting access to census records after a period of seventy-five or at most one hundred years. The proclamation by the Governor General for the 1911 Canadian census instructed enumerators to keep 'clear and legible records,' because 'the Census is intended to be a permanent record, and its schedules will be stored in the Archives of the Dominion.'<sup>59</sup> This would appear to be a clear recognition that at some future date users would be granted access to the individual census schedules. For certain types of research involving the linkage of data from one census to another, historians require access to individual census returns in identifiable form. Even an expensive public use sample from historic censuses would not satisfy this particular need. Since the Canadian censuses taken prior to the first

Statistics Act in 1918 did not enjoy the protection of a secrecy clause, Statistics Canada should make available the pre-1918 censuses after the lapse of seventy-five years. This will allow time to fashion a solution for opening up the post-1918 censuses when the appropriate time arrives; the simplest solution may be an amendment of the secrecy clause of the 1971 Statistics Act. If Statistics Canada continues to ignore this particular issue, the research community in Canada may have to take strong initiatives toward a reasonable solution. This will have to be in line with the trends in English-speaking countries in recent years toward freedom of information, as well as reductions in periods of absolute secrecy to thirty years or so, even for military and intelligence secrets. As the Royal Statistical Society testified before the Data Protection Committee in the United Kingdom in the fall of 1976, 'with the passage of time the need to preserve confidentiality, even of the most sensitive data, becomes less pressing.'<sup>60</sup>

## NOTES

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- 1 *Privacy Journal*, Vol. 2 (October 1976), p. 1.
- 2 U.S., Congress, House, Committee on Post Office and Civil Service, *Availability of Census Records: Report to Accompany H.R. 10686*, 94th Cong., 2d sess., March 29, 1976, H. Rept. 94-971, pp. 17-18. Hereafter cited as *Report*.
- 3 *Report*, p. 1.
- 4 *Ibid.*, p. 2. The National Archives could unilaterally make individual population schedules available under the terms of the Federal Records Act.
- 5 Roy V. Peel, Director, Bureau of the Census, to Wayne C. Grover, Archivist of the U.S., 26 Aug. 1952, quoted in U.S., Congress, House, Subcommittee on Census and Population of the Committee on Post Office and Civil Service, *Regulations for Use and Transfer of Population Census Records to National Archives: Hearings on H.R. 10686*, 94th Cong., 1st sess., Nov. 17, 1975, p. 44. Hereafter cited as *Hearings*. Since the nineteenth-century federal censuses were collected without a federal statute on confidentiality, the 1870 census records became available after receipt by the National Archives in 1942, which is the precedent for establishing a seventy-two year rule for opening up census records (*Hearings*, pp. 20, 23).
- 6 *Hearings*, pp. 31, 45. The National Archives does not have custody of the 1960 census.
- 7 *Ibid.*, p. 25.
- 8 *Report*, p. 12.
- 9 *Ibid.*, pp. 12-13.
- 10 *Ibid.*, pp. 12-13.
- 11 *Ibid.*, p. 14.
- 12 *Hearings*, p. 30; see also *Report*, p. 16; the *New York Times*, 24 November 1975, p. L17; and *Computerworld*, X (January 1976), p. 8.
- 13 *Hearings*, p. 37; see also *Report*, p. 16.
- 14 U.S., Department of Health, Education, and Welfare, *Records, Computers,*

- and the Rights of Citizens* (MIT Press, Cambridge, Mass., 1973).
- 15 Tore Dalenius and Anders Klevmarken, eds., *Personal Integrity and the Need for Data in the Social Sciences* (Swedish Council for Social Science Research, Stockholm, 1976), p. 105.
- 16 *Hearings*, p. 29.
- 17 *Ibid.*, p. 41.
- 18 Edwin D. Goldfield, 'Study of Privacy and Confidentiality as Factors in Survey Response,' Executive Seminar on 'Expanding the Right of Privacy.' Washington, D.C., 14 October 1976, *Final Conference Proceedings* (University of Southern California, Los Angeles, Calif.), pp. 101-106.
- 19 *Hearings*, pp. 32, 45.
- 20 *Ibid.*, p. 21.
- 21 *Ibid.*, p. 20.
- 22 *Ibid.*, p. 23; see also p. 24.
- 23 *Ibid.*, p. 41.
- 24 *Ibid.*, p. 5.
- 25 *Ibid.*
- 26 *Ibid.*, p. 6.
- 27 *Ibid.*, p. 46; *Report*, p. 16.
- 28 *Hearings*, p. 26.
- 29 *Information Hotline*, VIII (October 1976), No. 9.
- 30 William M. Mason et al., eds., *Old Data for New Research. Report of a Workshop on Research Opportunities and Issues in the Design and Construction of Public Use Samples from the 1940 and 1950 Censuses .... Madison, Wisconsin, June 28-30, 1976.* (Center for Demography and Ecology, University of Wisconsin, Working Paper 77-3).
- 31 See Canada, Parliament, *Minutes of Proceedings and Evidence of the Standing Joint Committee on Regulations and Other Statutory Instruments*, 1st Session, 30th Parliament, Issue No. 79, June 15, 1976, pp. 21, 27. Hereafter cited as SI 79.
- 32 SI 79, p. 16.
- 33 Printed in SI 79, p. 8.
- 34 *The Canada Gazette*, 22 April 1911, p. 7, s. 23.
- 35 Statistics Act, 1918, c. 43, s. 15.
- 36 SI 79, pp. 8, 26.
- 37 *Ibid.*, p. 20.
- 38 *Ibid.*, p. 29. The SSRCC was recently renamed the Social Science Federation of Canada (SSFC)
- 39 SI 79, p. 30.
- 40 Statistics Act, 1971, c. 15, s. 16.
- 41 SI 79, p. 30.
- 42 *Ibid.*, pp. 32-38.
- 43 *Ibid.*, p. 14.
- 44 Canada, Parliament, *Minutes of Proceedings and Evidence of the Standing Joint Committee on Regulations and Other Statutory Instruments*. 1st Session, 30th Parliament, Issue No. 61, March 16, 1976, pp. 8, 11. Hereafter cited as SI 61.
- 45 SI 61, pp. 6, 20.
- 46 Communication, W.I. Smith, Dominion Archivist, 9 February 1977.
- 47 SI 61, p. 7.
- 48 *Ibid.*, pp. 20, 21.
- 49 *Ibid.*, pp. 13, 14.
- 50 *Ibid.*, pp. 11, 15.
- 51 *Ibid.*, p. 24.
- 52 *Ibid.*, pp. 20-22.
- 53 *Ibid.*, pp. 12-13.
- 54 *Ibid.*, p. 16.

- 55** Interview, Edmund Rapaport, National Central Bureau of Statistics, Stockholm, 23 February 1977.
- 56** C. Hakim, 'Census Confidentiality, Microdata, and Census Analysis,' Paper presented to the Institute of British Geographers' Conference, Sheffield University, September 1976 (Office of Population Censuses and Surveys, London, England, 1977), p. 4. The development of pledges of confidentiality on census returns in the United Kingdom can be reviewed in *ibid.*, pp. 12-16.
- 57** *Ibid.*, p. 4.
- 58** This information for Scotland is derived from a communication from the Registrar-General for Scotland to David Allen, Social Science Research Council, London, England, 8 August 1972.
- 59** *Canada Gazette*, Supplement, 22 April 1911.
- 60** *Journal of the Royal Statistical Society*, Series A, Vol. 140, Part 2, 1977, p. 213.

## **Appendix 4.**

**Support Documentation contained on CD**



## Appendix 4.

### Support Documentation contained on CD

#### Directory Archivaria

Archivaria 45.doc      Extract from Archivaria - "Counting the Archives In: The Appraisal of the 1991 Census of Canada"

#### Directory CanPubAdmin

Flaherty.doc      Extract from Canadian Public Administration - "Access to historic census data in Canada: a comparative analysis"

#### Directory Ceninstruct

Instr1871.doc      Extract from 1871 Census Instruction Manual  
Instr1891.doc      Extract from 1891 Census Instruction Manual  
Instr1901.doc      Extract from 1901 Census Instruction Manual  
Instr1906.doc      Extract from 1906 Census Instruction Manual  
Instr1911.doc      Extract from 1911 Census Instruction Manual  
Instr1916.doc      Extract from 1916 Census Instruction Manual  
Instr1921.doc      Extract from 1921 Census Instruction Manual  
Instr1926.doc      Extract from 1926 Census Instruction Manual  
Instr1931.doc      Extract from 1931 Census Instruction Manual  
Instr1936.doc      Extract from 1936 Census Instruction Manual  
Instr1941.doc      Extract from 1941 Census Instruction Manual

#### Directory Expert Panel

Appendix1.doc      E-mail correspondence  
Appendix2.doc      Extract from Archivaria  
Appendix3.doc      Extract from Canadian Public Administration  
Appendix4.doc      Contents of Support CD  
Content.doc      Cover page and table of contents  
Panel.doc      Submission to Expert Panel - main content

#### Directory Hansard

Hofc1879.doc      Extract from Debates of the House of Commons of 1879  
Hofc1905.doc      Extract from Debates of the House of Commons of 1905  
Sen1905.doc      Extract from Debates of the Senate of 1905  
Hofc1918.doc      Extract from Debates of the House of Commons of 1918  
Sen1918.doc      Extract from Debates of the Senate of 1918

## Directory LegalMemo

Memo26May81.doc	Memo from C. Rosen, Legal Advisor, Department of Justice
Memo21Apr82.doc	Memo from Warren Black, General Counsel, Statistics Canada
Memo28Sep83.doc	Memo from Mary D. Temple, Counsel, Statistics Canada
Memo20Sep84.doc	Memo from M. H. Zazulak, Counsel, Statistics Canada
Memo22Apr85.doc	Memo from Jill Wallace, Senior Counsel, Department of Justice

## Directory Statutes

1870Chap21.doc	An Act respecting the First Census
1871Chap18.doc	An Act to Amend the Census Act
1876Chap13.doc	An Act to make provision for the Collection and Registration of Criminal Statistics
1876Chap14.doc	An Act to amend "The Railway Statistics Act."
1879Chap21.doc	An Act Respecting Census and Statistics
1885Chap3.doc	An Act to Provide for the Taking of a Census in the Province of Manitoba, the North-West Territories and the District of Keewatin
1886Chap58.doc	An Act respecting the Census
1886Chap59.doc	An Act respecting Statistics
1886Chap60.doc	An Act respecting Criminal Statistics
1905Chap5.doc	An Act respecting the Census and Statistics
1905Chap6.doc	An Act to amend the Census and Statistics Act
1906Chap68.doc	An Act respecting the Census and Statistics
1918Chap43.doc	An Act respecting the Dominion Bureau of Statistics
1927Chap190.doc	An Act respecting the Dominion Bureau of Statistics
1948Chap45.doc	An Act respecting the Dominion Bureau of Statistics
1952Chap257.doc	An Act respecting the Dominion Bureau of Statistics
1953Chap18.doc	An Act to amend the Statistics Act
1970ChapS-16.doc	An Act respecting the Dominion Bureau of Statistics
1999ChapS-19.doc	An Act respecting Statistics of Canada
S15-16Dec99.doc	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) - currently (March 2000) under Second Reading in the Senate
C312-5Nov99.doc	An Act to amend the National Archives Act and the Statistics Act - currently (March 2000) awaiting Second Reading in the House of Commons