

Conflicts between public interest, accountability, memory and history: The preservation of police records in England and Wales

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This year the history department at the Open University received seed funding for a project which will run in partnership with the Archives and Records Association and, in particular, closely aligns with their recently launched ‘Campaign for records.’ I’m working on the project under the lead of Dr Chris Williams who is director of the Centre for the history of crime, policing and justice and this centre has a long-standing interest in the preservation of regional policing records in England and Wales. In the light of recent decisions around the archiving of regional policing records – specifically not to include them in the Public Record Act – the project aims and objectives are: to evaluate and record decision-making processes, past and current developments in police records management, and the impact such decisions will have on the preservation of policing records for all future researchers, whether historians, journalists, investigations into organisational accountability, or gathering material for future enquires.

Background

I will begin by setting the scene and by running through the background and events which have led to the development of this research, and much of this background in terms of the preservation of policing records revolves around the Public Records Act. From the creation of the Metropolitan Police Service in 1829 their police authority (the body responsible for policing oversight) was the Home Office and this meant they were considered part of a government department and, as such, their records were public records. This only changed in 2001 when the role of the police authority moved from the Home Office to the newly created Metropolitan Police Authority and this authority was not considered a public records body. So, although the records of the Metropolitan Police Service lost their public record status, there remains some level of commitment between them and The National Archives with the Operational Selection Policy stating:

In view of the large collection of MPS records already held by The National Archives and their close relationship with the records of the Home Office, it was agreed between the MPS, The National Archives and the London Metropolitan Archive that MPS would continue to deposit its records at The National Archives.¹

In Scotland, the situation actually swung the other way relatively recently. In 2013 the diverse forces of Scotland merged to form Police Scotland, and with the revised Public Records (Scotland) Act of 2011 police records were included. In Northern Ireland the records of the Police Service of Northern Ireland were classified as public records under the Public Records Act (Northern Ireland) 1923. And this, then, is why we’re particularly interested in regional forces of England and Wales because, along with the British Transport Police and the City of London Police, for historical reasons around organisational creation or constitutional makeup, these forces fall under neither the Public Records Acts nor sections of local government acts that may refer to archiving of material. A consequence of this is that the records created by regional police forces remain less understood and more vulnerable.

Police forces are publicly funded, public-facing organisations and because of this they are often described as forming a part of the public sector, but they are not defined as such by the Government according to their own list of agencies and public bodies.² In fact, UK police forces are surprisingly difficult animals to pin down in terms of what they actually are. The House of Commons publication, *Policing in the UK*, describes that they have a unique model organised around two legal entities: the

¹ The National Archives, *Operational Selection Policy OSP29: Metropolitan Police Service*, (London, 2004), pp.3-4

² GOV.UK, *Departments, agencies and other public bodies at:* <https://www.gov.uk/government/organisations>

‘office of constable’ and the ‘police force.’³ This status means that each chief constable is solely responsible for the operational decision-making of his force, and this decision-making includes record keeping. With the focus constantly on funding and frontline policing, record keeping has traditionally taken a back seat with any shortfalls only coming to light in times of crisis, followed quickly (or not so quickly) by public outrage and then enquiry and occasionally constitutional change. Examples here are the failures around the investigation into the mass murderer Peter Sutcliffe – the Yorkshire Ripper – who was finally arrested in 1981; the failures to arrest the perpetrators of the murder of the private investigator Daniel Morgan in 1987, and likewise the murderers of Stephen Lawrence in 1993; and the failings around record keeping and information sharing uncovered following the Soham murders – the murders of Jessica Chapman and Holly Wells in 2002. Much more recently in 2024 the Angiolini Inquiry report revealed how Wayne Couzen’s vetting as a police officer relied on inference when dealing with events in Kent police in 2008, because relevant records do not survive as a result, again, of poor record keeping and information sharing.⁴ These all very publicly highlight poor police force records management practices with lost, misfiled, destroyed or undisclosed records.

Sir Michael Bichard’s 2004 report following the murders of Holly Wells and Jessica Chapman began a process of reform in that it recommended that a clear code of practice for all police forces should be drawn up. In response to this and to the Freedom of Information Act, in 2005 the Home Office published a *Code of Practice on the Management of Police Information*. The Code invited chief officers to develop their own strategies, and the police operational level response was the first 2006 *Guidance on the Management of Police Information* (MoPI). MoPI, however, was not statutory, compliance with it was piece meal, and reference to the preservation of records for future access was restricted to one small paragraph under Disposal:

7.7.5: The use of archives to store records and limit access to them is an option for forces, and a decision [sic] be made on a force-by-force basis. It must be emphasised, however, that archiving is a form of retention and is not to be used for information that must be disposed of.⁵

But by far the biggest catalyst in terms of pressing for urgent oversight of how regional policing records were kept was the fallout from the Hillsborough Stadium disaster of 1989 in which 97 people died. One statement made to the families brings home the absolute power of the chief constable:

I am under no obligation to disclose anything, and the papers belong to me. If I wanted to I could take them into the yard and have a bonfire with them.⁶

This quote appeared in the 2017 report written by the Right Reverend James Jones, one of two commissioned reports following the disaster. The report was called *The patronising disposition of unaccountable power*, a title chosen with care to reflect the culture of putting organisational reputation before individual rights. And yet, despite hard-hitting criticism and the clearly expressed sentiment that it should never happen again, it is a culture that continues to persist in government funded organisations and local councils, for example the obfuscation surrounding the enquiry into the Grenfell Tower fire of 2017 or the ongoing Post Office Horizon scandal. Both Bishop Jones’ report and the earlier 2014 report of the Hillsborough Independent Panel made clear that any policing records of the events of Hillsborough that were saved were as a result of the foresight of individual officers or departments and not as a result of any records management obligations on the part of the force. As such, both reports recommended that regional policing records should be included in the Public Records Act – first in Recommendation 2 of The Hillsborough Independent Panel report and then

³ Jennifer Brown, ‘Policing in the UK’, *House of Commons Library*: 2021, p.4

⁴ The Angiolini Inquiry available at: <https://www.angiolini.independent-inquiry.uk/reports/>

⁵ Association of Chief Police Officers, *Guidance on the management of police information*, 2006

⁶ The Right Reverend James Jones KBE, ‘*The patronising disposition of unaccountable power*’: *A report to ensure the pain and suffering of the Hillsborough families is not repeated*, 2017; available at: https://assets.publishing.service.gov.uk/media/5a82c1cce5274a2e8ab5931d/6_3860_HO_Hillsborough_Report_2017_FINAL_update_d.pdf

reiterated in Point of Learning 24 of The patronising disposition. And, to be fair, much work was subsequently done around this with government working parties, consultations with The National Archives and many others and the recommendation was incorporated into the Open Government Partnership UK National Action Plan for 2014 as Commitment 8:

The UK government will establish by 1 January 2014 a high-level working group to ensure greater transparency and accessibility of police records in England and Wales. The group will explore the range of options for achieving this, including bringing police force records under legislative control, by adding police forces to the Public Record Act 1958, alongside other options that may not require legislation. The working party will report with a clear proposal and action plan by 30 June 2014.⁷

Despite being a commitment the plan does not actually commit but says it will ‘explore’ ranges of options and also, despite being a commitment the 2016 end of term assessment for the plan stated that Commitment 8 was ‘Subject to policy decisions,’ and the completion status was given as ‘Limited.’ By the new Open Government Action plan for 2016 to 2018 this commitment had simply disappeared, leaving the final decision or decision-making processes unclear.

The government took a long time to respond to the Points of Learning set out in Bishop Jones’ report. In the meantime, given that MoPI was thoroughly out of date, the College of Policing was tasked by the Home Office with drafting a new statutory code of practice for police information and records management and this was published in July 2023 and sits on the College of Policing website.⁸ The new code is now statutory under the 1996 Police Act, which is good – His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services will, for the first time, be able to assess forces on their records management performance. In addition, in order to specifically address concerns about archiving and long-term preservation of policing records, the College of Policing has published a supplementary guide called the Authorised Professional Practice (APP) on Archiving in the Public Interest. In this document sit all the nuts and bolts of how, when, where and if archiving should be considered but key, this document is not statutory.

This, then, takes the story to December 2023 when the government finally set out its response to Bishop Jones’ report and I’ve extracted three pertinent responses here:

First, the Government will not take up the recommendations of the Hillsborough Independent Panel and The patronising disposition to include regional force records in the Public Records Act.

Second, it was suggested to the author of the response, the Secretary of State, that the Public Records Act may not be sufficient to address the issues the panel identified – interesting.

Third – the Government are again, given recent changes, returning to the approach of leaving the question of records archiving with police and crime commissioners and, therefore, individual police forces – and this is due in part to the prior development of the new Code of Practice and APP.

The project

This is the point we are at now and this is the background narrative around our new research which responds, in part, to a subtext in the Government’s response. In particular paragraph 6.2.2. states that adherence to the Public Record Act would have led to more Hillsborough material being lost than was ultimately retained.⁹ The Government received this advice (publicly) from comments made by Bishop Jones under Point of Learning 24 in his report: ‘Since the Panel’s report was published it has been

⁷ Cabinet Office, *Open Government Partnership U.K. National Action Plan: 2013 to 2015*, pp.22-23 (London: Cabinet Office, 2013)

⁸ Available at: <https://www.college.police.uk/guidance/police-information-and-records-management-code-practice>

⁹ *HM Government, A Hillsborough Legacy: the Government's response to Bishop James Jones' report to ensure the pain and suffering of the Hillsborough families is never repeated*, pp.55-57; December 2023

suggested to me that even if police forces were to be brought under the Public Records Act, this may not be sufficient to address the issues the Panel identified.’¹⁰ The Bishop does not identify who made this suggestion and on what grounds but there was certainly an unpublished paper by a chief officer presented to the Home Office in which the needs around policing records were split into two camps: their preservation for public accountability and their preservation for the historical record. This officer felt the Public Records Act did not identify or protect records relevant for the accountability of an organisation. This, then, has triggered our project’s first research question: What is the ultimate objective and aim of the Public Record Act, is it still relevant and why is it seen by some as insufficient to support organisational accountability? How do forces in Scotland and Northern Ireland work with their respective Public Records Acts and interpret such questions?

Paragraphs 6.2.4. and 6.2.9 of the Government response reports that the policing response was the revision of MoPI into a new statutory code along with a supplementary APP, which as has been seen, is not statutory. The Government claim that this, together with the creation of a new National Police Chief’s Council Heritage Portfolio, will lead to a broader range of police records being retained, resulting in less risk of losing important records for future scrutiny. Following on from this, our two further research objectives will be first to scrutinise the new statutory Code and APP to understand where the statutory obligations end and how much support will be given to forces who wish to follow guidance in the APP. Second, to record how forces interpret ‘in the public interest’ which has no legal definition and is frequently confused with ‘of interest to the public.’ What are the nuances between archiving for history and archiving for public interest?

Despite the Government saying the recommendations around the Public Records Act would not be taken up, at another point in their response they note the following:

6.2.3: The review concluded that adherence to the PRA was a desirable objective, but only after the police applied more consistent and transparent standards of records management. The working group accepted these recommendations.¹¹

And this is key, leading onto a main chunk of the project’s work. How will the Government measure whether regional forces have applied these more consistent and transparent standards? Would failure to meet these standards mean that adopting the Public Records Act will be necessary? Records management inspections by His Majesty’s Inspectorate, if undertaken, would be one mechanism, but they will hardly be interested in the perspective of the historian, of the historical record, of the archivists. So, from this standpoint we want to apply independent scrutiny on levels of compliance, on whether there are increases or decreases in the amount of policing records entering local record offices for research, or whether researchers, for any reason, are allowed greater access to policing records held by forces.

This research actually started in June 2022 when an online survey was emailed to 65 county and city record offices in England and Wales in order to ask about their current holdings of regional police force records. We received responses from 48 offices – 75 per cent – and out of these all bar one said they held police records. The full findings from this survey are for another time but what they clearly demonstrated was that dispersed across the record offices of England and Wales is a very large collection of important material recording the history of regional policing with 50 per cent of respondents holding over 1,000 records and 20 per cent over 500. Also significant was that only 34 per cent thought they had some level of deposit agreement in place or contact with their local police force and, in terms of the receipt of born digital records 89 per cent of offices had none and, clearly, this is another area of concern which is not currently being fully addressed. One question, however, reveals a narrative around the importance of memory and the archive with 41 per cent of all records received donated by retired or individual officers, and a further six per cent from police clubs, museums or as a result of oral history projects. What this reflects and has been demonstrated in this paper is that many archived police records were not as a result of any formal records management practices and the

¹⁰ Ibid.

¹¹ Ibid.

potential for increased protocols and apparent protection of records to block this avenue. 4.11 of the new Code is explicit in this:

Records created and acquired during the performance of duty, and any duplicates and copies of these records, remain the property of the force. Chief officers should ensure that their force has systems and processes in place to ensure that these records are accounted for when individuals leave the organisation.¹²

These few lines, which I believe up until this point were never made clear, are significant in terms of the last part of the title of this paper – memory. The needs of memory, whether individual, collective or organisational, or of collecting memories in the form of souvenirs have always played a significant role in how, not just policing records, but any records have been preserved and, therefore, how history is laid down. There is, sadly, little connection between things, places, or papers collected to preserve a memory and records management policies and it will be important to monitor whether there is a change in the types of records being preserved or, for that matter, the removal of records no longer felt to be compliant.

The conflicts and to conclude

The Centre for the history of crime, policing and justice at the Open University developed its interest in the preservation of regional policing records because of concerns around the way in which poor archiving practices by police may slant the historical narrative. This, then, is viewing the police record as a tool for historical analysis and the first conflict is that the record is also a tool for accountability. In addition, the College of Policing have issued instructions on archiving in the public interest and this definition needs to be clarified in terms of how it relates to history and to accountability. It potentially widens the conflict already present in organisations around the profession of records management – dominant in police forces, and the profession of archivists – rarely present in police forces. It also questions the *raison d'être* of the Public Records Act and there is a real need to return to this now nearly 70-year-old legislation. Last, there are conflicts between the policing view of what should be retained, ultimately for organisational reputation and benefit against the view of the individual officer or police staff, their memories and what they would like to save. There are relevant concerns that the new legislation will close this window dramatically reducing the current diverse pool of records available for policing history research.

In one respect such confusions can only be understood at the end of the project, but the final overarching point is that this research needs to happen now at a time when trust in policing is at an all-time low and the wider need for accountability of numbers of government departments and organisations has never been higher.

¹² *College of Policing, Code of practice, p.10.*

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