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Openness, Privacy and the Archive

Arguments on openness and privacy in Swedish national archival regulation 1987–2004

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Abstract
This study investigates how the balance was drawn between openness/the principle of public access to official documents, and privacy/personal integrity. The empirical material consists of legal texts on Swedish national archival regulation 1987–2004, and a "linguistic-historical analysis" was applied to answer research questions related to the scope of documents to archive, and to benefits and drawbacks of openness and privacy respectively.

The Archival Law of 1990 is aligned with the Swedish Freedom of the Press Act – celebrating 250 years in 2016 – through the term "official documents". Such documents, whether containing personal data or not, are accessible to everyone unless protected by secrecy regulation. The Archival Law and the Freedom of the Press Act thus have potentially far-reaching effects on privacy, although this aspect has received considerably less attention than the impact on openness. Exploring the development of the Swedish archival regulation is therefore of great interest.

The study shows that the scope of documents to archive was made gradually larger during the period. This happened through the transfer from "archival material" to "official document", and through the increasingly emphasised presumption for preservation of documents. As a result of this development, the principle of public access and, more specifically, *the archives*, were described as invaluable to democratic government. The linguistic analysis shows that the meaning of "the principle of public access to official documents" (*offentlighetsprincipen*) changed over time, implicating that the meaning must not be taken for granted.

Benefits and drawbacks related to openness and privacy were identified in Swedish and international archival science research and compared to those in the empirical material. Arguments in the material were mainly oriented towards positive aspects of openness. Benefits of privacy as being vital for democracy were entirely absent. With one exception, in-depth discussions on drawbacks of openness and privacy were also absent.

The short answer to the issue of balance between openness and privacy in Swedish archival regulation 1987–2004 is that very few attempts were made to strike such a balance. Theories proposed by various researchers – the century-long tradition of openness in Sweden, the difficulty to introduce privacy legislation "in a country where publicity has reigned supreme", and a view of democracy as based on the community rather than on the individual – may help explain this situation.

Key words: Right of information, freedom of information, openness, principle of public access to official documents, privacy, integrity, archival law, democracy.

Contents

1. Introduction	4
2. Purpose and research questions	7
3. Previous research	8
4. Empirical data, methodological and theoretical approach	13
5. Empirical study	15
6. The development of scope, openness and privacy over time	32
Reference list	39

1. Introduction[1]

The Swedish Freedom of the Press Act – the world's oldest *freedom of information* law from 1766,[2] celebrating its 250th anniversary in 2016 – has received much international acclaim as it gives citizens and the media an extensive right of access to official documents. Freedom of information (FOI), in turn, constitutes a vital feature of democratic systems as these "can function adequately only if the people in general and their elected representatives are fully informed", as expressed by the Council of Europe.[3] The Swedish Freedom of the Press Act is thus closely connected to ideas on openness and its importance for democracy, and the world's first FOI law merits all the positive attention it can get.

Although the importance of openness for democracy is virtually uncontested, several scholars also point out the importance of *privacy* for democracy, however.[4] In this respect, the Swedish Freedom of the Press Act is interesting as it has potentially far-reaching effects on privacy, although this aspect has received considerably less attention than its effect on openness. The effect on privacy is due to the construction of the Act: if a number of criteria are fulfilled – that a "document" has been "received" or "drawn up" by a "public authority" and is "held" by an authority", a document will be deemed "official"[5] This status, in turn, renders the document accessible for everyone unless protected by secrecy regulation.[6] Public authorities thus

[1] I wish to thank the participants of the Higher seminar at the Department of ALM in Uppsala for providing many valuable comments to a previous version of this paper in May 2016.

[2] Björkstrand, Gustav & Mustonen, Juha. Introduction: Anders Chydenius' Legacy Today in *The world's first Freedom of Information Act: Anders Chydenius' legacy today*, Mustonen, Juha ed., Kokkola: Anders Chydenius Foundation, 2006, p. 4.

[3] Council of Europe, *Recommendation 854 (1979), Access by the public to government records and freedom of information*, 1979, p. 1.

[4] See section 3.

[5] *SFS 1949:105*, ch. 2. See also Bohlin, Alf, *Offentlighetsprincipen*. Stockholm: Norstedts Juridik, 2010 p. 24 and Magnusson Sjöberg, Cecilia, *Rättsinformatik: inblickar i e-samhället, e-handel och e-förvaltning*. Lund: Studentlitteratur, 2011. p. 329.

[6] Unless otherwise stated, "foreign nationals" have the same access, *SFS 1949:105*, ch. 14; Bohlin 2010 p. 19.

have an obligation "to provide copies of public documents unless secrecy applies", a condition which is often referred to as *offentlighetsprincipen* in Swedish, and "the principle of public access to official documents" in English.[7]

It has been pointed out that the "automatic"[8] construction of creating official documents differs from many other countries, where only records deemed worthy of archiving become official after a process of appraisal.[9] In turn, such appraisal may take place years, or even decades, after the creation of the original record.[10] The fact that the Freedom of the Press Act creates many documents with personal data accessible to others through a somewhat "automatic" process may thus have an impact on privacy. This is further accentuated by the Swedish Archival Law from 1990, which mirrors the Freedom of the Press Act by using the term "official documents" and stipulates that such documents, in principle, "shall be preserved".[11] In this respect, also the relation between the Freedom of the Press Act and the Swedish implementation of the EU directive on the protection of personal data from 1998[12] is interesting. As Swedish historian Lars Ilshammar has pointed out, the first committee preparing the implementation of the directive did not arrive at the conclusion that the Swedish principle of pub-

[7] Translation into English of "offentlighetsprincipen" from *Personal data protection: information on the Personal Data Act*. Stockholm: Ministry of Justice, 4th revised edition, 2006, p. 13.

[8] Fredrikzon, Johan. *Särskilt betydelselösa. Informationsöverflöd och arkivgallring i Sverige vid mitten av 1900-talet*. Stockholms universitet, Inst. för litteraturvetenskap och idéhistoria, Master thesis, 2014, p. 36.

[9] See e.g. Reine Rydén who stresses that official documents, including those produced the very same day, are considered part of public archives. Rydén, Reine. Hur ska nutiden bevaras? *Arkiv, samhälle och forskning* 2011:2, p. 13. See also Gränström, Claes. The Janus Syndrome. *The Principle of Provenance*, Abukhanfusa, Kerstin, ed, Stockholm: Swedish National Archives, 1994, p. 16.

[10] The Swedish process is not entirely "automatic", however, because the various criteria may be subject to interpretation, sometimes requiring court proceedings. For numerous examples on court decisions, see Bohlin 2010 and Magnusson Sjöberg 2011.

[11] SFS 1990:782 *Arkivlag* 3 §. However, all documents are not stored forever because legislation and many regulations from the Swedish National Archives grant the destructtion of various types of documents. It should also be stressed that specific regulation (SFS 2009:400 *Offentlighets- och sekretesslag*) postulates under what conditions documents may be subject to secrecy, e.g. for the benefit of the personal integrity of individuals. Furthermore, the archival education at the Swedish universities include secrecy regulation and archival staff has extensive practical training regarding the release of documents subject to secrecy regulation.

[12] SFS 1998:204 *Personuppgiftslag*; *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data* (95/46/EC).

lic access was compatible with the directive. A second committee did.[13] In order to clarify that this was the case, the second committee suggested that an addendum be included, stipulating that the Swedish Personal Data Act is not applicable if in conflict with the Freedom of the Press Act regarding the "release of personal data" in "official documents", or regarding the "archiving" or "storing" of official documents by public authorities.[14]

The Personal Data Act thus makes explicit reference to official documents, and specifically mentions "archiving". What, then, is archived? The reason I want to focus on archival legislation, not least the reports and the bill leading to the first Swedish Archival Law passed in 1990, is because the amount of archived documents will have an impact on openness and privacy. Archiving large amounts of documents makes it possible for citizens to gain insight into the activities of political leaders and public authorities, contributing to democracy through openness by making "people in general" "fully informed", as phrased by the Council of Europe. On the other hand, extensive archiving of personal data makes it possible for citizens and organisations to gain insight also into *other citizens*, contributing to possible invasions of privacy, and all the more so if documents are made public without closure periods. The possibility to gain insight into citizens' lives is further accentuated by the technical development of the last decades. This development is of course extremely diverse, and decreased costs for storing large amounts of information,[15] possibilities for making information accessible over the internet,[16] and an increased scope of some of the criteria making up an "official" document[17] are just a few of its elements. Interestingly, Swedish journalist and expert on freedom of information, Anders R. Olsson, states that the debate on personal integrity in Sweden disappeared from the political agenda just as the technological development began to have a real impact for citizens.[18]

[13] Ilshammar, Lars. *Offentlighetens nya rum: teknik och politik i Sverige 1969-1999*. Diss. Örebro: Örebro universitet, 2002, pp. 172-175.
[14] SOU 1997:39 *Integritet, offentlighet, informationsteknik*, pp. 216; *SFS 1998:204* 8 §.
[15] Öman, Sören. Gallring i allmänna handlingar av integritetsskyddsskäl. *Handlingsfrihet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*, Stockholm, Skrifter utgivna av Riksarkivet nr 21, 2004, p. 39.
[16] Åström Iko, Karin. I allmänhetens tjänst? Arkivverket, tillgängliggörandet och brukarna. *Arkiv, samhälle och forskning* 2003:1, p. 19. Examples are given on page 31.
[17] Magnusson Sjöberg 2011, p. 329.
[18] Olsson, Anders R. *Privatliv och internet – som olja och vatten?* Stockholm: Teldok, 2000, p. 18. The debate originated in the 1960s and was present throughout the 1980s, whereafter it became less visible. See Olsson 2002, pp. 16-18; Söderlind, Åsa. *Personlig*

As discussed above, the Swedish Freedom of the Press Act differs from FOI legislation in other countries in that it makes large amounts of documents official and immediately accessible, the Archival Law stipulates the preservation of "official documents", and the Personal Data Act from 1998 grants the release and archiving of personal data in official documents. Furthermore, the technological development has made storage of, and access to, data both simpler and cheaper at the same time. These factors make it interesting to explore the arguments brought forward in relation to openness and privacy in Swedish archival legislation.

Archival regulation provides an excellent area for the study of the balance between openness and privacy as the regulation sets the limits on the amount of potentially accessible public documents. "If the material no longer exists, there is no way to access it", as one investigator succinctly put it.[19] The investigation of archival regulation will also contribute to the current understanding of the Swedish Freedom of the Press Act as an institution primarily providing openness. The study is furthermore expected to contribute to the field of archival science through the simultaneous analysis of openness and privacy in relation to archives, and through the use of a linguistic method which explores the use and meanings of terms related to openness and privacy. In this respect, the study will help understand the "archival politics" – an expression borrowed by Swedish historian Samuel Edquist[20] – as these developed in Sweden from the late twentieth century.

2. Purpose and research questions

The purpose of the study is to investigate how the balance was drawn between openness/the principle of public access to official documents and privacy/personal integrity in legal texts on Swedish national archival regulation 1987–2004. Initially, the terms having an impact on what scope of documents to archive will be analysed. Thereafter, the benefits and drawbacks of openness and privacy presented in the material are studied. The following questions have thus been applied:

integritet som informationspolitik: debatt och diskussion i samband med tillkomsten av Datalag (1973:289), Borås: Valfrid, 2009; Ilshammar 2002.

[19] "Finns inte materialet kvar kan man heller inte ta del av det." SOU 1988:11 *Öppenhet och minne. Arkivens roll i samhället. Betänkande av arkivutredningen*, p. 176.

[20] Edquist, Samuel. *Arkiven, bevarandet och kulturarvet*. Stockholm: Riksarkivet, 2014, p. 1.

- What was the scope of documents to archive?
- How were benefits and drawbacks of openness/the principle of public access to official documents expressed?[21]
- How were benefits and drawbacks of privacy/personal integrity expressed?

In all three instances, the *words and expressions* used to describe the area are identified as a starting point for the analysis. The reason for using "openness/the principle of public access to official documents" and "privacy/personal integrity" in the purpose and research questions, is that I want to convey that the research interest lies with general *ideas*, rather than with specific expressions.[22] The idea of openness/principle of public access is related to freedom of information and its importance for democracy, whereas the idea of privacy or personal integrity is linked to a certain space that the individual may benefit from in order to function as an autonomous being.[23] The methodological and theoretical foundation of the study are outlined in more detail in section 4.

3. Previous research

In this section, research related to openness/principle of public access as well as to privacy/personal integrity is presented. For the aspect of openness just as for the one of privacy, the section focuses on benefits and drawbacks – for the society at large, for the individual, or for other actors – indicated in previous research related to the archiving sector.

Openness/principle of public access: benefits and drawbacks

In terms of openness or the principle of public access, many researchers have brought forward arguments related to those in the text of the Council

[21] The first two research questions are often linked in the empirical material, and are therefore presented together in section 5. In section 6, however, each research question is treated separately as central elements from the various documents are brought to the forefront.

[22] In order not to burden the analysis with too many long expressions, I use variations such as "principle of public access" or even "principle" together with "principle of public access to official documents", just as I may speak of "integrity" at times, and "privacy" or "personal integrity" at others.

[23] The scope of the article does not allow for an in-depth discussion on the various theories on openness and privacy. In section 3, information is however given as I here synthesize arguments presented in previous research regarding benefits and drawbacks on openness and privacy.

of Europe introduced above: the need for citizens to be informed in order to participate in a democratic society. This is an argument apparent for instance in the work of Blackstone & Oppenheim, and in a similar vein, Valge & Kibal stress the public access to documents as "a condition for the free exchange of ideas in a democratic society".[24] In other instances, the need for free debate – made possible through the access to official documents – is emphasised.[25] More specifically, the principle of public access has been described as a "cornerstone" of the Swedish democratic system[26] and quite unique in its scope.[27] In relation to a discussion on making public information available on the internet, Munson et al. further stress that such measures may be beneficial for "values of transparency, accountability and democracy".[28] The importance of public access for creating accountability and trust for public government is an argument pointed out by several other scholars, among those Canadian archival scientist Terry Cook, who adds that the argument becomes increasingly important "in a digital world".[29] Other benefits brought forward in archival research are tied to the collective history made up of archival documents, as these in turn provide members of society with sources to their historical roots and collective memory.[30] The fact that official documents may provide the means for

[24] Blackstock, Marlene. A. & Oppenheim, Charles. Legal issues for information professsionals, part v: Freedom of Information. *Journal of Information Science*, 1999, Vol. 25(4), p. 249; Valge, Jaak & Kibal, Birgit. Restrictions on Access to Archives and Records in Europe: A History and the Current Situation. *Journal of the Society of Archivists*, 2007, Vol. 28(2), p. 193.

[25] Smedberg, Staffan. Bevarande och gallring. *Arkivvetenskap*, Ulfsparre, Anna Christina ed. 1:12 ed. Lund: Studentlitteratur, 1995, p. 182; Gränström, Claes, Lundquist, Lennart & Fredriksson, Kerstin. *Arkivlagen. Bakgrund och kommentarer*. 2 ed. Stockholm: Norstedts Juridik, 2000, p. 17; Bohlin, Alf, *Offentlighetsprincipen*. Stockholm: Norstedts Juridik, 2010, p. 22.

[26] Rapaport, Edmund & Samuelson, Per. Storing of Public Data for Research – The Swedish Case. *Government Publications Review*, 1991, Vol. 18(1), p.66; Gränström, Claes. Arkivteori. *Arkivvetenskap,* Ulfsparre, Anna Christina ed. 1:12 ed. Lund: Studentlitteratur, 1995, p. 12.

[27] Larsson, Torbjörn. How open can a government be? The Swedish experience. *Openness and Transparency in the European Union.* Deckmyn, Veerle & Thomson, Ian eds. Maastricht: European Institute of Public Administration, 1998, p. 47.

[28] Munson, Sean, Avrahami, Daniel, Consolvo, Sunny, Fogarty, James, Friedman, Batya & Smith, Ian. Sunlight or sunburn: A survey of attitudes toward online availability of US public records. *Information Polity*, 2012, Vol. 17(2), p. 112.

[29] Terry Cook. Evidence, memory, identity, and community: four shifting archival paradigms. *Archival Science,* 2013, no. 13, p. 111. See also Bohlin 2010, p. 23.

[30] Fredriksson, Berndt. Vad skall vi bevara? Arkivgallringens teori, metod och praktik. *Arkiv, samhälle och forskning,* 2003:2, p. 54; Cook, Tim. Counterpoint. Archives and

future research to help us understand and change society for the better, is another argument raised in the Swedish context.[31] Another benefit is more narrowly related to commercial applications linked to the access to official documents. Several scholars thus note the activities of publishing companies that sell information accessed with the aid of public access to official documents,[32] whereas other scholars point out the possibilities for commercial activities provided by the right of access.[33] It is also telling how an archival expert declared, in relation to the implementation of the personal data act in Canada: 'I'm here to argue on behalf of the Canadian society for electronic commerce and business itself, for government accountability, as well as for archives in history'.[34]

Openness and access to official documents are not regarded as exclusively bringing benefits, however. A potential drawback often noted in the Swedish context is the risk that less information will actually be written down, the fear of accessibility being the explanation for avoiding to create official documents.[35] The theory is that the far-reaching Swedish principle of public access may actually have a chilling effect on openness, bringing down the amount of accessible, official documents and leading to an increase in oral and informal decision making.[36] A different line of argument is presented by Munson et al. and linked to the individual. They argue that individual autonomy may be hampered by access to official documents, as these may contain personal data. They further point out the risk of reduced public activity on behalf of individuals, as well as of identity theft and the

Privacy in a Wired World: The Impact of the *Personal Information Act* (Bill C-6) on Archives, *Archivaria,* 2002, no. 53, p. 94.

[31] Fredriksson 2003, p. 54.

[32] Saarenpaa, Ahti. Data protection: In pursuit of information. Some Background to, and Implementations of, Data Protection in Finland. *International Review of Law, Computers & Technology,* 1997, no. 1, p. 51; Blackstock & Oppenheim 1999, p. 252.

[33] By way of example, Lars Ilshammar argues that "information in electronic form has come to be regarded not only as a right of citizens, but also as an economic asset which should be capitalised on, […]". Ilshammar 2002, p. 319. Translation by the author.

[34] Cook, Terry cited in Cook, Tim 2002, p. 104.

[35] See e.g. Fredriksson, Berndt. Arkivvetenskap – historia och framtid. *Arkiv, samhälle och forskning*, 2002:2, p. 87; Fredriksson 2003 p. 43; Norberg, Erik. Förord. *Handlingsoffentlighet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*. Stockholm, Skrifter utgivna av Riksarkivet nr 21, 2004, p. 8; Waldemarsson, Ylva. Politiska makthavare som politisk källa. *Arkiv, samhälle och forskning*, 2007:2, p. 6; Lönnroth, Louise. Bortglömt i arkiven. *Glömskan värd att minnas*, Lindberg, Bo ed. Göteborg: Kungl. Vetenskaps- och Vitterhets-Samhället, 2012, p. 35.

[36] Ahlenius, Ing-Britt. Myten om vår öppenhet. *Handlingsfrihet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*. Stockholm, Skrifter utgivna av Riksarkivet nr 21, 2004, pp. 18-19.

possibility that "attackers" get "access to or derive sensitive information".[37] In a Swedish context, legal expert Sören Öman also brings forward disadvantages of openness related to the individual. Öman argues that tracking all contacts between individuals and public authorities is likely to be regarded as an "infringement of integrity", and adds that the individual may feel "unease" from the knowledge of being "forever registered by the public authorities". He furthermore stresses that "[a]s long as the data remains, there is a risk that it is used against the individual in a negative way", and that the personal integrity of an individual is impossible to 'un-breach'.[38]

Benefits and drawbacks related to privacy/personal integrity

As for privacy or personal integrity, benefits to society and democracy have been pointed out by several scholars. Ahti Saarenpaa indicates that secrecy regulation may be beneficial to society because if such regulation were abused, the "pivotal values of the constitutional state" might be undermined.[39] The need for privacy for the benefit of society at large is even more pronounced in the work of archival scientist Heather MacNeil. She argues that privacy is necessary in a democratic society, the reason being that privacy "encourages independent and critically minded individuals". She further makes the point that privacy is important in order to establish the autonomy of individuals, such autonomy in turn being important to democracy.[40] In a similar vein, Hallinan, Friedewald & McCarthy argue that deeper knowledge of the legal framework of privacy and data protection is often lacking, a situation which "leads to an undervaluation of privacy as a social value".[41] This line of reasoning is similar to the arguments presented by legal scholar Priscilla Regan. In her work *Legislating Privacy*, she argues that "privacy is essential to the development of trust and accountability, which are basic to the development of a democratic political community".[42] Regan thus stresses what she calls the social value or social interest of

[37] Munson et al. 2012, pp. 100, 102.
[38] Öman 2004, pp. 39-40. Translation by the author.
[39] Saarenpaa 1997, p. 50.
[40] MacNeil, Heather. Information privacy, liberty and democracy. *Privacy and Confidentiality Perspectives: Archivists and Archival Records*, Behrnd-Klodt, Menzi L. and Wosh, Peter J. eds. Chicago: The Society of American Archivists, 2005, p. 74. MacNeil makes reference to legal scholar Ruth Gavison.
[41] Hallinan, Dara, Friedewald, Michael & McCarthy, Paul. Citizens' perceptions of data protection and privacy in Europe. *Computer Law and Security Review*, 2012, p. 263.
[42] Regan, Priscilla. *Legislating Privacy. Technology, Social Values, and Public Policy*. Chapel Hill: University of North Carolina Press, 1995, p. 227.

privacy, which she claims has been given too little attention.[43] These social values of privacy, she argues, "become apparent once one considers the source of threats to privacy", which, by and large, emanate from private and governmental organisations, rather than from other individuals.[44] Much as was the case for openness and public access to official documents, these scholars thus point out the benefits privacy may have for society by providing means for democratic government.

A number of scholars emphasise how privacy may be of value also to the individual. Besides Priscilla Regan, we have also seen that Heather MacNeil spoke of privacy in terms of benefits to the individual by creating the conditions for autonomy. In the Swedish context, Sören Öman points out the need for protection of the personal integrity of individuals. He claims that the lack of such protection could lead to the individual being haunted in the future by acts committed in the past, and that old or incorrect data may influence decisions in a way which may be detrimental to the individual.[45] Here, the benefit of privacy for the individual is thus related to her or his ability to lead a life without being hampered by previous events or incorrect data.

Besides benefits of privacy, scholars also present several potential drawbacks. Swedish archival expert Louise Lönnroth points out the risk that the principle of access to public documents is compromised, as well as the risk that potential evidence is erased.[46] Affecting society at large, Tim Cook argues that considerations for personal integrity may be detrimental to culture, history and heritage.[47] If these arguments were largely linked to society at large, another one identifies drawbacks both for society as represented by research, and for the individual. The example here is that integrity measures may be detrimental to individuals because researchers will not be able to help individuals whose data are lacking, nor will they be able to further the understanding of the situation of these persons.[48] Furthermore, several Swedish archival scholars emphasise the risk that the individual will not be able to take legal action if vital personal data has been erased.[49]

[43] Regan 1995, pp. 22-23.
[44] Regan 1995, p. 23.
[45] Öman 2004, pp. 39-40.
[46] Lönnroth 2012, p. 33.
[47] Cook 2002, pp. 94, 113.
[48] Fredriksson 2003, p. 54.
[49] The example given by scholars deals with compulsory sterilisation which took place in Sweden until the 1970s. Fredriksson 2003, p. 48; Wahlqvist, Sten. Registerförfattningar – konflikten mellan insyn och integritet. *Handlingsfrihet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*, Stockholm, Skrifter utgivna av Riksarkivet nr 21, 2004, p. 55; Gränström, Claes. Arkivverksamhetens syften. *Handlingsfrihet utan*

Lastly, we may note that Swedish scholars have pointed out a disadvantage more specifically linked to archival theory. Claes Gränström states that:

> consideration for personal integrity, i.e. for ethical reasons, is contrary to all archival theory and practice, as it strikes blindly without any consideration for the structure and existing relationship between the different parts of the archives. It can also be aimed at the most valuable parts of the archives.[50]

Similarly, Berndt Fredriksson argues that destruction of documents for the sake of integrity is a "clear breach against the principle that destruction is to be planned and carried out in a way which minimises the loss of information".[51] Fredriksson finishes his article by stating that the "problem related to how we are to stop the destruction on the grounds of personal integrity" is of a political, rather than of a scholarly, nature.[52]

The various arguments on openness and privacy as presented in the works of researchers will provide a background for the analysis of the documents on Swedish national archival legislation that constitutes the empirical material of this study. Before turning to the presentation of the empirical findings, information on the empirical data as well as on the methodological and theoretical approach of the study will be presented.

4. Empirical data, methodological and theoretical approach

The archival law was passed in 1990, and in order to be able to analyse the arguments leading up to the law, the two reports and the bill preceding the law will be analysed. A little more than a decade after the passing of the law, a new investigation into archival questions was published in 2002, followed

handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003. Stockholm: Skrifter utgivna av Riksarkivet nr 21, 2004, p. 64; Eriksson, Fredrik & Östberg, Kjell. The Problematic Freedom of Information Principle. *Freedom of Information Open Access, Empty Archives*. Flinn, Andrew & Jones, Harriet eds. Routledge, London & New York, 2009, p. 118-123; Lönnroth 2012, p. 33.

[50] Gränström 1994, p. 21.

[51] Fredriksson 2003, p. 48. This is also a point made by Sten Wahlqvist, who refers to the argument brought forward by the Swedish National Archives that, in relation to electronic registers, principles for preservation and destruction are increasingly overridden by concerns for personal integrity. Wahlqvist 2004, p. 49. Translation by the author.

[52] Fredriksson 2003, p. 55.

by a bill in 2004. These five documents make up the national-wide bills and propositions regarding the archival sector and constitute the empirical material of the study. The list below provide the basic data:

- Official Government Report 1987:38 Archives for individuals and the environment. Report from the Investigation regarding mass data areas and samples of individuals within the archival system
- Official Government Report 1988:11 Openness and memory. The Role of the Archives in Society
- Bill 1989/90:72 On Archives etc.
- Official Government Report 2002:78 Archives for everyone
- Bill 2004/05:124 Archival questions[53]

The first report, *Archives for individuals and the environment* was presented in 1987 and discussed alternatives regarding what material to archive in order to store longitudinal data for research purposes. The next report, published the following year in 1988, was named *Openness and memory* and contained suggestions on how to organise the archives of the Swedish municipalities and the Swedish state. Importantly, the report of 1988 contained the first proposal of a national archival law. Although published only one year apart, the reports of 1987 and 1988 were the result of the work of two different committees. Bill 1989/90:72 *On Archives etc.* presented a slightly changed version of the archival law first presented in the 1988 report, and further discussed how to make the archives accessible to the users. The Swedish Archival Law was passed in 1990, in effect from 1991, and reflected to a large extent the content of the proposition of 1989/90. Just over a decade later, the report 2002:78 *Archives for everyone* was published. As the title indicates, one of the main purposes was to make archival material accessible to new groups, not in the least through the means of new information technology. Of interest for this study are also the discussions on imposing fees for archival access, a theme which was reiterated in the subsequent Bill 2004/05:124 *Archival questions.*

As for the methodological and theoretical approach of the study, a "linguistic-historical analysis" has been applied. This type of analysis parts

[53] SOU 1987:38 *Arkiv för individ och miljö. Betänkande från Utredningen angående intensivdataområden och individbaserade urvalsserier inom arkivväsendet,* SOU 1988:11 *Öppenhet och minne. Arkivens roll i samhället. Betänkande av arkivutredningen,* Proposition 1989/1990:72 *Om arkiv etc.*, SOU 2002:78 *Arkiv för alla – nu och i framtiden*, Proposition 2004/05:125 *Arkivfrågor.*

from the assumption that there is a connection between language and reality, between text and context, and that changes in either one may impact the other, drawing on the works of German historian Reinhardt Kosselleck, and British historian Quentin Skinner, among others. By identifying words and expressions related to the fundamental ideas or concepts at the centre of a study, it will be possible to identify change and continuity in the meaning and use of those terms and expressions. In turn, this will provide the means to detect how the ideas or concepts, to which the terms and expressions refer, have evolved and interacted over time.[54]

As has been pointed out by Lars Ilshammar in relation to his analysis on openness and personal data legislation 1969–1999, meanings of central terms will often undergo substantial change during such a long period of time. Although Ilshammar did not propose a solution on how to deal with this fact, he nevertheless pointed out this important aspect.[55] From the archival science field, Börje Bergfeldt has suggested that "concepts" used by practitioners and scientist of the field should be studied, as this would help identify the context which forms the field.[56] In the analysis of the five documents related to Swedish national archival regulation, terms and expressions related to the scope of documents, to openness and to privacy will thus be identified, and the meanings and use of the terms analysed. Translations into English of terms and expressions in the empirical texts are made by the author, the original Swedish text included in the footnotes.

5. Empirical study

Report 1987:38 Archives for individuals and the environment

The report was the result of an investigation into how archiving samples of certain geographical areas and of the population could be handled. The investigation was related to a need for geographical and individual samples in longitudinal studies, a need which had been expressed by researchers since the 1970s.[57] As pointed out by researchers of the field of archival

[54] Rosengren, Anna. *Åldrandet och språket. En språkhistorisk analys av hög ålder och åldrande i Sverige cirka 1875–1975*. Huddinge: Södertörns högskola, 2011, pp. 36-39.
[55] Ilshammar 2002, pp. 61-62.
[56] Bergfeldt, Börje. Arkivvetenskapens framtid. *Arkiv, samhälle och forskning*, 2002:1, p. 15.
[57] See e.g. Lönnroth, Louise. Arkiv, samhälle och forskning 1952-2002 i *Arkiv, samhälle och forskning* 2002:2, p. 27; Fredriksson 2002, p. 82. Fredriksson also sees extensive destruction of documents during the 1960s as a reason behind the idea of collecting and storing mass data, p. 82; Fredriksson 2003, p. 28.

science, however, the report may also be regarded as a suggestion on how to deal with the seemingly ever-increasing amounts of paper documents requiring storage in public archives, thereby imposing high costs on restrained budgets.[58]

According to the directive, the investigator was to explore whether it was "possible to handle the problem of integrity regarding sensitive personal files kept in the archives".[59] If, as a result of the investigation, it was concluded that such storage might indeed cause risks for the personal integrity, suitable measures were to be suggested.[60] It is worth noticing that the question regarding risk for personal integrity was phrased in such a way as to theoretically allow for a "yes" for an answer.

On scope and benefits and drawbacks related to openness

A starting point for the investigator was that the "principle of public access to official documents" *(offentlighetsprincipen)* was "a part of the Swedish Freedom of the Press Act" regulating "the access to documents from the public sector".[61] The way official documents come into existence through the Act was hinted at in the definition of the word "archive": a "collection of documents that have been added at an archival institution as a result of its activities. The archive consists of documents that have been drawn up by the archival institution or sent to it".[62] The principle of public access to official documents, in turn, was described as providing citizens "insight into the way the public sector works" in a way that was "more or less unique" from an international perspective.[63] The investigator then went on to say that "the access to archival material" ought "indirectly [to] have had an impact on the trust of the general public for the public sector, as well as on the civil officials' loyalty to their tasks".[64] We may note that the report spoke of "archival material", or "documents", whereas the term "official documents"

[58] Lönnroth 2002, p. 35; Edquist 2014, p. 5.
[59] SOU 1987:38 p. 12 "möjligt att klara integritetsproblemen när det gäller känsliga personakter som förvaras i arkiven?". See also p. 18.
[60] SOU 1987:38 pp. 18-19.
[61] SOU 1987:38 p. 23 "Offentlighetsprincipen är en del av tryckfrihetsförordningen. […] reglerar den tillgången till handlingar från offentlig sektor."
[62] SOU 1987:38 p. 75 "Vanligen ett bestånd av arkivhandlingar som tillkommit hos en arkivbildare som följd av dennes verksamhet. Arkivet består dels av handlingar som upprättats av arkivbildaren, dels av material som inkommit till denna."
[63] SOU 1987:38 p. 23 "insyn i hur den offentliga sektorn arbetar", "i stort sett unik."
[64] SOU 1987:38 p. 23 "Indirekt torde tillgången till arkivalier ha påverkat både allmänhetens förtroende för den offentliga sektorn och de offentliga ämbetsutövarnas lojalitet med arbetsuppgifterna."

was not used to describe an archive or its content.[65] An interesting feature of the report was furthermore the idea that several interpretations of the "principle of public access to official documents" may exist. A person "fully supporting the principle of public access to official documents might regard 100 percent as the proper level of preservation", it was suggested, whereas another person might "support that all documents be thrown away".[66] The context of these arguments were the high costs related to the seemingly ever-increasing amounts of official documents in paper form. The theme was a dominant one, and the text weighed pros and cons of archiving and destroying documents, and the point was made that no "natural" level of destruction exists.[67]

The investigator stressed the limitations of the principle of public access to official documents. The principle was only meant to allow for insight into "specific areas, e.g. in terms of the evaluation of the handling […] of a specific case".[68] He also pointed out, however, that "[i]t is not the principle of public access to official documents which makes it harder for research, but rather the unsatisfactory means currently in use of storing data".[69] The investigator then presented his view on the condition which would allow for the creation of more extensive sets of documents: "*only if the principle of public access to official documents is interpreted in a broader sense allowing citizens transparency in societal processes at large*", "*data series on environmental changes and data series for personal data*" would be "*possible to create*".[70] The view of the principle of public access as serving the needs of citizens was thus presented as a condition for creating and preserving large

[65] The term "official document/s" was used on two occasions: when the investigator concluded that limiting access to sensitive personal data to research accepted by ethical committees would be in conflict with the duty to release "official documents" promptly in accordance with the Freedom of the Press Act, and in relation to a discussion on closure periods. SOU 1987:38 pp. 67, 91.

[66] SOU 1987:38 p. 51 "fullt ut stödjer offentlighetsprincipen kanske 100 procents bevarande av olika arkivmaterial som den naturliga bevarandenivån", "stödjer att allt material alltid skall kastas".

[67] SOU 1987:38 pp. 35, 51.

[68] SOU 1987:38 p. 23 "på enstaka punkter, t.ex. som granskning av hur ett visst ärende behandlats […].". See also p. 25 ("enstaka ärenden"); p. 73 ("enskilda ärenden").

[69] SOU 1987:38 p. 25 "Det är således inte offentlighetsprincipen som sådan som försvårar forskningen utan det är de nuvarande sätten att lagra data på som inte är tillfredsställande."

[70] SOU 1987:38 p. 25 The Swedish sentence reads: "*Både långa obrutna dataserier om miljöförändringar och långa statistiska dataserier för persondata är möjliga att framställa endast om offentlighetsprincipen tolkas i vid mening som en möjlighet för medborgarna att få insyn i samhällsutvecklingen i stort*." Italics in original.

data sets. The investigator also made the point that saving personal data was necessary in order to "be better prepared for future threats against our living conditions".[71] Indirectly, then, the principle of public access to official documents made it possible to conduct research that would diminish future risks. The investigator acknowledged that decisions which were favourable to research from an "efficiency perspective", might, on the other hand, be negative from the perspective of equality and personal integrity.[72]

Furthermore, the access to archived documents was described as a "collective good, the worth of which is difficult to estimate with market rates", and the archives were said to provide citizens the possibility to investigate into their origins, thereby contributing to "the cultural identification of the country and counteracts a feeling of estrangement".[73] Together with the libraries and the museums, the archives were said to "take care of the Swedish cultural heritage".[74]

"All data saved in archives result in a potential risk for misuse" – on privacy/personal integrity

The investigator expressed concern that the broadened interpretation of the principle of access, which would allow for the saving of more and possibly sensitive information, might pose a threat to privacy. The incompatibility between openness and integrity was made explicit: "there is a conflict between on the one hand the open society, and, on the other hand, personal integrity".[75] On a more detailed level, the investigator weighed "openness of the archives" – allowing for the study of societal change – against "the personal integrity for those individuals that are included in the small sample representing the whole population".[76]

At an early stage, the investigator concluded that "[a]ll storage of sensitive personal data leads to risks for abuse or other invasions of personal

[71] SOU 1987:38 p. 62 "öka beredskapen inför framtida hotbilder mot vår livsmiljö […]".
[72] SOU 1987:38 p. 28 "effektivitetssynpunkt".
[73] SOU 1987:38 p. 36 "kollektiv vara som svårligen kan skattas med marknadspriser."; "medverkar de till den kulturella identifikationen i landet och motverkar en känsla av främlingskap […]".
[74] SOU 1987:38 p. 21 "vårdar det svenska kulturarvet."
[75] SOU 1987:38 p. 32 "finns det en konflikt mellan å ena sidan det öppna samhället och å den andra den personliga integriteten."
[76] SOU 1987:38 p. 32 "skapa öppenhet i arkiven"; "personliga integriteten […] för de personer som blir utvalda att ingå bland den lilla grupp som skall representera hela befolkningen […]."

integrity".[77] In other words, registration and archiving of data *per se* was seen as constituting a potential threat to personal integrity. The investigator furthermore made the point that it was for the individual to decide whether infringement of integrity had occurred: "Therefore, infringement of integrity ought to have occurred as soon as the registered person feels that this is the case."[78] Views such as these were not the only ones presented, however. According to the investigator, "data that are no longer stored for the sake of the administration, are generally not viewed as posing a threat to personal integrity".[79] The investigator argued, however, that this might not be the case for the individuals in the samples. The argument made was that these individuals were more likely to attract the interest of researchers, than if data from the whole population had been stored.[80] He furthermore pointed out that "the risk of improper infringement of integrity has obviously been considered relatively limited" regarding personal data archived for scientific and statistical purposes.[81] Similarly, it was pointed out that personal data registers received by archival authorities may "hardly […] constitute risks of improper infringement of integrity" in the view of the legislator.[82] Rhetorically, the investigator implied that personal integrity had not been of great concern to previous legislators.

The view of the investigator, however, was that increased production and archiving of personal data posed a threat to personal integrity. A suggested remedy was a strengthening of the secrecy regulation, although the investigator at the same time cautioned the government to "consider the principle of public access".[83] Furthermore, it was suggested that the closure period should cover a longer period in order to reflect the increase of the average life span, and "increased destruction of data" was seen as "bringing the integrity risks down for those persons" whose data were destructed.[84] All in

[77] SOU 1987:38 p. 62 "All lagring av data i arkiv medför risk för missbruk eller andra integritetsintrång […]."
[78] SOU 1987:38 p. 63 "Integritetsintrång torde alltså föreligga så snart den registrerade upplever ett sådant intrång."
[79] SOU 1987:38 p. 65 "anses uppgifter, som inte längre bevaras för förvaltningsändamål, ofta inte innebära någon risk från integritetssynpunkt."
[80] SOU 1987:38 p. 65.
[81] SOU 1987:38 p. 64 "Risken för otillbörligt integritetsintrång har tydligen ansetts förhållandevis liten i fråga om personregister med sådana ändamål."
[82] SOU 1987:38 p. 64 "knappast kan antas innebära risk för otillbörligt integritetsintrång".
[83] SOU 1987:38 p. 66 "Hänsyn till offentlighetsprincipen". See also p. 65.
[84] SOU 1987:38 p. 67; 65 "ökad gallring av uppgifter" "minska integritetsrisken för de personerna."

all, the report clearly indicates that individuals would benefit from integrity, that it was for the individual to decide whether infringement of privacy had occurred, and that proper means should be put in place in order to secure personal integrity.

The report also implied potential *drawbacks* of personal integrity. For instance, it was suggested that the "substantially strengthened protection of secrecy" would mean that "many studies […] will not be possible to conduct".[85] This, of course, was an important drawback for many researchers, and it was furthermore pointed out that the protection of individuals might bring about a "lack of information in areas that might imply threats to society".[86]

To summarise the findings of the 1987 report, benefits of openness in the sense of access to archival documents was linked to future research, it was described as a "collective good" as well as being useful for "cultural identification". Importantly, the creation and archiving of geographical and individual samples proposed in the report also brought about unmistakable concern regarding the personal integrity of the persons selected in the samples. As we shall see in the analysis of the report published the following year, such concerns were almost entirely absent.

Report 1988:11 Openness and memory. The Role of the Archives in Society

The report from 1988 is of great interest as it contains the first draft of a Swedish national archival law. The explicit ambition of the investigator had been to "create a logically structured hierarchy of regulations, from the Freedom of the Press Act down to the instructions issued by the National Archives".[87] How did this work out? We may recall that the previous report used a mixture of terms including "archival documents", "documents" and "official documents". The link to the term "official documents" in the Freedom of the Press Act was thus all but straightforward. Did this change in the new report?

"For citizens to take part in a democratic society" – due to "the principle of public access to official documents" or to the archives?

I will start the analysis with a quotation from the report:

[85] SOU 1987:38 p. 62 "Ett kraftigt utökat integritetsskydd […] rader av studier inom […], inte kommer att kunna bedrivas […]". See also p. 71.
[86] SOU 1987:38 p. 62 "informationsbrist i frågor som kan innebära samhällshot."
[87] SOU 1988:11 p. 14 "skapa en logiskt uppbyggd författningshierarki från tryckfrihetsförordningen ner till de av riksarkivet utfärdade föreskrifterna." See also p. 191.

> The citizens must have knowledge in order to be able to participate in the democratic process. Not in the least, information about the actions of public authorities is needed, and about the doings of state and municipal policy-makers. Transparency is necessary in order to get a reasonable balance between power and responsibility, a reasonable relationship between those in power and the citizens. Openness is needed in order to create trust for decisions and decision makers.
>
> This is where the principle of public access to official documents comes in, i.e. the instrument that has been chosen in our country to secure transparency, and about which is stipulated in the Freedom of the Press Act.[88]

The expressed view above was thus that the citizen needs "knowledge in order to be able to participate in the democratic process", an argument that was recurring on several occasions.[89] The principle of public access, "the instrument that has been chosen in our country", was fundamental to make this happen. The principle was defined as making "[o]fficial documents […], in principle, public and […] accessible for everyone with no obligation of providing identification of any kind […]."[90] The principle was furthermore described as providing "the general public" with a "means to control and gain insight into the activities of the public authorities" regarding the "way of working of the public authorities in general, or an individual case".[91] Exercising this control was described as "an important reason to seek information in the archives of the authorities", although the investigator added that also the "press and mass media" did this.[92] In comparison to the previous report, the scope of the principle was thus no longer said to be limited to "individual cases", but was to grant the citizens control over the "public authorities in general".

[88] SOU 1988:11 p. 34 "Kunskap krävs för att medborgarna skall kunna deltaga i den demokratiska processen. Inte minst behövs information om offentliga myndigheters förehavanden, om statliga och kommunala makthavares göranden och låtanden. Insyn är nödvändig för att få en rimlig avvägning mellan makt och ansvar, ett rimligt förhållande mellan överhet och medborgare. Öppenhet krävs för att skapa förtroende för beslut och beslutsfattare. Här kommer offentlighetsprincipen in, dvs. det instrument som i vårt land valts för att säkra insynen och varom besked ges i tryckfrihetsförordningen."
[89] SOU 1988:11 p. 10, 12.
[90] SOU 1988:11 p. 34 "Allmänna handlingar är i princip offentliga och skall hållas tillgängliga för vem som helst utan att någon form av legitimation avkrävs […]."
[91] SOU 1988:11 p. 59 "*Allmänheten* har offentlighetsprincipen som ett medel för att kontrollera och få insyn i myndigheternas verksamhet.", "myndighetens arbete i stort eller i ett enskilt ärende." Italics in original.
[92] SOU 1988:11 p. 59 "en viktig anledning till att söka information i myndigheternas arkiv." See p. 35 on mass media.

In comparison to the previous report, the link between the Freedom of the Press Act and the archives was more clearly pronounced through the use of "official document" and "public authority". This, as well as the important role of the archives, was illustrated by the wording of the proposed archival law, the opening paragraph of which read:

> 1 § Archives form part of the national cultural heritage. Archives of public authorities shall be preserved and taken care of in order to satisfy both the right of access to official documents, and the need for information of the legal system, the public administration and of research.[93]

The previous report had expressed how archives – together with libraries and museums – *took care of* the Swedish cultural heritage. In the proposed wording of the new law, archives were instead *part of* it. The language was sometimes grandiloquent, as when the archives were said to constitute "one of the pillars of the cultural heritage of the country" that would help "preserving the history […] linked to the very foundations of our civilization".[94] Furthermore, the 1988 report described public archives as providing the means for "right of access to official documents", as well as the necessary information to the legal system, the administration and research. Given these important purposes, it is perhaps only logical that the report introduced an implicit presumption for archiving all documents, illustrated by the phrase: "Archives of public authorities *shall be preserved* […]".

What, then, was an "archive"? The proposed definition was "compilations of documents that gradually have arisen at the archival institution (public authority) as a result of its activities".[95] The term "archival institution" from the previous report was thus clarified with the term "public authority" a year later. In a similar vein, the term "official documents" was used alongside "documents". On yet other occasions, the investigator made reference to

[93] SOU 1988:11 p. 192 "*1 § Arkiv är en del av det nationella kulturarvet. Myndigheters arkiv skall bevaras och vårdas för att tillgodose såväl rätten att ta del av allmänna handlingar som behovet av information för rättsväsende, förvaltning och forskning.*" Italics in original.

[94] SOU 1988:11 p. 183 "en av bärarna av landets kulturarv. Att bevara historien […] hör samman med själva grunderna för vår civilisation." As pointed out by Samuel Edquist, the notion of "cultural heritage" made its entrance quite late into the process towards a Swedish policy on archiving, although the concept had been around since the 1980s. Edquist 2014, p. 3. See also Fredriksson 2003, p. 39.

[95] SOU 1988:11 p. 193 "bestånd av handlingar som efter hand uppkommit hos en arkivbildare (myndighet) till följd av dennas verksamhet."

existing regulation on "archival documents", and devoted resources to discuss the differences between "archival" and "official" documents.[96]

Just as in the 1987 report, a group which was described as potentially benefiting from the archives was that of academic research. It was repeated throughout the report how the "needs of the research community" needed to be taken into account.[97] Also the question of how to grant access to archives to various groups of users was a theme which permeated the report, and the use of new information technologies was seen as a means of providing easier access.[98] A reason for archiving documents was the new economic argument that "[a]rchives represent great economic values, as the production of information is extremely costly", whereas the estimated "costs for preserving collected data" were seen as "relatively low".[99] The *production* of information was thus the expensive part, the costs for *preservation* were limited in comparison. As a final argument, the investigator added that the "material is furthermore irreplaceable", and, as a consequence, it could not be "deemed reasonable or economical to destroy archival material when only a part of its information potential has been used".[100] The economic argument thus speaks in favour of continued *growth* of the archives, which is the very opposite of the context of previous report. The economic argument in favour of *destruction* was not entirely absent in the 1988 report – it stated that the "net growth" should be kept "as low as possible" – but the argument was certainly less pronounced.[101]

In view of the wide range of purposes of the archives described in the opening paragraph, it is logical that the report contained often repeated arguments against destruction of documents, and the investigator expressed concerns that "reduction", "destruction" and "extinction" of documents

[96] SOU 1988:11 p. 117; 194-195.
[97] SOU 1988:11 e.g. pp. 25, 186, 214-216, 219. Karin Åström Iko argues that the idea of helping academic research characterised the 1987 report and that a new perspective – cultural heritage – was apparent as from the report of the subsequent year. Although it is certainly true that cultural heritage was more visible in the 1988 report than the year before, we also note how consideration for academic research was still very much present. Åström Iko, Karin. I allmänhetens tjänst? Arkivverket, tillgängliggörandet och brukarna. *Arkiv, samhälle och forskning* 2003:1, p. 25.
[98] 1988:11 e.g. pp. 124, 133-134, 137.
[99] SOU 1988:11 p. 176 "Arkiven representerar stora ekonomiska värden, då produktion av information är synnerligen dyrbar. /…/ Kostnaderna att bevara insamlade uppgifter är förhållandevis små."
[100] SOU 1988:11 p. 176 "Materialet är dessutom oersättligt.", "rimligt eller ekonomiskt att förstöra arkivmaterial sedan enbart en del av dess informationspotential utnyttjats."
[101] SOU 1988:11 p. 175 "nettovillväxten skall hållas så låg som möjligt".

might put limits on the practical possibilities to fulfil the various purposes.[102] As he succinctly put it: "If the material no longer exists, there is no way to access it."[103]

Although the report contained an implicit presumption for archiving all documents – theoretically posing a bigger threat to personal integrity than the previous report which suggested the archiving of various samples – discussions on personal integrity were limited as we shall see in the next section.

Cursory reference to "integrity reasons"

As for aspects on privacy/personal integrity, the investigator agreed with the investigator of the previous report that it was desirable to strengthen secrecy protection.[104] The reasons for this were not given, however. The investigator further mentioned that "[i]t is also important for integrity reasons that decisions of destruction, motivated by considerations for the personal integrity, are carried out",[105] and again, the reasons were left out. In other instances, that mentioned personal integrity and related content, references were made to the existence of discussions on the subject, but more detailed information on the nature of these discussions were not given.[106]

To summarize, we may conclude that the term "official documents" was used more than "documents", and that an implicit argument for preserving the entirety of public archives had been introduced. We may also note that the benefits of openness to society and individuals were more pronounced in comparison to the previous report. This was also true for the value of archives, which were now described as one of the "pillars of the cultural heritage", not merely one "carer" alongside libraries and museums. Important was also the introduction of arguments which connected the principle of public access to democracy, whereas the drawback linked to invasion of privacy, which had been an important element in 1987, was virtually absent a year later.

[102] SOU 1988:11 pp. 73, 181, 198, 199. P. 198 "minskning" "förstöring", "utplåning".
[103] SOU 1988:11 p. 176 "Finns inte materialet kvar kan man heller inte ta del av det."
[104] SOU 1988:11 p. 179.
[105] SOU 1988:11 p. 197 "Det är även viktigt av integritetsskäl att gallringsbeslut, som motiveras av hänsyn till den personliga integriteten, verkställs." Destruction for integrity reasons also mentioned on p. 71.
[106] SOU 1988:11 pp. 39, 40, 180.

Bill 1989/90:72 On Archives etc.

Although much content of the bill is similar to that of the report, a number of differences may be detected in relation to the scope of archiving, openness and privacy as described below.

The importance of archives for public access

The term "principle of public access to official documents" was used on a few occasions, for instance when stating that "[s]pecific to the Swedish public archival system are the special legal conditions granting access to official documents in accordance with the principle of public access to official documents".[107] In most instances, though, the term "publicity of documents" (*handlingsoffentlighet*) was used in order to describe "the right of each and every one of access to official documents".[108] Discussing the precise nature of the documents to form the basis of public archives, the point was made that "through the archiving of documents, the access to official documents in accordance with the Freedom of the Press Act is provided".[109] We further note that the revised wording of the first paragraph (now turned into the third) of the proposed archival law stated that "an archive of a public authority" was "composed of the official documents created through the activities of the public authority".[110] Through this definition of archives as being made up of "official documents", a wider scope of documents was targeted for archiving than before. This is the case because the rest of the paragraph was unaltered: "[a]rchives of the public authorities shall be preserved".[111] The wider scope was thus created through the explicit link to the Freedom of the Press Act regarding the two terms "official documents" and "public authority". The widening of the scope was

[107] Proposition 1989/1990:72 p. 23 "Specifikt för det svenska offentliga arkivväsendet är de särskilda legala utgångspunkter för tillgång till offentliga handlingar som offentlighetsprincipen ger."
[108] See for instance Proposition 1989/1990:72 p. 24 "handlingsoffentligheten, dvs. rätten för var och en att ta del av allmänna handlingar."
[109] Proposition 1989/1990:72 p. 27 "Genom att handlingarna arkivläggs sörjer man för att man kan få sådan tillgång till allmänna handlingar som TF stadgar." See also p. 31.
[110] Proposition 1989/1990:72 p. 69 "3 § En myndighets arkiv bildas av de allmänna handlingarna från myndighetens verksamhet […]." The paragraph furthermore stated that certain documents that the public authority decided to archive were also to be regarded as "official". Translation into English based on Barkå, Mira. *Legal framework for records management and archives. Public authorities and private financial institutions in Sweden.* 3rd Workshop on Archival Legislation for Finance (ALFF) in Europe.
[111] Proposition 1989/1990:72 p. 70 "Myndigheternas arkiv skall bevaras […]."

further accentuated as the author explicitly stated that the right of access required "that official documents, in principle, be preserved".[112]

The arguments brought forward in relation to the advantages of openness/the principle of public access, and specifically to archives, were primarily related to research and to cultural heritage.[113] In addition, the idea was brought forward that "data, that at one point in time may appear less useful, may become relevant information at a later stage when science has developed and new questions have been raised".[114] In order to avoid "fatal mistakes" about what documents to save for research, "properly skilled persons" working in public archives should be involved in such decisions.[115] Again, considerations for academic research was thus still very much present. We may also note that the public archives were described as being "part of our national cultural heritage", and that this cultural heritage was the background against which the proposed archival law should be understood.[116] Also pointing in the direction of more official documents being archived was the suggestion that destruction of certain electronic data should cease.[117]

This did not mean that all destruction was banned. The author actually made the point that destruction had always taken place without "ever being questioned", and was sometimes applied to some 80 percent of public

[112] Proposition 1989/1990:72 p. 31 "allmänna handlingar i princip bevaras". See also p. 76 "The main rule is, as shown in 3 §, that the archives of the public authorities shall be preserved." ("Huvudregeln är, som framgår av 3 §, att myndigheternas arkiv skall bevaras."). The link to the Freedom of the Press Act was not applied to all instances, though, see p. 50 "documents, in principle, be preserved" ("handlingar i princip skall bevaras").

[113] Proposition 1989/1990:72 pp. 31, 24.

[114] Proposition 1989/1990:72 p. 44-45 "uppgifter, som vid en tidpunkt kan förefalla mindre nyttiga, vid en senare tidpunkt, då vetenskapen har utvecklats och nya frågor ställts, kan bli väsentlig information." As shown by archival scholar Louise Nyberg among others, archivists had voiced this thought since the beginning of the 20th century. Nyberg, Louise …Tvånget att försaka. Bedömningsgrunder för gallringsbeslut. *Information, förvaltning och arkiv – en antologi*, Höij, Patrik red, Landsarkivet Härnösand 2005, pp. 126-156.

[115] Proposition 1989/1990:72 p. 42 "fatala misstag", pp. 48, 52 "yrkeskunnigt folk", "fackkunnigt folk".

[116] Proposition 1989/1990:72 p. 30 "utgör en del av det nationella kulturarvet."

[117] For integrity reasons, sensitive personal data in electronic registers are often to be destroyed once no longer needed, see e.g. Wahlqvist 2004. The author had noted the gradual transfer from paper to electronic storage and warned that without changes to the existing legislation, fundamental information might be lost for the future. The author therefore proposed that the law be changed so that destruction would take place after a certain amount of time unless other legislation stipulated otherwise. Proposition 1989/1990:72 pp. 40, 51.

documents.[118] However, just as in the 1988 report, it was stressed that destruction was to take place only after making considerations for the cultural heritage and the purposes of public archives.

Personal integrity – of limited concern

Integrity issues were handled in much the same way as in the previous report, by making references to discussions on the subject, rather than through elaborate arguments.[119] The author did make the point, however, that considerations for integrity might be detrimental to research.[120] In a similar vein, it was stated that "[c]onsiderations for the integrity" may lead to "material […] not being saved to the extent that would have been desirable from other aspects, or that access to preserved material is limited".[121] The in-depth discussion that did take place was related to sensitive data in electronic registers, and as we saw above, the outcome of the discussion was to open for the preservation of more personal data. We may therefore conclude that these measures were not seen as having a particularly negative effect on personal integrity.

Summarizing the bill, we may note that "an archive of a public authority" was said to consist of "official documents". This means that the link to the Freedom of the Press Act was firmly established. The scope of documents to archive was thus potentially larger than in the 1988 report which had not specifically stressed that archives were made up of "official documents". We also note how benefits of openness in relation to the "archives" were described as "granting access to official documents". As for arguments on personal integrity, the bill showed similarities with the 1988 report in that it primarily made reference to discussions on the topic.

Report 2002:78 Archives for everyone

Twelve years after the Archival Law was passed, the report *Archives for everyone – now and in the future* – was published in 2002. An important topic for the investigator was to make proposals on how to make the archives accessible to new user groups, for instance by making more exten-

[118] Proposition 1989/1990:72 p. 41 "aldrig satts i fråga".
[119] Proposition 1989/1990:72 pp. 25, 28, 31, 50.
[120] Proposition 1989/1990:72 p. 26, 32.
[121] Proposition 1989/1990:72 p. 32 "Integritetshänsyn kan sålunda leda till att material inte bevaras i den utsträckning som hade varit önskvärd från andra synpunkter eller att tillgången till bevarat material begränsas."

sive use of information technology.[122] Accessibility of public archives had been a recurring theme internationally as well as in Sweden for quite some time, both among archival specialists and policy makers,[123] and the topic was also hinted at in the bill of 1989/90.

Archives and the principle of access invaluable to democracy

In the 2002 report, the "principle of public access to official documents" was described as "constituting a prerequisite for our democratic government", and "the citizens' constitutional right of access to official documents" was stressed.[124] The presentation of the principle was thus different in comparison with the 1988 report, which presented the principle of access as what we might call an auxiliary in the democratic process, whereas it had the character as of one the prerequisites of democracy in the report from 2002.

As in the bill 1989/90, the report stated that "[the official documents shall be preserved for the future".[125] The scope of documents to archive was thus the same in this respect. The report furthermore included many suggestions regarding how to grant easier access to new and existing groups of users, an access which was to be facilitated through digital tools.[126] These suggestions pointed in the direction of a *broadening* or deepening of the principle of access, and the author explicitly stated that "[t]he fact that public authorities may be reached over the internet constitutes new possibilities to realize the intentions behind the principle of public access to official documents, […]".[127]

Another element pointed in the direction of a *narrowing* of the principle, however. The report listed several reasons for charging for access to archival

[122] SOU 2002:78 p. 182. The Swedish National Audit Office (name then in force: Riksdagens revisorer) had recommended that the effects of the Swedish EU membership be investigated in relation to the archives, but the task was excluded. In view of the difficulties in combining the Swedish principle of access with the EU directive on the protection of personal data, the suggestion was an interesting one. SOU 2002:78 pp. 176, 182.
[123] See e.g. Lönnroth, Louise. Arkiv, samhälle och forskning 1952-2002 i *Arkiv, samhälle och forskning* 2002:2, s. 44. For a general discussion on access to archives, see Menne-Haritz, Angelika. Access, the reformulation of an archival paradigm, no. 1 *Archival Science* (2001), pp. 57-82.
[124] SOU 2002:78 p. 57 "offentlighetsprincipen som utgör en förutsättning för vårt demokratiska statsskick", p. 35 "medborgarnas grundlagsstadgade rätt att ta del av allmänna handlingar". See also pp. 86, 95, 166.
[125] SOU 2002:78 p. 57 "De allmänna handlingarna skall bevaras för framtiden […]."
[126] SOU 2002:78 e.g. pp. 13, 43 84-86, 167.
[127] SOU 2002:78 p. 41 "Att myndigheterna lätt kan nås över nätet innebär också nya möjligheter att förverkliga intentionerna bakom offentlighetsprincipen, […]." See also p. 40.

documents: rising costs for the premises, unsecure financial situation of archival organisations, and the more complex questions and investigations addressed to archival institutions.[128] Being "subject to competition" was another reason, and the investigator reported on "private" (commercial) actors", whose "business idea" it was to "scan and make accessible archival information over the internet for a fee".[129] The investigator was concerned, however, that too high a fee might result in a decline in demand, and urged that "[c]osts for services delivered may not result in a decrease in demand from individuals. From a democratic standpoint, it is important that everyone may access this material".[130] It was not entirely clear whether charging for the access to official documents was actually permitted. In the end, the investigator concluded that although the "principle of public access to official documents" grants the "right of access to official documents at no cost on site", making documents accessible in ways that *surpassed* legal obligations constituted grounds for charging for certain services.[131] An interesting feature of the report was thus that it contained movements in the direction of both a broadening *and* of a narrowing of the principle of public access to official documents.

We saw above that the principle of access was linked to democracy in the 2002 report. This was also the case for the *archives*, as shown in the following quotation:

> The archives are invaluable also from a democratic perspective – in order to promote the free dissemination of thoughts and an unrestricted enlightenment. Without insight in and knowledge about society and its development we easily find ourselves left out of the democratic process. The right of access to the archival material of public authorities create the prerequisite for transparency, open discussion and thereby increased

[128] SOU 2002:78 pp. 56, 63, 93.
[129] SOU 2002:78 p. 63 "konkurrensutsatt", p. 87 "privata (kommersiella) aktörer", p. 63 "affärsidé att skanna och lägga ut arkivinformation på Internet mot avgift". As has been shown in section 3, previous research has shown that access to public documents may be beneficial to commercial companies. Although it appears from the document that access to official documents provided the means for commercial activities of various organisations – including the public archival organisation SVAR which made documents accessible for a fee – this kind of benefit was not pointed out, nor were the activities of SVAR described as a "business idea".
[130] SOU 2002:78 p. 86 "Kostnaderna för de utförda tjänsterna får inte medföra att efterfrågan från enskilda minskar. Det är från demokratiska utgångspunkter viktigt att alla har möjlighet att ta del av detta material."
[131] SOU 2002:78 p. 85 "offentlighetsprincipen, […] rätt att gratis på stället ta del av allmänna handlingar." Arguments regarding legal obligations on pp. 87, 96.

> participation in the democratic system. Citizens' insight into the public administration is of great importance for democracy.[132]

The democratic argument in relation to the archives was a recurring one. For instance, the investigator pointed out that "the archives are of great importance from a cultural heritage perspective, but also from a democratic perspective", and that the "[a]ccess to archives and to archival material are of great importance from the point of view of democracy".[133] The importance of archives was emphasised from other perspectives as well. By way of example, the investigator stated that "[t]he archives also have an important role to play for the integration of new Swedes", and that a purpose was to "make the general public interested in the part of our collective memory that is administered by the archival system".[134] All in all, advantages linked to *archives* were more pronounced than those related to the principle of public access.

Discussions on drawbacks in relation to openness/the principle of public access were certainly not at the centre of the report. Possibly, the previously discussed high number of complex enquiries to archival authorities and the difficult task of establishing the right level of fees may be seen as drawbacks. Also the fear that fees might decrease demand could be regarded as a disadvantage, although it is more linked to technological development than to the principle itself.

Privacy/personal integrity – even less of a concern

Regarding issues on personal integrity, reference was once made to "regulations safeguarding integrity", and an appendix on information technology made a cursory reference to a debate on personal integrity having taken place decades earlier.[135] With these exceptions, the issue of integrity was left outside

[132] SOU 2002:78 p. 164 "Arkiven är också ovärderliga ur demokratiska utgångspunkter – för att främja ett fritt meningsutbyte och en allsidig upplysning. Utan insikt och kunskap om samhället och dess utveckling hamnar vi lätt utanför den demokratiska processen. Möjligheten att ta del av exempel [sic] myndigheters arkivmaterial skapar förutsättning för insyn, öppen diskussion och därmed en ökad delaktighet i det demokratiska systemet. Medborgarnas insyn i den offentliga förvaltning [sic] är av stor betydelse för demokratin." For expressions in English, see Björkstrand & Mustonen 2006, p. 8.

[133] SOU 2002:78 p. 166 "arkiven är av stor betydelse ur kulturarvssynpunkt, men också från demokratisynpunkt."; "Tillgången till arkiv och arkivmaterial är av stor betydelse från demokratiska utgångspunkter […]."

[134] SOU 2002:78 p. 165 "Arkiven har också en viktig roll att spela för integrationen av nya svenskar."; 87 "att intressera allmänheten för den del av vårt kollektiva minne som förvaltas av arkivväsendet."

[135] SOU 2002:78 p. 24 "regelverk som säkrar integritetsskydd", p. 196.

of the scope of the report. In other instances, references could be made to "secrecy regulation", however. On several occasions, the report emphasised the need for trained staff as assessments had to be made in order to establish whether official documents were subject to secrecy or not.[136] We may therefore note a gradual transfer from expressions regarding "integrity" in previous documents, to "secrecy regulation" in the 2002 report.

Summing it up, the report was one in which development in information technology facilitated access to archival documents, and the objective to increase accessibility to the archives was outlined from the beginning in the directive of the report. We have seen how the importance of the archives was stressed, as when described in relation to the "democratic process". Compared to earlier texts, the importance of archives was thus more clearly pronounced.

Bill 2004/05:124 Archival questions

Just as the bill 1989/90 contained many of the arguments of the preceding report, so the bill of 2004 includes many of the elements of the 2002 report. We also note that, for the first time in the analysed documents, reference was made to the Personal Data Act.

Archives important "from a democratic perspective"

The bill stated that "[t]he archives of the public authorities are subject to the principle of public access to official documents in accordance with the stipulations of the Freedom of the Press Act", granting "each and every one access to official documents".[137] Just as in the previous bill, the term "publicity of documents" was used. This was done in a way which suggested a narrower meaning than the "principle of public access to official documents", such as when stating that the "publicity of documents" was a certain aspect of "the principle of public access to official documents".[138]

As was the case with the report of 2002, the bill emphasised advantages brought by the *archives*. It was the "public archives" that were said to create "possibility for insight into the administration" because the archives con-

[136] SOU 2002:78 pp. 56, 104, 149, 177.
[137] Proposition 2004/05:125 p. 5 "Myndigheternas arkiv omfattas av offentlighetsprincipen enligt bestämmelserna i tryckfrihetsförordningen.", p. 6 "var och en rätt att ta del av allmänna handlingar."
[138] Proposition 2004/05:125 p. 6.

tained "official documents" subject to the "publicity of documents".[139] The argument regarding the importance of archives for democracy was also reiterated. It was thus stated that "[t]he archives, thus, are of great importance from a democratic perspective as well as from the perspective of research and of cultural heritage".[140] Furthermore, benefits of the archives in terms of providing material for research and the other purposes of the archival law were identified.[141] In a similar vein, we recognize the discussion on charges for archival services and the fear that they might lead to decreased accessibility.[142]

Enters the Personal Data Act

The 2002 report mainly addressed the issue of personal integrity through cursory references to "secrecy regulation". This was true also for the bill, although it did refer to the Personal Data Act passed in 1998. The Act was mentioned in relation the use of new technology in archives, to which the author added that this must be made "within the framework granted by relevant regulation, e.g. the Personal Data Act (1998:204) […]".[143] Further elaborations on the nature of the Personal Data Act or on personal integrity were not made.

Summing up the results, we find much the same situation in the bill of 2004 as in the report published a few years earlier in terms of the scope of documents to archive, as well as in terms of arguments on openness and privacy. For the first time in the material the Personal Data Act was mentioned, although not in a way which included in-depth discussions on personal integrity.

6. The development of scope, openness and privacy over time

In this section, the findings from all five documents are analysed focusing on one research question at a time, making it possible to detect changes in

[139] Proposition 2004/05:125 p. 6 "Genom de offentliga arkiven, som innehåller allmänna handlingar som omfattas av handlingsoffentlighet, skapas möjligheter till insyn i förvaltningen."
[140] Proposition 2004/05:125 p. 6 "Arkiven har alltså stor betydelse från såväl demokrati- som forsknings- och kulturarvssynpunkt." See also pp. 1, 7.
[141] Proposition 2004/05:125 p. 6.
[142] Proposition 2004/05:125 p. 19.
[143] Proposition 2004/05:125 p. 7 "inom de ramar som relevant lagstiftning, t.ex. personuppgiftslagen (1998:204) […] medger."

the meanings of terms and expressions. Comparisons between benefits and drawbacks related to openness and privacy in the material on the one hand, and in previous research on the other, will also be made.

Scope: from selection of samples to preservation of official documents

The scope of documents to archive became gradually larger during the period. Several factors contributed to this. One such factor was the transfer from "archival material" and "archival institution" to "official document" and "public authority". These transfers meant that the Archival Law was aligned with the wordings of the Swedish Freedom of the Press Act. Another element was the presumption, implicit at first, that archives and official documents should be preserved. Assertions that the cultural heritage and the purposes of the archival law were to be considered before carrying out destruction pointed in the same direction, which was true also for the idea that it was impossible to foresee what documents might be perceived as valuable by researchers in the future.[144]

As a result of the gradual alignment with the Freedom of the Press Act and the clearly indicated presumption for preservation, the archives and the principle of public access were described as invaluable to democratic government. Together with the noticeable reluctance for destruction due to consideration to the cultural heritage and the purposes of the Archival Law, the Swedish public archives and the principle of public access *did* become much more encompassing, and so, of importance for democracy. Claes Gränström and Berndt Fredriksson talk of "archival theory" and "archival doctrine", and Samuel Edquist of "archival politics",[145] and one of the contributions of this paper is to enhance our understanding of how this theory came into existence through archival politics. The elements described here

[144] The argument might of course be raised that presumption for preserveration has been present in Swedish archival regulation at least since the introduction of the first ordinance on destruction of government documents in 1885, and that "archival documents" mentioned in the 1885 ordinance was the equivalence of "official documents" of today. Although such an argument certainly makes much sense, this study shows that arguments presented in the analysed documents pointed in the direction of increased preservation, and we note the gradual transition from "archival document" to the term "official document" of the Swedish Freedom of the Press Act. In addition, the 1987 report has been identifited by researchers as a proposition on how to deal with the increasing amounts of paper documents. By the end of the 1980s, the level of preservation was thus expected to be very far from total. All in all, the arguments brought forward in the documents under study and by researchers thus indicate a goal to preserve a large scope of documents and a higher level of preservation than had previously been the case. On the 1885 ordinance, see Edquist 2014, pp. 1-2.

[145] Gränström 1995, p. 19; Fredriksson 2003, p. 29; Edquist 2014, p. 1.

all contributed to providing the Swedish public archives with the importance they may be said to have today, to establishing the present "doctrine".

From the findings of the empirical study, we may also conclude that the "automatic" way – borrowing the expression of Johan Fredrikzon, scholar of the history of ideas[146] – in which documents are deemed to be archived due to their status as "official documents", is in fact of quite recent date. As I have shown in my analysis, it was only with the bill of 1989/90 that the documents to archive were aligned with the wordings of the Swedish of the Press Act. Prior to this date, arguments in the documents did not indicate automaticity. On the contrary, the report from 1987 spoke of preserving a selection of *samples*. Due to the alignment, we may also note that the difficulty to interpret certain criteria of the Freedom of the Press Act will be inherited by the Archival Law.[147] For many individuals without studies in archival science, it may, therefore, be unclear what documents will actually be deemed "official" and therefore archived.

Openness/the principle of public access: bringing good things only

The linguistic analysis of the study shows that there is no single, clear-cut definition of "the principle of public access to official documents" (*offentlighetsprincipen* in Swedish). The report of 1987 stated that a person "fully supporting the principle of public access to official documents might regard 100 percent as the proper level of storing" while others might "support that all documents be thrown away". The principle was thus clearly presented as subject to interpretation. The report furthermore contained the message that the needs of the citizens set the limits to the principle of public access, as these need were described as vital for allowing for the creation of personal data. The argument that citizens' needs constituted the limits of the principle was abandoned with the next report from 1988. Instead, the framework was introduced that the principle was linked to the Freedom of the Press Act. With the alignment to the Act through the use of the term "official documents" and "public authority", "the principle of access to official documents" was defined as dealing with the release and archiving of "official documents". To these meanings might be added the one from the bill 2004/05, which suggested that "publicity of documents" had a narrower meaning than "the principle of public access to official documents". Various

[146] Fredrikzon 2014, p. 36.
[147] See e.g. Gränström 1995, pp. 6, 19; Bohlin 2010; Magnusson Sjöberg 2011, e.g. pp. 328-331.

meanings of "the principle of public access to official documents" have thus been in place.

As for benefits related to openness/the principle of public access in the material, many of those have been recognised in previous research. This is true notably for means of control of public authorities, transparency and democracy, as well as for the importance for cultural heritage, the possibility for the individual to take legal action and economic benefits related to commercial applications. It is only the theme of benefits for research, a strong argument in all five documents, which is considerably less visible in previous research. Potential drawbacks of openness/the principle of public access indicated by previous research was virtually absent in the material, however. Among the drawbacks identified in previous research we find the possibility that the principle of public access might lead to an oral culture and informal decisions, and that the individual might encounter identity theft, infringement of integrity and a feeling of unease from being registered. Of these drawbacks, only infringement of integrity was discussed in the material, and only in one of the five analysed documents: the first report from 1987. This report was also the one with the smallest scope of documents to archive.

Privacy – from concern to cursory references

In the empirical material, we note that references to "integrity" were gradually replaced by that of "secrecy regulation". More importantly though, the analysed documents contained very little in-depth discussion in relation to privacy/personal integrity.

In previous research, we have identified the benefits that privacy creates trust as well as autonomous and independent individuals, making it vital in a democratic society. We furthermore saw the argument that privacy would enable the individual not to be hampered by previous events and incorrect data. Research has also identified drawbacks, such as the risk of compromising the principle of access, risk for negative impact on culture, history and heritage and making certain types of research impossible to carry out. We also note the risk that individuals will not be able to take legal action due to vital documents missing. As discussions on privacy were rare in the material, few of these arguments were mentioned. Benefits related to privacy as linked to a democratic society were not mentioned at all. In the first document from 1987, we noted discussions on risks of data being misused, need for remedies to safeguard personal integrity and the notion that the individual should be the one to decide if an infringement of integrity

had occurred. Implicitly, privacy was thus seen as valuable to the individual in this document. Drawbacks from privacy were equally rare in the material. The report from 1987 mentioned missed opportunities for research due to privacy concerns, and apart from this example, drawbacks from privacy were not identified.

As we have seen, the scope of documents to archive was limited to samples in the 1987 report, while the scope increased with the subsequent documents. Yet, benefits of privacy were visible only in the first document. With the larger scope, such benefits of privacy for the individual might have been regarded as important to maintain, but in-depth discussions on privacy did not take place in the material after 1987. We may also note that drawbacks from privacy were equally absent in the material with the exception of the first report. This might be explained by the fact that the scope of documents to archive became wider and the presumption for preservation more explicit, thus providing large data sets e.g. for the benefit of future research.

On the balance between openness in privacy in Swedish archival regulation

From the analysis above, it is possible to return to the purpose of the study: to investigate how the balance was drawn between openness/the principle of public access to official documents and privacy/personal integrity in legal texts on Swedish national archival regulation 1987–2004. The short answer to the issue of balance between openness and privacy in Swedish archival regulation during the period, is that the material contains very few attempts to try and strike such a balance. The exception was the first report form 1987, where concern was expressed regarding the implications that openness might have on personal integrity, although the issue at hand was merely to store samples of personal data. In the subsequent reports and bills, the scope of documents containing personal data was larger, and so potentially having a greater influence on personal integrity. Yet, discussions on personal integrity were rare and cursory at best. The EU Directive on protection of personal data could have provided input to the texts on Swedish archival regulation. Two committees dealing with the implementation of the directive published reports in 1993 and 1997. The publications show that the first committee did not find that archiving personal data in official documents in accordance with the Freedom of the Press Act was

compatible with the directive, while the second committee did.[148] The implementation of the directive in Sweden in 1998 was based on this latter interpretation. The very different conclusions that the committees arrived at could have provided interesting input for archival regulation texts, but such reflections were not present.

Concluding remarks

All in all, discussions were more oriented towards openness than to privacy in the material. More specifically, the benefits of openness were very visible, while drawbacks of openness were not. As for privacy, only the first document contained in-depth discussions on this issue. Why is this?

Theories of various researchers may shed some light on this. Some researchers explain the inclination towards openness with what we might call old habit. The fact that Sweden – and Finland – has a tradition of openness that goes centuries back has been suggested to explain the "precedence to the right of free access".[149] Similarly, Danish historian Tim Knudsen argues that the historical tradition of Sweden explains why it has a presumption for openness, and poses the question if "inertia" might explain the situation regarding openness.[150] From the Finnish perspective, legal scholar Ahti Saarenpaa maintains that legislation regarding privacy "is a difficult issue" "in a country where publicity has reigned supreme", and where many actors are used to "exploiting the principle of right of access".[151] A complement to the idea of history and tradition above, is the interpretation that Sweden is characterised by a view of democracy as based on the *community*, rather than on the individual.[152] In such a perspective, emphasis is placed on the citizen's ability to take part in debates, decisions are based on what is best for the community, and solidarity expected with decisions taken.[153] The theory of tradition and of democracy based on community both seem to help explain the bias towards openness in the material.

The Swedish Freedom of the Press Act has tremendous importance for the freedom of information. In turn, access to information is vital for demo-

[148] Forthcoming publication by the author.
[149] Holmgren, Martin. The Swedish Principle of Public Access to Official Documents – in Relation to Archival Theory and Electronic Data Processing. *The Principle of Provenance*, Abukhanfusa, Kerstin & Sydeck, Jan eds. Stockholm: Swedish National Archives, 1994, p. 70, see also p. 66.
[150] Knudsen 2004, p. 118.
[151] Saarenpaa 1997, p. 49.
[152] Knudsen 2004, p. 118.
[153] Knudsen 2004, p. 116. Knudsen relates to the research by J. P. Olsen.

cratic government. In this respect, Sweden and Finland are in a privileged position, as these countries have the world's longest tradition of freedom of information legislation, celebrating 250 years in 2016. As pointed out at the beginning of the study, the Freedom of the Press Act may also have an impact on personal integrity, however. As this historical and linguistic analysis of the development of the current Swedish archival paradigm shows, this impact is reinforced through the Swedish Archival Law. The celebration of the 250th anniversary of the world's first freedom of information law is, perhaps, a good time to start considering also its possible implications for privacy.

Reference list

Ahlenius, Ing-Britt. Myten om vår öppenhet. *Handlingsfrihet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*. Stockholm, Skrifter utgivna av Riksarkivet nr 21, 2004, pp. 15-20.

Bergfeldt, Börje. Arkivvetenskapens framtid. *Arkiv, samhälle och forskning*, 2002:1, pp. 7-17.

Björkstrand, Gustav & Mustonen, Juha. Introduction: Anders Chydenius' Legacy Today. *The world's first Freedom of Information Act: Anders Chydenius' legacy today*, Mustonen, Juha (ed.), Kokkola: Anders Chydenius Foundation, 2006, pp. 4-6.

Blackstock, Marlene. A. & Oppenheim, Charles. Legal issues for information professionals, part v: Freedom of Information. *Journal of Information Science*, 1999, Vol. 25(4), pp. 249-264.

Bohlin, Alf, *Offentlighetsprincipen*. Stockholm: Norstedts Juridik, 2010.

Cook, Terry. Evidence, memory, identity, and community: four shifting archival paradigms. *Archival Science* no. 13 (2013): 95-120.

Cook, Tim. Counterpoint. Archives and Privacy in a Wired World: The Impact of the *Personal Information Act* (Bill C-6) on Archives, *Archivaria*, 2002, no. 53, pp. 94-114.

Council of Europe, *Recommendation 854 (1979), Access by the public to government records and freedom of information*, 1979.

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data.

Edquist, Samuel. *Arkiven, bevarandet och kulturarvet*. Stockholm: Riksarkivet, 2014.

Eriksson, Fredrik och Östberg, Kjell. The Problematic Freedom of Information Principle. *Freedom of Information Open Access, Empty Archives*. Flinn, Andrew & Jones, Harriet eds. Routledge, London & New York, 2009, pp. 113-124.

Fredriksson, Berndt. Arkivvetenskap – historia och framtid. *Arkiv, samhälle och forskning*, 2002:2, pp. 77-95.

Fredriksson, Berndt. Vad skall vi bevara? Arkivgallringens teori, metod och praktik. *Arkiv, samhälle och forskning,* 2003:2, pp. 21-58.

Fredrikzon, Johan. *Särskilt betydelselösa. Informationsöverflöd och arkivgallring i Sverige vid mitten av 1900-talet*. Stockholms universitet, Institutionen för litteraturvetenskap och idéhistoria, magisteruppsats, 2014.

Gränström, Claes. The Janus Syndrome. *The Principle of Provenance*, Abukhanfusa, Kerstin & Sydeck, Jan eds. Stockholm: Swedish National Archives, 1994, pp. 11-23.

Gränström, Claes. Arkivteori. *Arkivvetenskap,* Ulfsparre, Anna Christina ed. 1:12 ed. Lund: Studentlitteratur, 1995, pp. 3-29.

Gränström, Claes, Lundquist, Lennart & Fredriksson, Kerstin. *Arkivlagen. Bakgrund och kommentarer*. 2 ed. Stockholm: Norstedts Juridik, 2000.

Gränström, Claes. Arkivverksamhetens syften. *Handlingsfrihet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*. Stockholm: Skrifter utgivna av Riksarkivet nr 21, 2004, pp. 58-65.

Hallinan, Dara, Friedewald, Michael & McCarthy, Paul. Citizens' perceptions of data protection and privacy in Europe. *Computer Law and Security Review*, 2012, pp. 263-272.

Holmgren, Martin. The Swedish Principle of Public Access to Official Documents – in Relation to Archival Theory and Electronic Data Processing. *The Principle of Provenance*, Abukhanfusa, Kerstin & Sydeck, Jan eds. Stockholm: Swedish National Archives, 1994, pp. 65-73.

Knudsen, Tim. *Offentlighed i det offentlige: om historiens magt*. Aarhus: Aarhus Universitetsforlag, 2003.

Larsson, Torbjörn. How open can a government be? The Swedish experience. Openness and Transparency in the European Union. Deckmyn, Veerle & Thomson, Ian eds. Maastricht: European Institute of Public Administration, 1998, pp. 39-51.

Ilshammar, Lars. *Offentlighetens nya rum: teknik och politik i Sverige 1969-1999*. Diss. Örebro: Örebro universitet, 2002.

Lönnroth, Louise. Arkiv, samhälle och forskning 1952-2002. *Arkiv, samhälle och forskning* 2002:2, pp. 23-51.

Lönnroth, Louise. Bortglömt i arkiven. *Glömskan värd att minnas*, Lindberg, Bo ed. Göteborg: Kungl. Vetenskaps- och Vitterhets-Samhället, 2012, pp. 31-67.

MacNeil, Heather. Information privacy, liberty and democracy. *Privacy and Confidentiality Perspectives: Archivists and Archival Records*, Behrnd-Klodt, Menzi L. and Wosh, Peter J. eds. Chicago: The Society of American Archivists, 2005, pp. 67-81.

Magnusson Sjöberg, Cecilia. *Rättsinformatik: inblickar i e-samhället, e-handel och e-förvaltning*. Lund: Studentlitteratur, 2011.

Menne-Haritz, Angelika. Access, the reformulation of an archival paradigm no. 1 *Archival Science* (2001), pp. 57-82.

Munson, Sean, Avrahami, Daniel, Consolvo, Sunny, Fogarty, James, Friedman, Batya & Smith, Ian. Sunlight or sunburn: A survey of attitudes toward online availability of US public records. *Information Polity* , 2012, Vol. 17(2), pp. 99-114.

Norberg, Erik. Förord. *Handlingsoffentlighet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*. Stockholm, Skrifter utgivna av Riksarkivet nr 21, 2004, pp. 7-10.

Nyberg, Louise …Tvånget att försaka. Bedömningsgrunder för gallringsbeslut. *Information, förvaltning och arkiv – en antologi*, Höij, Patrik ed., Landsarkivet Härnösand 2005, pp. 126-156.

Olsson, Anders R. *Privatliv och internet – som olja och vatten?* Stockholm: Teldok, 2000

Personal data protection: information on the Personal Data Act. Stockholm: Ministry of Justice, 4th revised edition, 2006.

Proposition 1989/1990:72 *Om arkiv etc*.
Proposition 2004/05:125 *Arkivfrågor*.
Rapaport, Edmund & Samuelson, Per. Storing of Public Data for Research – The Swedish Case. *Government Publications Review*, 1991, Vol. 18(1), pp.65-69.
Regan, Priscilla. *Legislating Privacy. Technology, Social Values, and Public Policy*. Chapel Hill: University of North Carolina Press, 1995.
Rosengren, Anna. *Åldrandet och språket. En språkhistorisk analys av hög ålder och åldrande i Sverige cirka 1875–1975*. Huddinge: Södertörns högskola, 2011.
Rydén, Reine. Hur ska nutiden bevaras? *Arkiv, samhälle och forskning* 2011:2, pp. 6-21.
Saarenpaa, Ahti. Data protection: In pursuit of information. Some Background to, and Implementations of, Data Protection in Finland. *International Review of Law, Computers & Technology, 1997, no. 1,* pp. 47-64.
SFS 1990:782 *Arkivlag*.
SFS 1998:204 *Personuppgiftslag*.
SFS 2009:400 *Offentlighets- och sekretesslag*.
Smedberg, Staffan. Bevarande och gallring. *Arkivvetenskap*, Ulfsparre, Anna Christina ed. 1:12 ed. Lund: Studentlitteratur, 1995, pp. 176-195.
SOU 1987:38 *Arkiv för individ och miljö. Betänkande från Utredningen angående intensivdataområden och individbaserade urvalsserier inom arkivväsendet*.
SOU 1988:11 *Öppenhet och minne. Arkivens roll i samhället. Betänkande av arkivutredningen*.
SOU 2002:78 *Arkiv för alla – nu och i framtiden*.
SOU 1997:39 *Integritet, offentlighet, informationsteknik*.
Söderlind, Åsa. *Personlig integritet som informationspolitik: debatt och diskussion i samband med tillkomsten av Datalag (1973:289)*, Borås: Valfrid, 2009.
Valge, Jaak & Kibal, Birgit. Restrictions on Access to Archives and Records in Europe: A History and the Current Situation. *Journal of the Society of Archivists*, 2007, Vol. 28(2), pp. 193-214.
Wahlqvist, Sten. Registerförfattningar – konflikten mellan insyn och integritet. *Handlingsfrihet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*, Stockholm, Skrifter utgivna av Riksarkivet nr 21, 2004, pp. 49-57.
Waldemarsson, Ylva. Politiska makthavare som politisk källa. *Arkiv, samhälle och forskning*, 2007:2, pp. 6-23.
Åström Iko, Karin. I allmänhetens tjänst? Arkivverket, tillgängliggörandet och brukarna. *Arkiv, samhälle och forskning*, 2003:1, pp. 18-35.
Öman, Sören. Gallring i allmänna handlingar av integritetsskyddsskäl. *Handlingsfrihet utan handlingar? Rapport från ett seminarium i Stockholm den 7 mars 2003*. Stockholm, Skrifter utgivna av Riksarkivet nr 21, 2004, pp. 39-48.

Unpublished material

Barkå, Mira. Legal framework for records management and archives. Public authorities and private financial institutions in Sweden. 3rd Workshop on Archival Legislation for Finance (ALFF) in Europe, year unkown.