

# Royal archives that we pay for but aren't allowed to read: a brief history



*The Cabinet Office recently blocked publication of Lord Mountbatten's diaries. [Iain McLean](#), [Scot Peterson](#), and [Richard Reid](#) write that this is not the first time when archives funded by the taxpayer have not been available after the standard embargo period, the effect being that public knowledge of key constitutional and political events is limited.*

The [Guardian](#) recently reported that the Cabinet Office is blocking access to some of the papers of Lord and Lady Mountbatten. The papers were 'acquired for the nation' in 2010, with the assistance of (what is now) the National Lottery Heritage Fund. Announcing the grant, the Fund [stated](#):

[T]he University of Southampton is on track to ensure that the records of those who stood at the very forefront of British political life will be preserved for future generations of historians, scholars and the public to explore and enjoy.

The [Guardian](#) reports that, despite an order from the Information Commissioner, the university has refused to allow access to some of the Mountbatten MSS, in particular the Mountbattens' diaries and some correspondence. Although the reports do not specify the content of the papers being withheld or the reason why they are withheld, Mountbatten was involved in numerous events of constitutional importance – from the independence and partition of India to an embryonic plot to overthrow Harold Wilson's government in 1968. Oddly, the university has joined the Cabinet Office to appeal against the order.

The Mountbatten litigation is eerily similar to the *Hocking* litigation in Australia. Historian Jenny Hocking sought access to the 'Palace Letters', namely correspondence between Governor-General Sir John Kerr and The Queen's Principal Private Secretary Sir Martin Charteris during Australia's constitutional crisis which culminated in Kerr's dismissal of Gough Whitlam's Labor government on Armistice Day 1975. As in the Mountbatten case, the National Archives of Australia opposed the release. Hocking argued that the Palace Letters were 'Commonwealth Records' within the meaning of the [Archives Act 1983](#). She lost at first instance, the court [holding](#) that the Australian archive should follow:

the special archival arrangements concerning Royal correspondence in the United Kingdom. In that jurisdiction, such correspondence, together with other private and personal records of The Queen, are housed in the Royal Archives. Access to them is governed by specific agreements. The Freedom of Information Act 2000 (UK) does not apply to such records.

During Hocking's appeals, Sir Christopher Geidt, Charteris's successor, wrote to the Official Secretary to the Governor-General, to confirm that this remained the view of the Palace. However, Hocking won her final appeal to the High Court of Australia. In a ruling with strong echoes of [the Spycatcher case](#), the court [held](#):

Whether a constitutional convention pertaining to the ownership of confidential communications with Her Majesty exists in the United Kingdom or in relation to any other country is neither necessary nor appropriate for this Court to decide. Whether such a constitutional convention exists or has at any relevant time existed in the outworking of the Australian Constitution is not satisfactorily established merely by an exchange of letters between the Official Secretary and the Private Secretary.

As the Australian first-instance court noted, the Royal Archives (RA), in the Round Tower at Windsor Castle, are not regarded as UK public records. As well as being exempt from freedom of information claims, the RA do not share the statutory obligation on both the UK and Australian national archives to admit any eligible person to read them. Their terms of access have, at least in the past, included a 'prior restraint' condition that the researcher may not publish without submitting the publication draft to the archivists.

This can cause difficulties in constitutional studies. In the UK and the 15 'Realms' (including Australia) which share the UK monarch as head of state, constitutional crises may involve the 'reserve powers' of the monarch or her local representative the Governor-General. In a [recent paper](#) on constitutional crises and the reserve powers, we considered four actual or potential crises involving the royal Private Secretary of the day. In all but the first case, archival restrictions remain, or remained until recently. A file at the UK National Archives on the 1936 abdication of Edward VIII was not released until after the death of Queen Elizabeth the Queen Mother in 2003. Until then, only successive Cabinet Secretaries had been allowed to inspect it. One of them [wrote](#) in 1967, when the file might otherwise have been opened under a proposed reduction from the previous embargo of fifty years to the existing '30-year rule':

[A]lthough the constitutional complexities of the situation are undeniably of great interest, they are of much less importance since the occasion was, one hopes, unique and there can be no question of "precedential value".

Historians and constitutional scholars might prefer to make their own judgments of that.

Similarly, the diary of Sir Alan (Tommy) Lascelles, who was Principal Private Secretary to the king in 1950 at a time of potential constitutional crisis, may not be opened until five years after the death of HM Queen Elizabeth II. Although the Lascelles diary is not a public record and is held by Churchill College, Cambridge, rather than a public archive, it remains closed to constitutional researchers.

Another interaction between monarchy and politicians has involved letters written by HRH the Prince of Wales to politicians expressing his opinions. After a ten-year legal wrangle, the UK Supreme Court ruled in 2015 that the specific letters the complainant (the *Guardian*) had asked to see – but no others – must be [revealed](#). On this matter too, Australian practice differs. A file of correspondence between HRH Prince Charles and Sir John Kerr has been on open access in the National Archives of Australia since 2005. One handwritten letter from Charles, then at sea commanding HMS *Bronington*, expresses Charles's support for Kerr in the face of violent criticism over his dismissal of the Whitlam government.

The reserve powers come into play only when there is a constitutional crisis. One might think that access to the archives of key constitutional actors should be more, not less, important at such times. Nevertheless, archives funded by, variously, the taxpayer directly, the taxpayer via the National Lottery, and the taxpayer via support for the UK monarch's establishment, have not been available after the standard embargo period. In some cases, they are still not available at all, with the effect of limiting public knowledge of these key constitutional and political events.

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