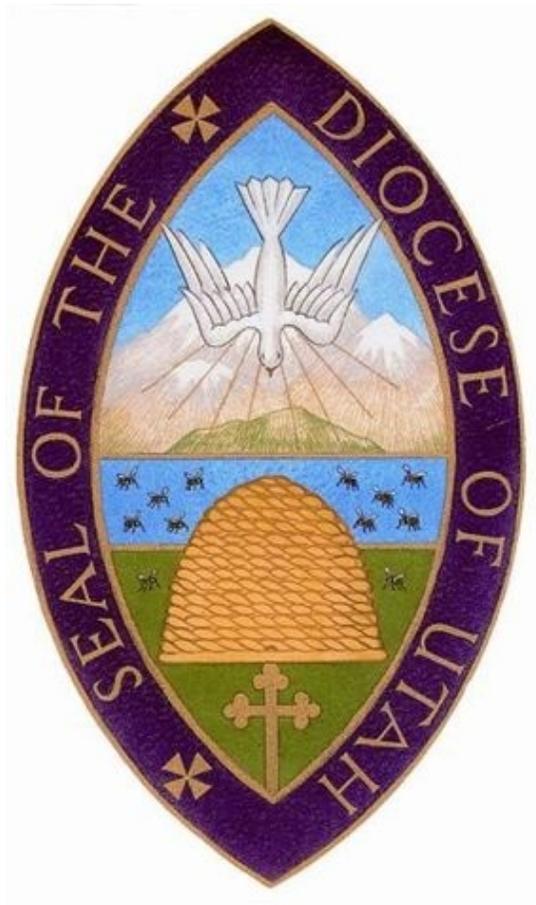


# **Policy on the Diocesan Archives**



**The Right Reverend Scott Byron Hayashi, Eleventh Bishop of Utah**

**Policy Number: D014**

**Revision Number: 0**

**Approved by Bishop and Diocesan Council: September 13, 2014**



## The Episcopal Diocese of Utah Policy on Diocesan Archives

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September 13, 2014 Rev. 0

The Diocese of Utah Archives is the repository for the official records of the Diocese of Utah. The Archives has a primary responsibility to serve the administration, program and mission of the Diocese by meeting its information and research requirements.

As an extension of its mission, the Diocese of Utah Archives welcomes research inquiries from the public. Public access to the records of the Diocese is governed by policies adopted by the Standing Committee and the Diocesan Council of the Diocese of Utah and by agreement with private donors. These policies require that a researcher complete an *Application for Use of the Archives*. The researcher must state the purpose of the research and identify the objectives and intended products of the research inquiry. The researcher will be notified of acceptance and an appointment scheduled. Researchers returning after an absence of more than a year will be asked to update their application form. If a researcher is unable to visit the Archives in person, the Archivist will respond to inquiries by mail, phone or e-mail as time permits.

Access to the Archives is granted on the basis of the age and content of the records and is always at the discretion of the Archivist. In general, diocesan records older than 30 years are open to researchers with the exception of confidential records. See: *Sacramental Records Access Policy* and *Confidential Records - Policies and Procedures*. All diocesan records 30 years old or less - with the exception of those created for public dissemination and those which must remain open by law - are closed to the public. There are also special conditions under which access to records older than 30 years and not usually considered confidential may be restricted by the Archivist; if the records have not been processed or appraised, if they contain un-separated personal information on individuals, if they are in a highly fragile condition, if restrictions have been placed upon them by the donor. Special access to restricted records may be granted only in the unusual case when release of the information serves an essential public interest over and above a private research agenda or when it fulfills a vital personal need.

All records and papers of the Archives, unless otherwise noted, are the property of the Diocese of Utah. Expenses incurred during the research process are the responsibility of the researcher. Researchers are required to request permission to publish and to note copyright permission and credit in print. Proper citation formats are available upon request. Researchers are respectfully requested to deposit copies of their work with the Archives when significant use has been made of its primary resources.

NOTE: This policy is based on the provisions of the Public Access Policy of the Archives of the Episcopal Church.

### DIOCESAN ACCESS POLICY

The Diocese of Utah Archives is the repository for the official records of the Diocese of Utah. The Archives has a primary responsibility to serve the administration, program and mission of the Diocese by meeting its information and research requirements.

*Or Archivist Designate, the Executive Officer of the Diocese, or the Bishop Diocesan.*



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### DIOCESAN STAFF:

Diocesan staff has access upon request to the current and non-current records of their immediate departments. In addition, diocesan staff will be allowed access to the records of other departments on a need to know basis if their request for access is in conformity with the diocesan confidential records policy. All requests for access are to be made to the Archivist. If the Archivist is not available and there is an immediate need for access, the Diocesan Executive Officer is to be contacted. No files are to be removed from the Archives without permission of the Archivist.

### CLERGY AND DIRECTORS OF DIOCESAN CONGREGATIONS, SPECIAL MINISTRIES AND AFFILIATED INSTITUTIONS:

Clergy and directors of diocesan congregations, special ministries and affiliated institutions have access upon request to the current and non-current records of their respective congregations, ministries and institutions. All requests for access are to be made to the Archivist.

### MEMBERS OF DIOCESAN CONGREGATIONS, SPECIAL MINISTRIES AND AFFILIATED INSTITUTIONS:

Members of diocesan congregations, special ministries and affiliated institutions requesting access to a congregation's, special ministry's, or institution's records for the purpose of researching a specific topic or preparing a history, must obtain a letter of authorization from the priest-in-charge or director of the congregation, ministry or institution. This letter must be sent or presented to the Archivist and should introduce the individual or individuals as official representatives of the congregation or institution and request access to the records for a specified purpose. In addition, individuals seeking access to the records will need to schedule an appointment with the Archivist and to fill out the Application for Use of the Archives.

### CHAIRPERSONS OF DIOCESAN COMMISSIONS, COMMITTEES AND TASK FORCES:

Chairpersons of diocesan commissions, committees and task forces have access upon request to the current and non-current records of their respective commissions, committees and task forces. All requests for access are to be made to the Archivist.

### MEMBERS OF DIOCESAN COMMISSIONS, COMMITTEES AND TASK FORCES:

Members of diocesan commissions, committees and task forces requesting access to the records of their respective groups must obtain a letter of authorization from their chairperson or director. This letter must be sent or presented to the Archivist and should introduce the individual or individuals as official representatives of the group and request access to the records for a specified purpose. In addition, individuals seeking access to the records will need to schedule an appointment with the Archivist and to fill out the *Application for Use of the Archives*.

*Or Archivist Designate, the Executive Officer of the Diocese, or the Bishop Diocesan.*

## CONFIDENTIAL RECORDS POLICIES AND PROCEDURES

### INTRODUCTION

The following policies and procedures relate to records that are confidential, private or privileged. These records are created in the course of conducting business for the Diocese of Utah. The offices of record for these records include (but are not limited to) the Bishop's



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Office, the Canon to the Ordinary, Camp Tuttle, and CFO/Treasurer/Canon for Finance. These records are created with the presumption of privacy and to foster and support confidential relationships and communications. Therefore, access to these records is limited to specific, authorized users. In general, the Bishop, or delegate, has the right to access any record created during the course of corporation business or on behalf of the Diocese. Further, the Chancellor and/or the diocesan insurance carrier may be granted access or have a legal right to access if warranted by the circumstances. The Archivist/Records Manager has access in so far as is necessary to carry out the duties of her/his position. In certain situations, a release form or waiver may be required.

Access can mean many things and is determined by the circumstances. In most cases, access simply means the reporting of data or information contained in the file. In other cases, access indicates the need for copies of documents contained in the file and in still other instances, access indicates permission to review the contents of the file. Signed release forms are used when necessary. The Bishop or delegate (generally the Chancellor or the head of the Office of Record concerned) determines the need for access and the type of access to be granted.

The fact that the Diocese has a fiduciary responsibility to protect confidential records created with a presumption of privacy is substantiated by canon and civil law. Title III, Canon 4 of the Canons for the Government of the Protestant Episcopal Church (2000) requires "proper regard for confidentiality" in relation to medical, psychological and psychiatric reports on postulants; Title III, Canon 15, Section 8(a) of the Canons for the Government of the Protestant Episcopal Church (2003) says that "Statements made during the course of proceedings under this Canon (Of the Dissolution of the Pastoral Relation) are not discoverable nor admissible in any proceedings under Title IV provided that this does not require the exclusion of evidence in any proceeding under the Canons which is otherwise discoverable and admissible." Title IV (Ecclesiastical Discipline) Canon 3 (Of Presentments) Section 13 (2003) states that "the Church Attorney shall render a confidential Report to the Diocesan Review Committee of the findings of that investigation and the Report of the Church Attorney shall be confidential for all purposes as between the Church Attorney and the Diocesan Review Committee." Provided, however, "the Diocesan Review Committee shall share the report of the Church Attorney with the Bishop of the Diocese." Title IV, Canon 3, Section 38 (2003).

"Prior to the issuance of a Presentment or the determination not to issue a Presentment...the matter shall be confidential, except as may be determined to be pastorally appropriate by the Presiding Bishop." Title IV, Canon 14, Section 26 (2003). "No privileged communication shall be required to be disclosed. Further, the secrecy of a confession is morally absolute for the confessor, and must under no circumstances be broken."

Title IV, Canon 15 (Of Terminology used in this Title), Section 1. "Privileged Communications" shall mean (i) disclosures in confidence made by a person to a Member of the Clergy with the purpose of seeking religious counsel, advice, solace, absolution or ministrations wherein the Member of the Clergy is acting in the capacity of spiritual advisor to the person, and where the person making the disclosures has a reasonable expectation that the communication will be kept in confidence, (ii) communications privileged under the law of the state or applicable federal law, (iii) such other privileged communications as are defined under the Federal Rules of Evidence.



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“Civil statutes such as Utah Code Ann. Section 78-24-8 and Rule 506 of the Utah Rules of Evidence indicate that records such as psychological assessments are privileged from disclosure; Utah Code Ann. Section 78B-5-618 outlines access and disclosure procedures for health care records; Utah Code Ann. Section 78-24-8(2) and Utah Rules of Evidence, Rule 504 govern the records associated with the attorney/client privilege and Utah Code Ann. Section 78B-10-104 provides confidentiality to products of mediation. Records produced in a priest/penitent relationship may be privileged under Utah Code An.78-24-8(3).”

Confidential records are not to leave the Office of Record. Even though diocesan employees develop or compile these records, the employee does not own the records. The contents or topic of the records are not to be discussed outside established parameters. Disposition of confidential records may not be determined without a retention schedule or without consultation with the Archivist/Records Manager.

If civil litigation or canonical investigation begins, any retention attached to the records is to be suspended; that is, records may not be destroyed. When a record relating to a case is requested by the Chancellor or other appropriate authority, all offices or individuals involved with the creation or maintenance of records relating to the case will be contacted and all pertinent records provided. If records are subpoenaed, the Chancellor and the Archivist/Records Manager will be contacted prior to any action.

These policies and procedures seek to insure the integrity and content security of the record, whatever its format. Content security refers to the principle of protection against destruction, disclosure, modification or breach of confidentiality of information contained in a record. Limited access protects the confidentiality and/or privileged elements intrinsic to the record. In addition, these policies and procedures attempt to bridge canon and civil laws in order to protect and limit access to confidential records and to protect the principle of religious freedom.

Definitions from the Random House Unabridged Dictionary, 2nd ed., 1987.

**CONFIDENTIAL:** Spoken, written, acted on, etc. in strict privacy or secrecy; secret.

**CONFIDENTIAL COMMUNICATION (LAW):** A confidential statement made to a lawyer, doctor or pastor or to one's husband or wife, privileged against disclosure in court if the privilege is claimed by the client, patient, penitent or spouse. Also called *PRIVILEGED COMMUNICATION*.

**PRIVATE:** 1. Belonging to some particular person. 2. Pertaining to or affecting a particular person or a small group of persons. 3. Confined to or intended only for the persons immediately concerned; confidential. 4. Personal and not publicly expressed. 5. Removed from or out of public view or knowledge; secret. 6. Not open or accessible to the general public.....

**PRIVILEGED:** 1. Restricted to a select group or individual. 2. (Law) (of utterances or communications) a. not rendering the person making them liable to prosecution for libel or slander, in view of attendant circumstances. b. not requiring any testimony concerning them to be presented in court.

**FIDUCIARY:** 1. A "person" to whom property or power is entrusted for the benefit of another.. 2. Adj. (Law) of or pertaining to the relation between a fiduciary and his or her principal. 3. Of, based on, or in the nature of trust and confidence, as in public affairs a fiduciary obligation of government employees.



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### **SACRAMENTAL RECORDS ACCESS POLICY**

The Diocese of Utah Archives is the repository for the sacramental records (parish registers) of closed churches in the Diocese and for confirmation records for which the Bishop's Office is the Office of Record.

Sacramental records are both public and private in nature. Baptisms, confirmations, marriages, and burials are recorded to document sacred acts and are, as such, private records. Sacramental records are also private because the information they contain is often confidential and are created with the presumption of privacy.

Sacramental records are not civil records. They are, however, sometimes treated as civil records because they are accepted as valid evidence when the appropriate civil record does not exist. The passage of time, however, affects the sensitivity of these records and the need for restricting their use diminishes. Therefore, public access to sacramental records is unrestricted to those created eighty (80) or more years ago.

Access to information contained in sacramental records created less than eighty (80) years ago is, however, restricted to the individual or individuals named in the record as having received the sacrament; the Episcopal clergy or his delegate involved in canonical procedures; the parents of the subject if the subject is a minor; and government agencies (such as Social Security) who present a signed release from the individual whose record is requested. An exception may be made - at the discretion of the Archivist with the advice of the Bishop and/or the Chancellor - for the immediate family of an individual named in the record if that individual is deceased.

See also: *Confidential Records - Policies and Procedures*.

Requests for information must be made in writing and signed by an authorized party as detailed above. Identification may be requested. Once right to access has been determined, the Archivist will issue a letter in which the information as it appears in the record is transcribed and will affirm its authenticity.

If a person representing a civil authority (law enforcement, court official, lawyer, etc.) requests a record for civil or legal purposes, that person will be referred to the Chancellor who will handle the request.

*Or Archivist Designate, the Executive Officer of the Diocese, or the Bishop Diocesan.*

### **DIOCESE OF UTAH APPLICATION FOR USE OF THE ARCHIVES**

Permission to use archival material will be granted to qualified researchers upon completion of this application form and agreement to abide by the following rules governing the use of the Diocese of Utah Archives. Such permission is granted subject to whatever restrictions may have been placed on the materials by the donor or the Diocese of Utah. Once permission has been granted, access to the Archives will be arranged by appointment with the Archivist.

**PROTECTION OF THE MATERIAL:** A researcher is responsible for safeguarding materials made available to him/her by the Archives. Materials may not be removed from the Archives. Original order of the materials must be maintained. The use of any kind of pen is prohibited. Papers may not be written on, folded or handled in any way that may cause damage. Cotton



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gloves will be worn while handling photographs. Eating, drinking and smoking are prohibited in the Archives.

**PERMISSION TO PUBLISH:** Permission to examine materials is not an authorization to publish them. Separate written application for permission to publish must be made to the Diocese of Utah Archives. Researchers who plan eventual publication of their work should make inquiry concerning overall restrictions before beginning their research. In granting permission to publish, the Diocese of Utah is not granting exclusive rights to the publication of the materials. One copy of all publications in which the Archives is cited as the source of material in the publication should be presented to the Archives upon publication.

The Diocese of Utah, its officers, employees and agents, does not assume any responsibility for the infringement of copyright or for any other liability incurred by the user of materials in the Diocese of Utah archives.

**NOTE:** There are unpublished materials in the Archives for which the Diocese of Utah does not own the copyright.

**PHOTODUPLICATION:** The Archives will consider requests for photo duplication of material when such duplication does not violate copyright restrictions. Single copies will be provided for the researcher's personal reference use. Researchers will be responsible for any expense incurred. Photocopies and other reproductions remain the property of the Diocese of Utah Archives and the researcher may be required to return them. Permission is not granted to reproduce copies or to place these records on file in other repositories. Supplying a photocopy is not an authorization to publish. See also: *Photography Copying Agreement*.

**EXCLUSIVE RIGHTS:** Exclusive rights to examine or publish will not be granted

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APPLICATION FOR USE OF THE ARCHIVES

FULL NAME (PLEASE PRINT) ADDRESS PHONE

LOCAL ADDRESS LOCAL PHONE (IF DIFFERENT FROM ABOVE)

HOW LONG WILL YOU BE AT THE LOCAL ADDRESS? OCCUPATION WORK/SCHOOL ADDRESS PHONE

DESCRIPTION OF PROPOSED RESEARCH

ANTICIPATED FINAL RESULT FROM YOUR RESEARCH

I AGREE TO ABIDE BY THE RULES SET FORTH IN THE ABOVE DOCUMENT. In consideration of my being granted permission to use the material in the Diocese of Utah Archives, I agree to hold harmless the Diocese of Utah, its officers, employees and agents from and against all claims and actions arising out of my use of the Archives. I also warrant that I have read the rules governing the use of the Archives' materials.

SIGNATURE OF RESEARCHER DATE

Accepted by:

SIGNATURE OF ARCHIVIST DATE



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### PHOTOGRAPH COPYING AGREEMENT

I, \_\_\_\_\_, agree that the photographs and/or negatives in my possession and described below are property of the Diocese of Utah. I will not use them for commercial purposes or allow anyone to use them while in my possession for commercial purposes.

I will see that the ownership of these images is made clear to anyone in the future to protect the rights of the Diocese of Utah.

I will see that the photographs are marked:

Photograph courtesy of the Diocese of Utah, Copyright \_\_\_\_\_

For copies of this photograph, please contact the Archivist of the Diocese of Utah

And will request permission to copy from the Diocese of Utah.

DESCRIPTION:

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

*Or Archivist Designate, the Executive Officer of the Diocese, or the Bishop Diocesan.*