

FILE RETENTION

What is the canonical obligation to retain files concerning complaints against clergy that have not been addressed in a penal process?

OPINION

The 1917 Code allowed for documents to be destroyed in criminal cases when the defendant had died or when ten years had passed from the time of the condemnatory sentence.¹ In such cases a brief summary of the facts and the text of the definitive sentence were to be retained.

In 1941, the Code Commission was asked to clarify canon 379 §1 and whether a brief summary of the facts needed to be retained when the accused had died:

Whether the words of canon 379 §1 *retento facti brevi summario cum textu sententiae definitivae* [retaining only a brief summary of the facts, with the text of the definitive sentence], are to be applied only to cases which have been closed by a condemnatory sentence for ten years, or also to cases in which the accused have departed this life.

Reply. In the affirmative to the first part, in the negative to the second.²

The reply of the Code Commission clarified the law so that a brief summary of the facts of a case were not kept when the accused had died.

The secret archives and the retention of documents were then both addressed by canon 489 of the 1983 Code:

Canon 489 §1. In the diocesan curia there is also to be a secret archive, or at least in the common archive there is to be a safe or cabinet, completely closed and locked, which cannot be removed; in it documents to be kept secret are to be protected most securely.

¹ *CIC/17*, c. 379 §1. Bishops shall also have another secret archive or at least a safe or box, entirely closed and covered, in the common archive, from which place it cannot be moved. In it secret writings are to be most cautiously preserved; but promptly once a year, documents in criminal cases are to be burned in morals cases, [or] in which the defendant has died or ten years have passed from the condemnatory sentence, retaining only a brief summary of the facts, with the text of the definitive sentence.

² Code Commission, Reply, 5 August 1941, "Secret Diocesan Archives: When Summary of Destroyed Papers Need Not Be Kept," August 5, 1941, *AAS* 33 (1941) 378; *CLD* 2:132.

§2. Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained.

The text of canon 489 is less detailed than canon 379 of the 1917 Code. Each diocese is obliged to have a "secret" or very confidential archive or safe for confidential documents including those relating to penal remedies such as warnings and corrections given to clergy for misconduct. Gordon Read considered that the retention of a summary of the facts only applied where there has been a definitive sentence and did not apply in the case where the accused has died.³ However, Barbara Cusack argues for the retention of a summary of the facts even when the accused has died because of its value for historical purposes and the delay in reporting accusations of sexual abuse.⁴

Royal Commissions and Grand Jury investigations often encounter the destruction of documents. Individual bishops and leaders of religious institutes are asked to explain the reasons why a file or documents were destroyed. These bishops and religious leaders are also sometimes asked if they have policies for document retention. The *Australian Royal Commission into Institutional Responses to Child Sexual Abuse* in 2017 recommended:

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to remove the requirement to destroy documents relating to canonical criminal cases in matters of morals, where the accused cleric has died or ten years have elapsed from the condemnatory sentence. In order to allow for delayed disclosure of abuse by victims and to take account of the limitation periods for civil actions for child sexual abuse, the minimum requirement for retention of records in the secret archives should be at least 45 years.⁵

In February 2020 the Holy See responded to the Recommendation pointing out that civil legislation in various jurisdictions varies greatly concerning the right to privacy and the retention of records and their disposal. The response of the Holy See went on to draw attention to the fact that:

³ Gordon Read, *Letter and Spirit*, 272.

⁴ Barbara Cusack, *New American Commentary*, 643.

⁵ the royal commission into institutional responses to child sexual abuse, *Final Report, 2017*, https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_16_religious_institutions_book_1.pdf.

The provision concerning the destruction of documents applies only in cases "where the guilty parties have died or ten years have elapsed from the condemnatory sentence", that is, only in those cases that have already been concluded with the sentence of a tribunal or that are extinguished by death. It should also be noted that even when documentation is destroyed, "a brief summary of what occurred along with the text of the definitive sentence is to be retained" (CIC, can. 489, §2; CCEO, can. 259, §2).⁶

The Holy See's response is very significant because it points out that the destruction of documents is contrary to canon law and is not to happen until either the accused has died, or ten years have elapsed since the sentence judging the accused is guilty. In those circumstances "a short summary of the facts and the text of the definitive judgment are to be kept."⁷ Since the Australian Royal Commission proved that it takes complainants on average thirty three years to come forward and complain about the abuse they suffered as minors, records need to be retained for a very long period of time to enable victims to receive justice and to have a proper investigation of allegations of abuse.

The legislator is concerned that documents in the secret archive might be destroyed during the time the see is vacant, so canon 490 notes only the diocesan administrator himself is to access the secret archives during the vacancy of the see.⁸

To ensure the safe retention of documents canon 491 provides for two copies of inventories or catalogues.⁹ In the past, key documents concerning misconduct and criminal behaviour were destroyed in violation of canon law. This canon allows for a document retention policy and a records disposal schedule that all dioceses should have, taking into account the requirements of civil law. These documents should specify that records, notes and interviews concerning unresolved complaints need to be retained.

6 Holy See, "Observations of the Holy See," Prot. No. 484.110, in "Responses to Australia's Royal Commission on Child Sexual Abuse," *Origins*, 50/17 (September 17, 2020) 271-276.

7 Francesco Coccopalmerio, *Exegetical Commentary*, vol. 11/1, 1160.

8 *CIC*, c. 490 §1.

9 *CIC*, c. 491 §1. A diocesan bishop is to take care that the acts and documents of the archives of cathedral, collegiate, parochial, and other churches in his territory are also diligently preserved and that inventories or catalogs are made in duplicate, one of which is to be preserved in the archive of the church and the other in the diocesan archive.

The bishop should retain all files while the accused cleric is still alive and the complaint has not been resolved by a definitive sentence. A copy of the definitive sentence and a summary of the facts are to be retained in all cases.

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