

1. Federal Archives Act

Law on the Preservation and Use of Federal Archival Documents (Bundesarchivgesetz - BArchG) of 6 January 1988 (BGBl. I S. 62), as amended at last by the Freedom of Information Law of 5 September 2005 (BGBl. I S. 2722)

§ 1

Federal archival documents are to be permanently preserved, made available for use and scholarly exploited by the Federal Archives.

§ 2

(1) Federal constitutional bodies, agencies and courts, Federal corporations, public institutions and foundations under public law as well as other Federal agencies shall offer all documents, which they no longer need for fulfilling their public duties including the safeguarding of the security of the Federal Republic of Germany or one of its States, to the Federal Archives. In cases in which the provisions of paragraph 3 apply the agencies shall offer the documents to the responsible State Archives. Documents that have a permanent value pursuant to article 3 shall be transferred as Federal archival documents to the competent Federal or State Archives. If the disclosure would mean a violation of the secrecy of correspondence, posts and telecommunications, these documents shall not be subject to the obligation of offering. Federal legislation by which duties pursuant to article 1 were transferred to other agencies shall not be affected.

(2) Legislative bodies decide on their own responsibility whether documents shall be offered and transferred.

(3) Documents of subordinate Federal agencies the regional responsibility of which does not cover the whole region of validity of this Law shall be offered and transferred to the responsible States archives in agreement with the highest responsible Federal authority, if State legislation guarantees the protection of legitimate interests of third persons pursuant to paragraph 4 and the articles 4 and 5. The highest responsible authority has the right to offer and transfer such documents to the Federal Archives, if there is a justified Federal interest in this course of action.

(4) Documents which

1. are subject to article 30 of the Fiscal Code (Abgabenordnung), article 35 of the First Volume of the "Social Code" (Erstes Buch Sozialgesetzbuch), article 32 of the Law on the Federal German Bank (Gesetz über die Deutsche Bundesbank) or article 9 of the Act on the Credit System (Gesetz über das Kreditwesen) or
2. are subject to Federal legal provisions concerning secrecy other than those mentioned under no. 1 shall be offered and transferred.

From the moment at which the documents are transferred the Federal Archives shall observe the legitimate interests of persons concerned to the same extent as the agency had to do before. In particular, the archives shall observe the provisions on processing and securing of person-related data which apply to the transferring agency.

(5) In so far as uniform documents that occur in large quantities have a permanent value pursuant to article 3, the kind and the extent of the documents to be transferred to the competent archives shall be determined in advance as a matter of principle in agreement with the agencies defined in paragraph 1. In the case of machine-readable records, the method of transferring shall also be agreed upon. It shall comply with the generally recognised technological practices. If such documents which have been offered to the competent archives are not taken over within four months, the agency offering them shall not be obliged to keep them for further storage.

(6) Documents which in the opinion of the agencies mentioned in paragraph 1 and of the competent archives are of manifestly little importance need not to be offered.

(7) Legal provisions governing the obligation to destroy documents shall not be affected.

(8) Documents within the meaning of this Law are paper files, single written papers, maps, plans as well as data, pictures, film, sound and other records which are produced by the Federal agencies mentioned under paragraph 1, by agencies of the German Democratic Republic, by agencies of the zones of occupation, the Deutsches Reich or the Deutsche Bund or have become their property or else have been deposited for use.

(9) Documents within the meaning of this Law also are those produced by the United Socialist Party of Germany, by organisations or legal persons affiliated with this party as well as by mass organisations of the German Democratic Republic in so far they refer to the persuance of state functions. This shall also apply to other parties of the German Democratic Republic or organisations and legal persons affiliated with them.

(10) The Federal Archives shall advise Federal agencies designated in paragraph 1 on the management of their records.

§ 2a

(1) Under the name "Foundation on Archives of Parties and Mass Organisations of the GDR" ("Stiftung Archiv der Parteien und Massenorganisationen der DDR") a non-independent foundation under public law is established within the Federal Archives. The Foundation comes into existence by a decree of the Federal Minister of the Interior.

(2) The Foundation shall take over, permanently preserve, make available for use and complete documents produced by agencies mentioned under article 2, para. 9. This shall also apply to other thereto corresponding documents, materials and library holdings on German history, in particular on the history of the German and international labour movements.

(3) Documents pursuant to article 2, para. 9 are to be transferred to the Foundation as its property. As far as other documents, materials and library holdings are concerned, special contracts are to be made with the owners.

(4) The 30 years' term of protection specified under article 5, para. 1, sentence 1 shall not be applied to holdings of the Foundation. Otherwise, the use of documents of the Foundation is to be regulated in pursuance to article 5, para. 1, last sentence and paras. 2, 5 and 6 by the decree mentioned.

§ 3

The Federal Archives, after consultation with the offering agency, shall decide on the permanent value of the documents for the research in or the comprehension of German history, the protection of the rightful concerns of citizens or the provision of information for legislation, administration or jurisdiction.

§ 4

(1) Legal claims of persons on the destruction of personal data concerning themselves shall not be affected.

(2) Upon request, the persons concerned shall obtain information on the data relating to themselves in the archival documents to the extent that these documents are indexed by names. Instead of giving information, the Federal Archives may grant access to the documents in question.

(3) In cases where person-related data prove to be incorrect, this fact shall be mentioned in the documents or shall otherwise be recorded. If a person concerned contests the correctness of personal data he or she shall have the opportunity to make a counter-statement. The competent archives shall be obliged to add the counter-statement to the documents. Such a counter-statement can also be demanded by the heirs of the person concerned, if they put forward a legitimate interest.

§ 5

(1) Everybody shall upon application have the right to use Federal archival documents more than 30 years old unless legal stipulations provide otherwise. Any further legal stipulations and special agreements for the benefit of owners of private archives shall not be affected.

(2) Federal archival files which refer to private individuals may be used by third persons only 30 years after the death of the person concerned. If the year of death cannot be ascertained or can only be ascertained with an unjustifiable effort the term of protection expires 110 years after the birth of the person concerned.

(3) Archival documents pursuant to article 2, para. 4 may only be used 60 years after they were prepared. This term of protection does not apply to documents originating from the time prior to 23 May 1949 the use of which is indispensable to carry out specified scholarly research projects or to pursue legitimate concerns.

(4) The terms of protection specified in paras. 1 to 3 do neither apply to documents that were intended for publication when under preparation nor to archival documents which prior to their transfer to the Federal Archives or the archives' sections of the legislative bodies were already accessible under the Freedom of Information Law.

(5) The term of protection pursuant to para. 1, first sentence, may be shortened if para. 6 does not provide otherwise. The terms of protection pursuant to para. 1, first sentence and para. 2 may be shortened after approval of the person concerned. If the person concerned has not given his or her approval, the terms of protection pursuant to para. 1, first sentence and para. 2 may be shortened if use of the documents is indispensable for scholarly research projects or

for the pursuance of legitimate concerns predominantly of interest for another person or agency and if it can be precluded by appropriate measures, in particular by anonymized reproductions, that interests warranting protection are not impaired. The terms of protection pursuant to para. 1, first sentence and para. 2 may be shortened in case of persons of public interest and office-holders in pursuance of their duties, if the legitimate concerns of the person are taken into consideration appropriately. The terms of protection pursuant to para. 1, first sentence and para. 3 may be extended by a maximum of 30 years in so far as this lies in the public interest. If the archival documents were prepared by one of the Federal agencies mentioned in article 2, para. 1, shortening or extending the terms of protection shall require the approval of this agency.

(6) Use shall not be allowed if

1. there is a reason to assume that the wellbeing of the Federal Republic of Germany or one of its States would be put at stake, or
2. there is reason to assume that legitimate concerns of third persons conflict with it, or
3. the physical preservation of the archival documents would be at risk, or
4. administrative work would arise which could not be justified, or
5. the obligation of secrecy pursuant to article 203, para. 1 to 3 of the Penal Code or other Federal legal provisions on secrecy would be infringed.

(7) The use of documents which have been subject to the obligation of secrecy pursuant to article 203, para. 1 or 3 of the Penal Code may be restricted or prohibited to the extent that this is necessary to protect the interests warranting protection of persons concerned. This applies to documents pursuant to para. 3, second sentence, too.

(8) If documents are used which are older than 30 years and are still subject to the power of disposal of the agencies mentioned in article 2, para. 1, the paras. 1 to 7 shall apply *mutatis mutandis*. However this does not apply to documents which will not be taken over by the Federal Archives pursuant to article 2, paras. 5 and 6.

(9) The interlinkage of personal data is permissible only in cases in which the interests warranting protection of persons concerned are not impaired.

§ 6

The member of the Federal Government in charge of Culture and Media Affairs is authorized to issue a legal ordinance which does not require the approval of the Federal Council so as to

1. regulate the conditions of access to archival documents in the Federal Archives
2. lay down provisions governing fees and expenses for the use of such documents.

The fees shall be determined with respect to the purpose of research according to the costs of personnel and material the Federal Archives has to cover.

§ 7

The Federal Government may assign to the Federal Archives other Federal tasks than those mentioned in the present Law or in other Laws in so far these tasks have a relevant connection with Federal Archives' functions or research into German history.

§ 8

Documents containing information on the financial situation of a third person or containing business secrets of others which are subject to the tax secrecy pursuant to the Fiscal Code (Abgabenordnung) may also be offered and transferred by public agencies other than those mentioned in article 2, para. 1 to the competent public archives for archiving. For the use of the documents those provisions of this Law which apply to the documents pursuant to article 2, para. 4, no. 1 shall apply correspondingly.

§ 9

Civil servants and persons working in public archives who are under a special obligation to the public service are subject to all provisions for secrecy applying to staff of the agencies which transfer the documents, in particular article 30 of the Fiscal Code (Abgabenordnung), article 203, para. 2 and article 355 of the Penal Code (Strafgesetzbuch), article 32 of the Law on the Federal German Bank (Gesetz über die Deutsche Bundesbank) and article 9 of the Law on the Credit System (Gesetz über das Kreditwesen).

§ 10

The tenth volume of the "Social Code" (Zehntes Buch Sozialgesetzbuch) (Article 1 of the Act of 18 August 1980, Federal Law Gazette I, page 1469), last amended by Chapter II Article 17 of the Act of 4 November 1982 (Federal Law Gazette I, page 1450) is to be amended as follows:

1. Article 71 is to be amended as follows:

a) The words "obligations to notify" are to be replaced by the word "obligations."

b) The following sentence 2 will be added to para. 1:

"A disclosure of personal data is allowed to the extent that this is necessary for observing the legal obligations for the preservation and use of archival documents pursuant to articles 2 and 5 of the Law on the Preservation and Use of Federal Archival Documents (Bundesarchivgesetz) or corresponding legal provisions of the States (Länder) which do not fall short of the terms of protection of this Law."

2. Article 76, para. 2 shall be worded as follows:

"(2) para. 1 shall not apply

1. in accordance with the provision of article 69, para. 1, no. 1 for personal data which have been made accessible in connection with the assessment for social insurance benefits being granted or on account of the issue of certification unless the person concerned contradicts the disclosure,

2. in accordance with the provision of article 71, para. 1, sentence 2."

3. In article 84, the full stop shall be replaced by a semicolon and the following words shall be added:

"Article 71, para. 1, sentence 2 shall not be affected."

§ 11

Documents that are subject to Federal legal provisions on secrecy other than those mentioned in articles 8 and 10 may be offered for use and transferred to public archives by agencies other than those mentioned in article 2, para. 1 provided that the interests of the persons concerned warranting protection are taken account of pursuant to articles 2 and 5 of this Law.

§ 12

(has become obsolete)

§ 13

(effective date)

[The Law on the Preservation and Use of Federal Archival Documents in its original version came into effect on 15 January 1988.]

Source:

<http://www.bundesarchiv.de/bundesarchiv/rechtsgrundlagen/bundesarchivgesetz/index.html>

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