

Cataloguing infanticide case files

Paper for discussion by the Cataloguing Panel on 7 February 2024

[name redacted under section 40(2) of the FOI Act], Head of Archival Practice and Data Curation and Chair of the Cataloguing Panel

Question for the Cataloguing Panel:

Our current practice is to withhold the names of women charged with infanticide from the published catalogue descriptions of closed files during their lifetimes.

Do panel members recommend continuing with this practice or changing it? Why?

Prompt for this discussion

A member of the public asked why defendants' names had been withheld from the catalogue descriptions for criminal case files relating to infanticide. He was dissatisfied with the response from Your Views and requested a review. He contends that:

- There is no reasonable justification for withholding the names from publication
- Withholding the names is deliberately sexist, unfairly favouring women over men (for example, men accused of rape)
- Withholding the names unreasonably impedes researchers from accessing part of The National Archives' collections

The Quality Manager discussed the query with several managers in other teams and agreed to ask the Cataloguing Panel for our collective view. This is because it is within our remit to provide expert input into the development of relevant policies and practices. Our remit also includes advocating for best practice in cataloguing and reviewing user feedback where appropriate.

Our discussion should acknowledge that this is a sensitive and emotive topic.

General background information about our practices

Closed descriptions

We publish most catalogue entries online in full, regardless of whether the record is open or closed. Sometimes, however, publishing the full description would contradict the reason for closing the record.

In such cases, the catalogue entry is marked with the closure status 'Closed or Retained Document, Closed Description' and an alternative to the full description is published instead. Where possible, this is a transparently redacted description, with sensitive portions of the original replaced with a suitable phrase in square brackets, such as '[name withheld]'.

In such instances, the full description is published when the record comes open. In some cases, the full description may be published in advance of the record coming open, if the reasons for withholding it no longer apply.

Full versions of redacted catalogue descriptions are maintained securely in the Closed Master and accessible only to a limited number of staff members.

Where a closure period is based on a person's lifetime, we assume a lifetime of 100 years by default. We do not proactively cross-check against death registers or other records to establish whether the person has died.

Maintaining an online catalogue reflects user expectations, the needs of our public services and a strong professional norm, rather than any direct legal obligation. There is no absolute requirement to publish specific information online within a catalogue entry. Conversely, there may be specific legal reasons not to publish some information (e.g. because it is sensitive personal data or because it is defamatory). We strive for good practice and transparency within the law.

Cataloguing of criminal case files in general

Criminal case files are catalogued by the names of the defendants and the offences with which they were charged. Specific guidance on cataloguing such files in preparation for transfer to The National Archives has been agreed with the Ministry of Justice and the Crown Prosecution Service. Case files from the Director of Public Prosecutions are typically catalogued in slightly more detail than case files from the criminal courts.

For cases within the past century, the Note field of the catalogue includes a statement that the naming of the defendant does not imply guilt. This is because

we do not always know whether the defendant was found guilty or whether a conviction was later overturned. In response to user feedback, this practice was discussed and endorsed by the Cataloguing Panel in 2020.

The names of defendants are usually included in the published catalogue entries for both closed and open criminal case files. This is in line with the principles of open justice and information having been made public at the time of a trial. The Takedown Panel has rejected several requests to have living defendants' names redacted in catalogue entries.

For cases that went to trial, the offences as stated in the catalogue entry should match those for which the defendants were tried. We are strict about this because stating the offence incorrectly is misleading and (for living defendants) could be defamatory.

In certain circumstances, our established practice is not to publish defendants' names, either during their lifetimes or during the victims' lifetimes. As well as infanticide cases, these include:

- Juvenile defendants
- Incest cases (where defendants' names are withheld to avoid identifying victims of sexual offences)
- Male defendants charged with sexual offences likely to have been subsequently decriminalised and any convictions disregarded; this is complex because the facts are not always obvious from the stated charges

Policy files and other records that are not criminal case files may in some instances mention individual defendants by name. Catalogue descriptions for policy files do not normally include the names of individual defendants.

Current practice for cataloguing criminal case files was discussed with and endorsed by the Executive Team in November 2021.¹

Challenging the closure of records

A member of the public who wants to view a closed record can make a Freedom of Information request. Such requests are considered individually within a strict and complex legal framework.

¹ See [the ET paper](#) and [a background paper](#) with additional detail.

Requests may be made by specifying a specific record by its catalogue reference. Requests may also be made by asking whether we hold certain information, without specifying a catalogue reference.

The National Archives also has established processes for considering:

- Reclosure, i.e. previously open records becoming closed
- Takedown, i.e. removing information previously published online, including in catalogue entries
- Suggested corrections to catalogue entries

The meaning of infanticide

In English and Welsh law, the word infanticide applies only in cases where:

- a mother is responsible for the death of her biological child, and
- the child is under 12 months old, and
- the balance of her mind was disturbed for reasons connected to birth or lactation²

It is a distinct offence but also offers a partial defence to a charge of murder or manslaughter.

A charge of infanticide is not automatic or inevitable. The criminal justice system allows for – and sometimes uses – charges of murder or manslaughter where the defendant and victim are mother and baby.

The offence of infanticide was created by the Infanticide Act 1922. The current definition dates from the Infanticide Act 1938, as modified by subsequent legislation, but the three key aspects (identity of the defendant, age of the victim and an aspect of mental imbalance) have applied since 1922. Before 1922 there was no distinct offence of infanticide.

² See also these online articles by legal experts: <https://www.counselmagazine.co.uk/articles/100-years-of-the-infanticide-act>; <https://insights.doughtystreet.co.uk/post/102ipk5/mothers-who-kill-a-look-at-infanticide>

Nobody except the biological mother may be charged with or convicted of infanticide. This means that the offence can only be committed by women.³

Current practice for cataloguing infanticide case files

As noted above, our current practice is not to publish the defendant's name during her lifetime. This is because:

- A charge of or conviction for infanticide is only possible where the defendant's mental health is relevant to what took place
- Stating that a woman was investigated for, charged with or convicted of infanticide is in itself a statement about her mental health
- We should not be publishing sensitive personal information about an individual's mental health in our online catalogue during the person's lifetime

A staff member in our FOI Centre undertook a project in 2018 to establish consistency in the closure status of infanticide case files and in whether names were withheld from their descriptions. This work was discussed and approved by both the Reclosure Panel and Takedown Panel.

Infanticide case files typically contain sensitive personal information about the defendant and other family members (which may include siblings of the victim) and a significant amount of distressing detail. Because of this, they typically have long closure periods, often of 75 to 100 years after the date of the last paper in the file. This may be significantly longer than the defendant's anticipated lifetime.

In some instances, the name of a deceased defendant has been published in the catalogue whilst the file remains closed. However, we do not have a means of identifying systematically when defendants are likely to be deceased. Their dates of birth have not been captured when cataloguing. It would not be practicable for us to identify cases where the defendant was born 100 years ago and proactively add their names to the catalogue descriptions for closed records.

³ It is possible that a transgender man who has given birth would be recognised as both legally male and as his child's mother. We do not know of any instances in our records where a transgender person was directly involved in an infanticide case.

There are no instances where the name is withheld from the catalogue description of an *open* criminal case file relating to a charge of infanticide.

Any use of the word 'infanticide' in catalogue entries for records dated earlier than the 1922 Act does not have the same implication about mental health. It is, however, highly unlikely that any adult woman responsible for the death of her baby before 1922 would still be alive in 2024.

Points to consider

1. Is there a solid justification for withholding the names from publication?
2. Is there a clear reason why this only applies to the names of women?
3. Is there a mechanism for members of the public to challenge the withholding of a name from publication in a specific instance?