

Archives Advice 3

**Recommended Restricted Access
Periods for Government Archives**

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For information and advice, please contact

NT Archives Service
GPO Box 874
Darwin NT 0801

Telephone: (08) 8924 7677
Facsimile: (08) 8924 7660
Website: <http://www.nt.gov.au/dcis/nta/>

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DEFINITIONS

Appraisal	The process of evaluating business activities to determine which records need to be captured and how long the records need to be kept to meet business needs, to maintain organisational accountability and community expectations.
Archive	A record of permanent value that forms part of the Territory Archives. ¹
Disposal	A range of processes associated with implementing authorised decisions about records retention, destruction, rearrangement, migration or transfer of custody or ownership.
Disposal schedule	A formal policy, authorised jointly by the Chief Executive of an NT Government public sector organisation and the NT Archives Service, that defines the temporary or permanent status, retention period and consequent disposal actions authorised for classes of records.
Open access period	The period during which the public can routinely access government archives held in the custody of the NT Archives Service. The open access period begins after the end of the restricted access period.
Permanent records	Records of permanent value which are in the custody of a public sector organisation. When permanent records are transferred into the custody of the NT Archives Service, they are considered an archive and form part of the Territory Archives (see <i>Archive and Territory Archives</i>).
Public sector organisation	An agency as defined in s.5 of the <i>Information Act</i> .
Record	Recorded information in any form (including data in a computer system) that is required to be kept by a public sector organisation as evidence of the activities or operations of the organisation, and includes part of a record and a copy of a record.
Responsible public sector organisation	Public sector organisation (as defined above) that is responsible for the function to which the record or archive relates.
Restricted access period	The period during which decisions on access to government archives held in the custody of the NT Archives Service are made by the public sector organisation responsible for the archives (s.144 of the <i>Information Act</i>).
Series	Those records or archives having the same provenance which belong together because: <ul style="list-style-type: none">▪ they are part of a discernible filing system (alphabetical, numerical, chronological, or a combination of these);▪ they have been kept together because they result from the same activity, or▪ they are of similar formats and relate to a particular function. A series may consist of only one item. ²
Territory Archives	Records held on behalf of the Territory by the archives service. ³

¹. s. 4 *Information Act*

². Judith Ellis (ed.) *Keeping Archives 2nd Edition*, (Australian Society of Archivists and DW Thorpe, Melbourne 1993), p.479

³. s. 4 *Information Act*

INTRODUCTION

Access to government archives held by the NT Archives Service is determined in accordance with Section 142 of the *Information Act*.

The *Information Act* provides for the transfer of permanent records to the NT Archives Service, where they become part of the Territory Archives. Territory Archives are preserved for their value to the government and the community.

All government archives must be open for public access eventually. The **open access period** is the period during which the public may access the archives. Public access to government archives is restricted prior to the open access period.

The **restricted access period** for government archives in the custody of the NT Archives Service is the period during which decisions on access are made by the public sector organisation responsible for the archives.

The restricted access period is negotiated by the Chief Executive Officer of the responsible public sector organisation and the NT Archives Service at the time of transfer of the records (s.142 (1) of the *Information Act*). An Access Agreement defines when an archives series will be open to the public (see *Archives Advice 1: Access Agreements for Government Archives*).

The *Information Act* provides for an open access period for government archives commencing 30 years after their creation. If it is in the public interest a 45-year restricted

access period may apply. Further extensions of ten-year periods are permissible if it is in the public interest. However, all government archives must be open after a maximum restricted access period of 100 years.

Decisions about access to government archives during the restricted access period are made by the responsible public sector organisation (see *Archives Advice 4: Public Access to Government Archives in the Restricted Access Period*).

DETERMINING OPEN ACCESS PERIOD

Determination of the restricted access period for government archives should be made with the view to making archives available to the public. This is consistent with the intent of the *Information Act* which is to make government information available unless it is in the public interest to restrict access, or for the protection of privacy. In the majority of cases, government archives will be opened after a restricted access period of 30 years.

A decision should be made with the presumption that government archives will be open to the public after 30 years. However, an appropriate balance needs to be met between providing public access to archives and any other public interests which may support a longer restricted access period.

When determining the open access period for government archives, the public interest is the factor that must be considered. The general right of access to government information as stated in Section 3.(1) (a) (ii) of the *Information*

Act is: "...limited only in those circumstances where the disclosure of particular information would be contrary to the public interest because it's disclosure would have a prejudicial effect on essential public interests or on the private and business interests of persons in respect of whom information is held by public sector organisations".

ACCESS AGREEMENTS

Access agreements are negotiated between a public sector organisation and the NT Archives Service for each archives series transferred to the NT Archives Service. The Access Agreement will define the open access period. The *Information Act* provides for an open access period commencing 30 years after the date of creation or, if it is in the public interest, 45 years after the date of creation.

When it is in the public interest for an archives series to be restricted for a longer period, the responsible public sector organisation may request an extension of the restricted access period of up to 10 years.

In preparing an application for an extension of the restricted access period, the public sector organisation should review the previous determinations and consider whether the restrictions still apply with the passing of time.

Further extensions of up to 10 year periods are permissible if it is in the public interest. However, all government archives must be open for public access after a maximum restricted period of 100 years (see *Archives Advice 1: Access Agreements for Government Archives*).

PUBLIC INTEREST ISSUES TO CONSIDER

The following points may be considered aspects relating to the public interest which affects the open access of archives after 45 years or longer:

- ▶ Sensitive personal information, or information which unreasonably discloses personal affairs (not including publicly available information or information reasonably expected to be publicly available, eg name and address)
- ▶ Information which is protected under secrecy or confidentiality provisions in other legislation
- ▶ Information, the disclosure of which could jeopardise the future provision of information to a public sector organisation, particularly an organisation performing an investigatory function
- ▶ Information, the disclosure of which could compromise the security of a public sector organisation, an organisation regulated by the organisation or any other public sector organisation, or otherwise threaten the safety of any person
- ▶ Disclosure of information about an Aboriginal sacred site or Aboriginal tradition.

GOVERNMENT ARCHIVES RELATING TO INDIGENOUS PEOPLE

When determining the restricted access period for government archives relating to indigenous

people, the responsible public sector organisation will need to be aware of materials that may be considered offensive to Aboriginal and Torres Strait Islander peoples.

GOVERNMENT ARCHIVES RELATING TO CHILDREN

The maximum restricted access period should be considered for government archives of a sensitive and personal nature, which refer to children eg, legal records, court records, welfare records and medical records.

The restricted access period for any archives series relating to children should also take into account the date when the child would reach the age of majority and be considered an adult.

RECOMMENDED RESTRICTED ACCESS PERIODS

30 years

The standard restricted access period for the majority of government archives is 30 years. This allows for the lessening of sensitivity and confidentiality with the passing of time.

After 30 years, the release of low level personal information eg, name, address, date of birth, place of birth is no longer considered sensitive. Information that is publicly available or reasonably expected to be publicly available should be available on open access.

Some types of government archives which may be open for public access after 30 years include:

- ▶ Administrative correspondence
- ▶ Business records and commercial information
- ▶ Land and mining leases
- ▶ Police journals
- ▶ Local government records
- ▶ Primary production and fisheries records
- ▶ Ports and harbours records
- ▶ Survey and mapping records
- ▶ Water resources records
- ▶ School registers
- ▶ Prison registers
- ▶ Tourism records
- ▶ Railway and construction records
- ▶ Sporting records
- ▶ Housing records
- ▶ Cabinet records.

45 Years

Government archives which contain legal details may be restricted for longer than 30 years in the public interest due to the sensitive nature of the information recorded in them. A restricted access period of 45 years allows for the sensitivity of the archives to diminish. Some examples of government archives

containing legal information which may be restricted for 45 years include:

- ▶ Crown law records
- ▶ Inquest records
- ▶ Judicial functions, courts and tribunal records.

75 Years

Government archives which contain more detailed personal information may have a restricted access period of 75 years. These include:

- ▶ Law enforcement and public safety records
- ▶ Prosecution files
- ▶ Medical and psychiatric records
- ▶ Social welfare records.

100 years

The types of government archives which may have the maximum restricted access period of 100 years are considered highly sensitive and would have legislated requirements for their closure. Some examples are listed below:

- ▶ Adoption records
- ▶ Births, Deaths and Marriages records
- ▶ Aboriginal sacred sites or traditions records

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