

Archives Advice 1

**Access Agreements for
Government Archives**

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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 (refer to section “*How to prepare an access agreement*”).

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 (refer to section “*Public Access within the Restricted Access Period*”).

DETERMINING RESTRICTED 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. (see *Archives Advice 3: Recommended Restricted Access Periods for Government Archives*)

When determining the restricted 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".

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

Some types of 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.

Public Interest Issues to Consider

The following issues may be considered when assessing matters of public interest to open 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.

Some types of government archives which may have longer restricted access periods in the public interest are listed below:

- ▶ Adoption records
- ▶ Births, deaths and marriages records
- ▶ Information about an Aboriginal sacred site or Aboriginal tradition.

A public sector organisation may request an extension of the restricted access period of up to 10 years at a time. Further extensions of up to 10 year periods are permissible if it is in the public interest. However, all government archives must be available after a maximum restricted access period of 100 years.

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

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 relating to children should also take into account the date when the children would reach the age of majority and be considered an adult.

How to Prepare an Access Agreement

The NT Archives Service will issue a separate recommendation (*Form 1A Access to Government Archives: Recommended Restricted Access Period*) for each archives series to the responsible public sector organisation. The recommendation will include; the restricted access period, open access period, and reasons for the recommendation. An appendix will list any specific items within the archives series which are recommended for longer restricted access periods than the remainder of the archives series (*Form 1B Access to Government Archives: Recommended Restricted Access Period (Exceptional Items)*).

Where an archives series contains 50% or more of items which would be restricted for a longer period than the remainder of the archives series, the longer closure period should be applied to the entire archives series.

The public sector organisation is required to complete an Access Agreement for each archives series it has responsibility for which is held in the custody of the NT Archives Service (*Form 2A Access to Government Archives: Access Agreement*). In preparing the Access Agreement, the responsible public sector

organisation should review the range of information contained in the archives series, any additional legislation which may impact on the restricted access period for the archives series, and consider the most appropriate restricted access period.

Consideration should also be given to whether any specific items within the archives series may require a longer restricted access period in the public interest (*Form 2B Access to Government Archives: Access Agreement (Exceptional Items)*).

The public sector organisation should contact the NT Archives Service to discuss any questions or issues relating to the access period for the archives. The Access Agreement (with any attachments) must be signed by the Chief Executive Officer before submission to the NT Archives Service for joint approval.

Opening of Archives for Public Access

Prior to the end of the restricted access period for each archives series, the NT Archives Service will remind the responsible public sector organisation when the open access period is due to commence (see *Archives Advice 2: Implementation of Open Access Periods for Government Archives*).

Extension of Restricted Access Period

Upon notification that archives series is due to be opened to public access, the responsible public sector organisation may review the restricted access period. If it is in the public interest for the restricted access period to be

extended, the public sector organisation may submit a *Form 3A Access to Government Archives: Application for Extension of the Restricted Access Period*, including any exceptional items (*Form 3B Access to Government Archives: Extension of Restricted Access Period (Exceptional Items)*).

The public sector organisation may apply to extend the restricted access period for up to 10 years, if it is in the public interest. Further extensions may also be requested. However the maximum period that an archives series may be restricted is 100 years.

Public Access within the Restricted Access Period

During the restricted access period, if the archives have been specifically identified in the custody of the NT Archives Service, an application for access may be made to the responsible public sector organisation through the NT Archives Service. (see *Archives Advice 4: Public Access to Government Archives in the Restricted Access Period*)

Individuals may also request access through Part 3 (Access and Correction Rights) of the *Information Act*. Further information about Access to Government Information can be found on the website of the Office of the Information Commissioner (www.infocomm.nt.gov.au).

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- ▶ Archives Office of Tasmania
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- ▶ Queensland State Archives
- ▶ State Records of New South Wales
- ▶ State Records Commission of Western
Australia
- ▶ State Records of South Australia.

