



Australian Capital Territory
Territory Records Office
GUIDELINE

Guideline to Principle 7: Access Principle

**A resource for implementing
the
Standard for Records, Information and Data**

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INTRODUCTION

Records are evidence of business activity. The *Territory Records Act 2002* (the Act) defines them as ‘information created and kept, or received and kept, as evidence and information by a person in accordance with a legal obligation or in the course of conducting business’.

The Act allows the Director of Territory Records to approve standards for records management, which ACT Government organisations must comply with. The ACT Standard for Records, Information and Data was approved in 2016. It sets out seven principles for managing ACT Government records. This Guideline is intended to assist organisations to comply with the Access Principle.

While the term ‘record’ has a specific meaning, in practice it can at times be difficult to distinguish between records and other types of information or data. Although the Act only applies to records, its principles can be applied to all ACT Government information and data holdings. The Territory Records Office recommends this approach. If there is doubt as to whether ACT Government information or data meet the definition of a record, the standard should be applied.

The Access Principle

The Access Principle means ACT Government organisations must support principles of open government and begin from a position of openness in relation to access to ACT Government records information and data. They must manage their records, information and data in a way that supports openness, ensuring they remain accessible for as long as they are required to meet accountability, legislative and business requirements and community expectations. The Act provides that all ACT Government records that are 20 years old are available to the community, with Cabinet records being available after 10 years. A small range of exceptions are possible with the approval of the Director of Territory Records.

ArchivesACT provides a service on behalf of the ACT Government to assist the community to have appropriate access to Territory Archives. Public access to Territory Archives is essential in supporting cultural, historical and other research and maintaining a knowledge base for generations to come. By adhering to the Access Principle, ACT Government organisations will ensure records, information and data can be accessed and used by others for business and other purposes and also meet the cultural and historical requirements supported by the Act.

Complying with the Access Principle

There are three aspects to complying with the Access Principle:

- 1 Encouraging openness of records, information and data: ACT Government organisations must build a culture of openness in relation to their records, information and data. This includes developing policies and practices that do not unnecessarily restrict access, either by the public or by other areas of government.

- 2 Ensuring records, information and data can be found, accessed, used and re-used when appropriate: an organisation must plan and implement strategies to ensure records, information and data are made, managed and preserved in accessible formats for as long as they are required by Government or the community.
- 3 Enabling appropriate public access: organisations must establish open, equitable and consistent mechanisms to support members of the public to exercise their rights to access records, information and data.

For an organisation undertaking a comprehensive assessment of their records, information and data management, use the Territory Records Office's [Compliance Checklist Tool](#) in association with this and other guidelines to implementing the Standard for Records, Information and Data.

Further information

This guideline should not be read in isolation, as the Standard for Records, Information and Data comprises seven separate but inter-related principles. Each principle is supported by its own guideline.

Along with the seven guidelines, further information can be found in the following resources:

- *Territory Records Act 2002*
- *Freedom of Information Act 1989*
- *Information Privacy Act 2014*
- International Standard: ISO15489—Records Management part 1
- International Standard: ISO15489—Records Management part 2
- Chief Minister's Statement on Open Government
- ACT Government Open Data Policy
- ArchivesACT finding aids and research guides
- ArchivesACT research guides
- Territory Records Office *Records Advice* series

A list of relevant records advices can be found on the Territory Records Office website, or by contacting the Territory Records Office for more information.

ENCOURAGING OPENNESS OF RECORDS, INFORMATION AND DATA

ACT Government organisations must build a responsible culture of openness, transparency and accountability in relation to their records, information and data. This is in keeping with ACT Government commitments to One ACT Government, open government and open data, and supports the principles underlying the Freedom of Information and Territory Records Acts.

Openness and transparency

Principles of open government dictate that ACT Government records, information and data should be presumed to be available to the public unless there are strong reasons for restricting access to them. ACT Government organisations must build a responsible culture of openness and transparency with regard to their records, information and data that avoids unnecessarily restricting access, either by the public or across government.

In support of these principles, organisations should ensure that their policy statements, procedures and instructions relevant to records, information and data management wherever possible emphasise disclosure over restriction. Organisations should consider using websites and other mechanisms; including ACT government open data initiatives, to proactively provide public access to records, information and data where this is not prevented by other considerations such as security or privacy. See the [Strategy Principle](#) for further guidance.

Accountability

Accountability refers to the general principle that individuals, organisations and the community are responsible for their actions and may be required to explain their actions to others. Appropriately managed records, information and data are fundamental to explaining the actions undertaken by the ACT Government, and may be requested at any time by businesses, individuals, and ACT government employees.

ACT Government organisations must generate and support a culture of accountability. Strategies to support a culture of accountability can include emphasising the need for personnel and systems to capture full and accurate records of government business. This may be embodied in diverse areas including organisational policy statements, staff performance agreements, and information and communications technology procurement strategies and instructions.

Restrictions on access

There is a range of legislation, policies, standards and procedures that may require ACT Government organisations to restrict access to their records, information and data. Some of these, such as the *Freedom of Information Act 1989*, the *Information Privacy Act 2014* and the *Territory Records Act 2002*, are discussed further in this Guideline. ACT Government organisations should ensure that they understand the framework within which decisions about access to records should be made. This includes making proper assessments of requirements to restrict access, including organisation-specific requirements and broader obligations such as the Protective Security Policy Framework. Nevertheless, the default position must always be that records, information and data are broadly accessible across government and to the community unless there are strong reasons for restricting access.

ENSURING RECORDS, INFORMATION AND DATA CAN BE FOUND, ACCESSED, USED AND RE-USED WHEN APPROPRIATE

ACT Government records, information and data must be created and managed in such a way as to support and maintain their 'searchability', accessibility, and usability for as long as they are required by Government or the community. This includes ensuring that records, information and data are searchable and understandable, that requirements for their ongoing maintenance are documented and understood, and that they remain accessible for as long as needed.

Searchability, retention, access and use

Staff of an organisation must be able to quickly and efficiently identify, locate, retrieve and access records, information and data regardless of their location or format and for as long as they are needed. Making records easy to find and use will have a significant impact on the efficiency of an organisation. To make it easier and more efficient to access records, information and data, organisations must:

- provide descriptive and meaningful metadata for systems to ensure records, information and data can be found easily – see the [Describe Principle](#) for further guidance;
- ensure business systems do not continue to contain records, information and data that can be destroyed due to expired retention periods – see the [Retain Principle](#) for further guidance;
- develop procedures to ensure records, information and data are captured into endorsed locations so they are accessible for their full retention period – see the [Strategy Principle](#) and the [Protect Principle](#) for further guidance; and
- maintain registers or other indexes to their records, information and data, including by using electronic document and records management systems (EDRMS), and reporting as required to the Territory Records Office about their archival records – see the [Capability Principle](#) and the [Describe Principle](#) for further guidance.

Procedures must be in place for departing staff to ensure records, information and data in their custody are managed appropriately.

It is important to note that access to certain records, information and data may need to be restricted – refer to the [Protect Principle](#) for further guidance.

ENABLING APPROPRIATE PUBLIC ACCESS

Organisations must establish open, equitable and consistent mechanisms to support members of the public to exercise their rights of access to records, information and data. A range of legislation and policy statements influence the public's ability to access ACT Government records, information and data. These include the *Freedom of Information Act 1989*, the *Information Privacy Act 2014*, the *Territory Records Act 2002*, the Protective Security Policy and Framework and the Open Government policy.

Freedom of information Act

The *Freedom of Information Act 1989* gives individuals the right to request access to documents held by the ACT Government and ministers, and applies to records under 20 years old. Some exemptions exist, such as protection of the public interest, public safety or the private or business affairs of others. Each organisation is responsible for responding to *Freedom of Information Act 1989* requests and must have procedures and resources in place to manage and respond to requests.

The *Freedom of Information Act 1989* also gives individuals the right to ask for their personal information held by the Government to be amended if they believe it is incomplete, incorrect, out of date or misleading.

Information Privacy Act

The *Information Privacy Act 2014* puts in place a range of principles that protect the privacy of information about people in the ACT. Section 6 of the Information Privacy Act provides that it does not affect the operation of the Territory Records Act. This means that the Information Privacy Principles established under the Information Privacy Act do not prevent a record from being made appropriately available under the Territory Records Act. Personal privacy can still be protected in records that are more than 20 years old through an exemption from public access under section 28 of the Territory Records Act.

Territory Records Act

The *Territory Records Act 2002* requires that all ACT Government records become available for public access 20 years after the date of their creation. While some categories of records may continue to be withheld from public access after this time, ACT Government organisations should start from a presumption that records are generally available to the public.

Openness and equity

All records over 20 years of age should be presumed to be available for public access unless an exemption applies as defined in the *Freedom of Information Act 1989* and *Territory Records Act 2002*.

Access to records must be administered equitably, so that any record that is open is open to all people. This is significantly different from *Freedom of Information Act 1989* decisions, where people are entitled to see information about them, which would not be made available to others.

There are particular requirements for records, information and data that may allow people to establish links with their Aboriginal and Torres Strait Islander heritage.

Exemptions

Under section 28 of the *Territory Records Act 2002*, organisations may apply to the Director of Territory Records to have records exempted from public access under a number of

provisions. These provisions are identical to the exemptions provided by the *Freedom of Information Act 1989*, although it is important to note that not all FOI Act exemptions can be applied to records that are greater than 20 years old. Decisions to exempt records from public access are made in the context of their age, and acknowledge that few ACT Government records remain sensitive 20 years after they were created.

Exemptions are available for records:

- affecting relations with the Commonwealth and states;
- affecting enforcement of law and protection of public safety;
- affecting personal privacy;
- subject to legal professional privilege; and
- disclosure of which would be in contempt of the Legislative Assembly or a court.

Decisions to exempt records from public access can be appealed through provisions in the *Freedom of Information Act 1989*.

Organisations must keep a register of records, information and data that are exempt from public access (referred to as 'section 28 declarations'). As the sensitivity of information assets can decrease over time, this register should be reviewed every five years to ensure the reasons for exemption remain current.

Public applications for access

Public requests to access records, information and data over 20 years of age should be made through ArchivesACT. Staff in ArchivesACT will work with organisations to provide this access. When organisations receive direct requests for public access to records under the *Territory Records Act 2002* (the Act) they should consider referring researchers to ArchivesACT for assistance. This may help researchers to identify records, information and data relevant to their interests that are held by other ACT Government organisations. ACT Government organisations must not refuse access to records more than 20 years old that are not subject to a declaration under section 28 of the Act.

Where ArchivesACT is not used by the enquirer, and organisations choose to provide access directly, they must establish systems and procedures to assist members of the public and to protect the records, information and data being accessed.

Staff involved in access processes must have a strong understanding of the organisation's records, information and data repositories, ensure a documented process is followed and keep a register of applications, including applicant contact details. ACT Government organisations should also keep records of decisions to grant public access to records (that is, decisions not to apply for an exemption under section 28 of the Act). Records, information and data control systems such as electronic document and records management systems (EDRMS) should be annotated when a decision is made to provide public access to a record, information or data. Such annotations help to ensure equity of access by ensuring that records that have already been provided to one member of the public can be provided to subsequent applicants. This practice also reduces the need to re-examine records, information and data that have already been cleared for public access.

The Act requires that organisations respond to public requests for access within a ‘reasonable time’. ‘Reasonable time’ might vary and will depend on factors such as:

- complexity of the organisation’s business systems;
- extent to which the applicant is able to specifically identify their requirements;
- storage location; and
- extent to which public requests for access are the usual business of the organisation and the resources that are normally available to service those requests.

Processes for providing public access under the Act should generally meet the same timeframes specified under the *Freedom of Information Act 1989*. It is important to take steps to ensure that the applicant is kept informed of the progress of their request.

Facilities and services

Access to Territory archives is usually provided through the ArchivesACT Reading Room. This facility is secure and supervised to prevent the removal, alteration or damage of information assets. A copy service is also provided.

Where the Reading Room is not used, organisations must be able to provide applicants with a reasonable opportunity to inspect records, information and data, and therefore may need to provide supervised secure public access facilities. They must apply due diligence in protecting the information assets from destruction, alteration and removal.

Fees for access under the Act are not currently authorised.

To ensure the proper preservation of fragile physical items, requesters should be asked to take conservation measures when handling them, for example, wearing gloves may be appropriate.

Promotion of public access

Some ACT Government records, information and data will be deemed as Territory archives and will be retained for continued access in perpetuity. The Act requires organisations to take reasonable steps to assist members of the public to identify and obtain access to Territory archives.

Organisations must respond promptly and comprehensively to requests from members of the public and ArchivesACT for information about records that may be available for access. This should include:

- providing ArchivesACT staff with appropriate access to the organisation’s EDRMS or other systems that provide information about the availability of records, information and data;
- contributing to lists, indexes and other information about records that are approaching 20 years of age and will become available for public access;
- ensuring the organisation keeps sufficient and accurate metadata about the nature and location of its records, information and data, as outlined in the

Describe Principle, and particularly for its archival records stored outside Territory premises, as required by the Protect Principle; and

- supporting and participating in ArchivesACT initiatives that promote the availability of Territory government archives.