What is a Section 28 declaration?

A section 28 declaration is a legal notification by the Director of Territory Records that records that could be open to public access are, in fact, exempt from public access through the Territory Records Act 2002.

The principles set out in Territory Records Office Guideline on Access, are intended to ensure that access to the records of the Territory is provided in an environment of openness and equity. These principles are established in the main purposes of the Territory Records Act 2002 (Section 3):

- to encourage open and accountable government by ensuring that Territory records are made, managed and, if appropriate, preserved in accessible form;
- to support the management and operation of Territory agencies
- to preserve Territory records for the benefit of present and future generations; and
- to ensure that public access to records is consistent with the principles of the Freedom of Information Act 2016.

Under the Territory Records Act 2002 (TRA), members of the public are entitled to access records when a record is 20 years old. However, TRA section 28, Declaration applying provisions of FOI Act, sets out a mechanism by which agencies may apply to the Director of Territory Records to have records exempted from public access. All records deemed exempt under the TRA are exempt from access by members of the public. However exempt records can be made available through the FOI Act.

The mechanism for applying the exemptions to records older than 20 years is the section 28 declaration. A declaration made under this section can be made for a record at any time during the life of the record. The Records Advice Application to close a record or class of records under Section 28 of the Territory Records Act 2002 contains an application form for a section 28 declaration. See also Records Advice How a section 28 declaration is made for further information.

The Director may make a declaration to close public access to records that are at least 20 years old only if:

(a) the disclosure of the record would, or could reasonably be expected to:

(i) endanger the life or physical safety of a person; or
(ii) prejudice law enforcement; or
(iii) unreasonably disclose information about any person (including a deceased person); or
(iv) be a contempt of court or the Legislative Assembly; or

(b) the record is subject to legal professional privilege.
Sensitivity of information usually diminishes with time, and as a result exemption categories similar to those in the FOI Act can often be applied less strictly when being applied to records requested under the Territory Records Act 2002. Records dating from before self-government in 1989 are also subject to the access provisions of the Act, and section 28 declarations must be sought for these records where appropriate.