

## **Considerations to be taken when examining records in preparation for a section 28 declaration**

### **Application of Territory Records Act exemptions**

The principles set out in the Territory Records Office Guideline *Access*, are intended to ensure records of the Territory are open to public access after 20 years unless specifically exempted under section 28 of the [Territory Records Act 2002](#).

The *Territory Records Act 2002* allows for the closure of 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.

### **Availability under the Freedom of Information Act 2016 (FOI)**

Agencies should not apply for a section 28 declaration for records to which they would normally allow unrestricted access under the FOI Act.

### **Appeal arrangements**

Section 28 declarations can be appealed in the same way as decisions made under FOI. Members of the public can apply to the Ombudsman for a review of a decision to withhold a record from public access. Where an applicant is not satisfied by the result of the review they can apply to the ACT Civil and Administrative Tribunal for further review.

### **Annotating records management systems**

ArchivesACT must ensure that records to which a section 28 declaration applies are not inadvertently provided to a member of the public. ArchivesACT's public access procedures include a requirement to annotate data in recordkeeping control systems to identify whether a record has been exempted wholly or in part from public access.

The agency must also keep a register for tracking purposes of the records to which a section 28 declaration has been applied.

## **Diminishing sensitivity**

Sensitivity of information usually diminishes with time, and as a result the types of exemption categories 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 are also subject to the access provisions of the Act. Section 28 declarations must be sought for these records where appropriate.

Because of the principle of openness and the decrease in the sensitivity of information over time, decisions to exempt records from the public access provisions must be reviewed regularly and expire 10 years after the exemption is made. Exemptions can, however, be reapplied if they are still required after 10 years.

## **Application of security classifications**

Examination of records for public access will consider any classification or caveats applied. However, taking into regard the ageing sensitivity of information and the categories to be applied for exemption to public access, the classifications may have aged sufficiently to be irrelevant. For instance, the security put specifically in place for a one-off major event at an unusual venue may be classified as Sensitive prior to the event, during the event and immediately afterwards. The Sensitive classification may no longer be required 20 years later.

## **Reversal of exemptions**

Agencies may reverse a section 28 declaration by informing the Director of Territory Records and update their register accordingly. If reversed, those records become available to all members of the public under the *Territory Records Act 2002*.

## **Impact of other legislation**

Legislative requirements specifying access to documents or records exist in other parts of the *Territory Records Act* and in other legislation, and should be considered when examining records for public access, for example:

[\*Territory Records Act 2002\* Part 3A – Executive records - access and release.](#)

## **Further information**

[Access - Roles in public access](#)

[Access - What is a Section 28 declaration?](#)

[Access - How a Section 28 declaration is made](#)

[Access - Application under Section 28](#)



The *Considerations to be taken when examining records in preparation for a section 28 declaration*

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