

How a Section 28 declaration is made

This Records Advice explains the steps undertaken to exempt records from public access under Section 28 of the *Territory Records Act 2002*.

1. The agency Records Management Program should nominate who is authorised to submit s28 declaration applications to the Director of Territory Records; it is usually the agency records manager.
2. The records manager completes the *Application to close records under Section 28 of the Territory Records Act 2002* form. The form describes a record, or class or records that contains documents, or a document, that should be exempt from public access because one or more of the relevant clauses of the *Territory Records Act* applies to it. See the Records Advice *Application to close a record or class of records under Section 28 of the Territory Records Act 2002*.
3. The form is sent to the Director of Territory Records. Only the Director can declare a record to be exempt from public access under the *Territory Records Act 2002*.
4. The Director of Territory Records may then declare the record exempt from public access under section 28 of the *Territory Records Act 2002 (TRA)*.
5. Under the Act, agencies are required to keep a register of records to which a section 28 declaration has been applied. The register is to enable agencies to keep track of records which have been exempted from public access.

The register should include:

- sufficient detail to identify the records that have been exempted
- a copy of, or reference to, the Director of Territory Records' declaration exempting the records from public access
- the date of the decision; and
- the date the declaration was last reviewed, or is to be reviewed.

When seeking exemptions from public access, agencies must provide sufficient information to enable the Director to make an informed decision about the records.

This will include:

- sufficient descriptive information to identify the records or group of records, their content and the government function and activities to which they relate
- an assessment of how the exemption category relates to the records in question
- an opportunity for the Director to inspect the records or a sample of the records as required; and
- any other available information which may help the Director to make a decision about access to the records.

Provided sufficient information accompanies the application to close records to public access, the Director of Territory Records will endeavour to respond to requests within 30 days.

The Territory Records Act enables the Director 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.

Records likely to be sensitive for more than 20 years and therefore needing protection under section 28 can often be identified at the point of their creation or during the appraisal process. Agencies are encouraged to seek section 28 declarations early in the record's existence.