

Release of records containing personal information

The National Archives holds approximately 40 million records dating mainly from 1901, created or received by the Commonwealth government. Many of these records contain information about named individuals, including members of the Australian Defence Force, migrants and subjects of investigation by the security services.

The *Archives Act 1983* provides a right of public access to records of the Commonwealth government in the open access period held by the National Archives or in the custody of agencies. Section 31 of the Act requires the National Archives to release open access period records for public access unless they contain information that falls into one of the exemption categories defined at section 33 of the Act.

Following amendments to the Archives Act in May 2010, the open access period will begin after 20 years instead of the previous 30 years. This change was phased in over a 10-year period from 1 January 2011.

What records are available for release?

The Archives Act applies to all Commonwealth government records except those of the Courts, some records of the Parliament and governors-general, and material held by other national collecting institutions, such as the National Library of Australia. There is a right of access to all other Commonwealth records in the open access period, including those held by government agencies.

The National Archives' collection contains millions of records about named individuals and these records are accessed by family historians and other researchers. The amount of personal information in records ranges from quite limited through to detailed information.

When considering the release of information, the National Archives is responsible for balancing public access rights with the obligation to ensure that information that needs ongoing protection is withheld from public access. One of the exemption categories requires the National Archives to withhold information that constitutes an unreasonable disclosure of personal affairs.

The National Archives' Access Examination Policy – personal, business and professional affairs of a person sets out the criteria used by the National Archives when deciding whether information constitutes an unreasonable disclosure of personal affairs. Factors including the nature, perceived

sensitivity, age and current relevance of the information, and the extent to which the information is already in the public domain are considered by the National Archives when making a decision to release or withhold information.

In addition, the National Archives is guided by relevant case law, legal opinion, the views of the agency controlling the records, and community attitudes.

Who can obtain open access period records?

The public have a general right of access to open period Commonwealth records under the Archives Act. The identity of the applicant, relationship to the person documented in the record, or reasons for requesting access are not relevant to the decision to release or withhold a record from public access. Once the record has been examined and any exemptions have been applied, the record is available to any person who wishes to view it.

Are subjects of records consulted before release?

While the *Freedom of Information Act 1982* requires agencies to consult individuals named in records before release, the Archives Act contains no such provision. This recognises the difference in age of records each Act deals with and the very considerable practical difficulties that such a provision would entail. After more than 20 years it is unlikely that the National Archives would be able to contact the large numbers of individuals about whom information is released each year, so in the interests of consistency and equity, the National Archives does not seek individual views.

Relationship of the Privacy Act 1988 to the Archives Act 1983

The National Archives has a key interest and major role in the area of information privacy. The Archives Act contains provisions which safeguard the personal affairs of individuals. The exemption of open access period Commonwealth records from the coverage of the Privacy Act recognises that the Archives Act provides adequate safeguards to protect the personal affairs of individuals.

Can the National Archives control the use of records it releases for public access?

The National Archives is aware that the information it releases may be used for a range of purposes beyond its control. In addition, the increased availability of digitised records on the internet, and the gradual reduction of the open access period for Commonwealth records to 20 years, has alerted the National Archives to ensure there is an appropriate balance of public access rights and openness of government as required under the Archives Act, with privacy and security concerns.

Most users of records from the National Archives' collection are the subject of the record or family members and can be relied upon to handle the information they obtain with sensitivity. But it is possible that information may be used in a way that is misleading or even malicious. The Archives

Act does not provide a remedy for such an occurrence beyond leaving the individual who published the information (but not the National Archives) open to an action for defamation.

What if the subject of a record objects to the release of information?

The National Archives recognises that different levels of sensitivity apply to the release of information, particularly in relation to information about named individuals. While some individuals embrace the release of records and the availability of information online, others are concerned and sometimes distressed by the release of information about themselves or family members.

The Archives Act does not provide a formal avenue of appeal against the release of information. However, the National Archives invites people who are concerned about the availability of records to email publicrelease@naa.gov.au.

The National Archives will consider these concerns and may review the decision to provide access to the record online via RecordSearch. Where online access is withdrawn, the record will remain available for access via the research centre of the National Archives office where the record is held.