

## Why we refuse access

Under the *Archives Act 1983*, most Commonwealth records in the open access period are available for public access. Most records (98 per cent) are wholly released for public access, while less than two per cent are partially released. A very small percentage (less than 0.25 per cent of records) are wholly withheld because they consist entirely of exempt information.

Whenever we refuse access we provide the applicant with a written statement of reasons. We record the reasons in the National Archives' online catalogue, RecordSearch, so that all researchers may see which records have been withheld and why. RecordSearch is available in all reading rooms and on our website.

Reasons for refusing access are usually recorded in an abbreviated form like '33(1)(g)'. This indicates the paragraph of the Archives Act under which the information is being withheld.

The National Archives' Access Examination Policy on the personal, business and professional affairs of a person provides additional information about the framework the National Archives uses to manage the release of information in records.

### **The categories of exempt information**

We may refuse you access to information that is in the open access period if its disclosure:

- would damage Australia's security, defence or international relations – s33(1)(a);
- would breach a confidence shared by a foreign government, an authority of a foreign government, or an international organisation with the Commonwealth government – 33(1)(b);
- would have a substantial adverse effect on the financial or property interests of the Commonwealth and disclosure would not, on balance, be in the public interest – 33(1)(c);
- would be a breach of confidence – 33(1)(d);
- would, or could reasonably be expected to –
  - prejudice the investigation of a breach of the law, or the enforcement or proper administration of the law – 33(1)(e)(i);
  - disclose the existence or identity of a confidential source of information, including a person providing confidential information to the Australian Crime Commission, the Australian Federal Police or the Integrity Commissioner or an ACLEI staff member (within the

meaning of the *Law Enforcement Integrity Commissioner Act 2006*) or a witness under the *Witness Protection Act 1994* – 33(1)(e)(ii) and 33(1A);

- endanger the life or physical safety of any person – 33(1)(e)(iii);
- prejudice the fair trial of a person – 33(1)(f)(i);
- disclose methods for preventing, detecting or investigating breaches or evasions of the law the disclosure of which might prejudice the effectiveness of those methods – 3(1)(f)(ii); or
- prejudice the protection of public safety – 33(1)(f)(iii).
- would unreasonably disclose information about the personal affairs of a person – 33(1)(g);
- would, or could reasonably be expected to destroy or diminish the commercial value of trade secrets or other information – 33(1)(h);
- would, or could reasonably be expected to, have an adverse effect on a person's lawful business or professional affairs or on the business, commercial or financial affairs of an organisation – 33(1)(j);
- would be privileged from production in legal proceedings on the ground of legal professional privilege and its disclosure would be contrary to the public interest – 33(2); or
- would release information which is prohibited from disclosure under a Commonwealth, State or Territory taxation law – 33(3).

If the whole record contains this type of information its access status will be noted on RecordSearch as Closed. If only a portion of the record is exempt, the access status will be Open with exception and you may have access to any part of the record that is not exempt where that is practicable to do so.

## **Is access refused for other reasons?**

Yes, if the records are not in the open access period, or if giving you access in the form you request would have certain adverse consequences.

If you request access in a particular form (eg to an original record, or to a videotape) we must give you access in that form or tell you why not. We may offer you access in an alternative form if granting access in the form you request would:

1. interfere unreasonably with the operations of the National Archives or the controlling agency – 36(4)(a). For example, if you request access to original records still in daily use in an agency we may arrange for you to have access to the records on the agency's premises;
2. not be appropriate because of the physical nature of the record – 36(4)(b). For example, if you request access to original file index cards which contain exempt records and records that are not in the open access period, we might ask you to nominate your areas of research interest and search the cards for you;
3. be detrimental to the preservation of the record – 36(4)(c). For example, if you request a copy of a tightly bound volume and making copies would be likely to damage the volume, we would refuse your request; or
4. involve an infringement of copyright other than Crown copyright – 36(4)(d).

If we refuse access in the form you request you can appeal against our decision. You cannot appeal if we refused access because the record is not in the open access period.

## **If you are concerned about information that has been released**

Under the Archives Act we are required to release as much information as possible. If you have concerns about information that has been released, please email us at [publicrelease@naa.gov.au](mailto:publicrelease@naa.gov.au).

### **For further information**

- *Fact Sheet 10 – Access to records under the Archives Act*
- *Fact sheet 12 – What to do if we refuse you access*

Our reference staff can also provide more information and answer questions.