

Records Information – Special Access

Public Records Act (1973) Sub-Section 9(2) Closure of Personal Records

Records closed under Section 9 (personal or private affairs) account for well over 90% of all closures under the Act. The general rule is that records containing personal information on the data subject will not be released during the prospective lifetime of the data subjects, viz.

- for 75 years after the creation of the records (adults)
- for 99 years after the creation of the records (children).

These periods are, to some extent, arbitrary. In any particular group of records the likelihood is that some few data subjects will still be living and many will be long deceased by the time the records are released - depending on their age at the time the record was created.

Resource limitations do not permit access decisions to be made or reviewed at the level of individual documents or record items. A single decision is made in respect of each group (consignment) prepared for transfer and, as a general rule, if a consignment contains some material which should be withheld, the consignment will be closed in its entirety. Where consignments are arranged chronologically, records are released progressively.

The Public Records Act and Freedom of Information

Closure under the [Public Records Act 1973](#) does not preclude the public from gaining access under Freedom of Information provisions. Where access is sought to individual documents within a closed consignment, it may be more appropriate to make an application under [Freedom of Information](#) which will be referred by the Keeper of Public Records to the agency responsible for the records.

Special Access

Special access to closed records is granted only in exceptional circumstances. The Minister needs to be satisfied that there is a countervailing public interest in making records available for the proposed research which:

- Outweighs the reasons for withholding their release from all other researchers - in this case the personal privacy of the data subject.
- Justifies the resources required in order to support the investigation, preparation and supervision involved in satisfying the request.

Public Benefit or Interest

The proposed research needs to be described fully and precisely together with the justification for granting special access on grounds of public benefit or interest.

An evaluation of public benefit or interest may be made on the following grounds:

- likely benefits* (eg. research which will provide an authoritative account of significant political, social or economic events in Victorian or Australian history; contribute to medical, legal, community welfare studies of direct benefit to the community).
- availability of the results of the research through publication, broadcast, etc.
- demonstrated qualifications* of the applicant in the area of research and the extent of substantial and authoritative research already carried out and published on the selected topic.
- whether the research project is officially sponsored by a government agency.

*(supporting opinion from others in a position to judge would be an advantage).

Individual Benefit or Interest

Applications may be recommended where individuals are seeking access to their own records or access to records of other individuals where individual benefit or interest has been established and outweighs the invasion of personal privacy involved in making the records available. Circumstances where access may be recommended include:

- research of medical or other records of relatives in relation to an inheritable disease or condition.
- investigations by individuals seeking to establish legal rights or entitlements (eg. property titles, claims for damages).

Personal Privacy Protection

Projects which meet the public benefit or interest criteria set out above may, nevertheless, be refused on grounds that they would involve an unreasonable disclosure of the personal affairs of data subjects. Biographical, genealogical and other kinds of research into the lives of individuals during the closed period would normally be deemed to involve such a breach.

Statistical research, where an undertaking is given not to reveal details identifying individuals, may be considered where the work otherwise meets the public benefit or interest criteria.

Evaluation of Applications for Special Access

The *Public Records Act* accords the Minister a discretionary power to grant special access to closed records. Applications for special access are examined in light of the established criteria and a recommendation is made by the Keeper of Public Records to the Minister.

The following factors are taken into account, when applications for special access are being considered, by the Keeper of Public Records:

- If the researcher undertakes not to reveal details about individuals then an evaluation of the public benefit or interest will be made according to the criteria outlined above.
- Research projects which identify the data subject are considered to constitute an invasion of privacy which outweighs any public benefit/interest identified and as such would not warrant a recommendation that special access be granted.
- Claims that information about the data subject is already widely known cannot be considered, as it is not possible to verify precisely what information in the record is known publicly nor how widely it is known.

Conditions

If special access is granted, conditions may be applied to which the applicant will be required to agree before the records are released. These may include:

- reporting progress towards completion of the project;
- non-disclosure of specified information and/or vetting of material before publication, broadcast, etc. and agreement to deletions as required;
- no use of material obtained other than for production of the final text of the proposed work.

Application for Special Access

Researchers wishing to apply for special access should write to:

Keeper of Public Records
Public Record Office Victoria
PO Box 2100
North Melbourne VIC 3051