



# CONTINUUM

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## MAKING ACCESS DECISIONS UNDER THE PUBLIC RECORDS ACT

GUIDELINES FOR ALL PUBLIC OFFICES

ARCHIVES NEW ZEALAND

TE RUA MAHARA O TE KĀWANATANGA

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Archives

New Zealand

Te Rua Mahara  
o Te Kāwanatanga



ADVISORY NOTICE

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*How should public offices assess the need for access conditions on records that have been in existence for 25 years, or are being transferred to Archives New Zealand or an approved repository? What are the issues to consider?*

## 1 > INTRODUCTION

1.1 > Under the Public Records Act 2005, all public archives transferred to Archives New Zealand or to an approved repository, and all public records that have been in existence for 25 years, must be available for public inspection unless:

- > Conditions on access are imposed by the controlling public office, or
- > The records are restricted under another statute.

1.2 > There are two main access regimes for public records:

- > While the records are less than 25 years old and are in public office custody, access is usually administered under the Official Information Act 1982 (OIA) and the Privacy Act 1993. Some public records are not covered by OIA, but there may be some other legislative framework that regulates access to the records.
- > Once the records have reached 25 years of age, or when they are transferred to Archives New Zealand or an approved repository, then they will usually become **open**, and members of the public can inspect the records as of right. However, public offices can classify their records as **restricted access records**, which means that the previous access regime continues to apply, and requests for public access to the records must be vetted by the controlling public office first.

1.3 > A restriction therefore refers to a period of time during which researchers must apply to the controlling public office for permission to access the records, rather than a period during which no access is possible.

1.4 > Public offices should only place restrictions on records if there are good reasons, under the OIA or Privacy Act or other relevant legislation<sup>1</sup>, for withholding some of the information in the records.

## 2 > GENERAL ACCESS PRINCIPLES

### 2.1 > *There must be a good reason for any access restrictions.*

Government aims for openness in providing access to records<sup>2</sup>, and so access must not be restricted unless there is a good reason to do so. Public offices must specify the grounds for restricting records under the Public Records Act, and these grounds are entered in an access register which can be searched by members of the public. The grounds outlined in section 5 of this Advisory Notice provide some examples of good reasons for restricting access. In general, a good reason may be said to exist where the public interest in withholding records outweighs the public interest in making records available.

### 2.2 > *Restrictions should be applied sparingly.*

Restrictions on access should only be imposed as an exception. Public offices should make a reasonable effort to identify which of their records are likely to contain sensitive information, and apply restrictions appropriately. Large classes of records should not be restricted if only a few records contain sensitive information.

### 2.3 > *Restrictions should have a limited time span.*

Restrictions should always be for a finite period, as sensitivity reduces over time.

### 2.4 > *Restrictions should be applied consistently.*

Access conditions should be consistent with the criteria in the OIA, Privacy Act, and other relevant legislation. Information which would be provided if requested under OIA should not be restricted. Access conditions should also be consistent with similar records already transferred to Archives New Zealand or an approved repository, and with similar records created by other public offices.

### 2.5 > *Restrictions should be easy to implement.*

Once records have been transferred to Archives New Zealand, access conditions will need to be implemented by Archives New Zealand staff. Restriction statements should be clear and unambiguous, so that Archives staff are not required to make subjective judgements about which records are restricted. Restrictions which require Archives staff to examine the content of items in order to determine their status are difficult to administer and should be avoided. Decisions on which researchers should be able to access records should be made on a case-by-case basis by the responsible public office, rather than by specifying who is allowed access beforehand.

1. Examples of other statutes that affect access to records include the Criminal Records (Clean State) Act 2004, the Adult Adoption Information Act 1985, and the Inland Revenue Act 1974.  
2. See, for example, sections 4 and 5 of the OIA, sections 3 (f) and 44 of the Public Records Act, and the *Policy Framework for New Zealand Government-held Information*.



### 3 > THE PROCESS

**3.1 >** Public offices should consider access issues as an integral part of their recordkeeping policies and procedures. Access conditions which are set under the Public Records Act should be developed as part of an overall consideration of a public office's access policies.

**3.2 >** As far as possible, access decisions should cover a whole class or series of records. It is not expected that public offices will be able to examine each individual record to determine whether it should be open or restricted, and so decisions need to be based on an understanding of the information which is likely to be found in the records as a whole.

**3.3 >** When records are 25 years old, or are about to be transferred to Archives New Zealand or an approved repository, the controlling public office must determine access conditions if they have not already done so.

**3.4 >** The steps in the public office's decision-making process should be:

1. Read this advisory notice.
2. Consult internally to determine whether the records are likely to contain sensitive information.
3. Make an interim access decision.
4. Consult with Archives New Zealand (if a restriction is proposed).
5. Confirm or amend the access decision.

**3.5 >** When making decisions on access, it is important to:

- > Consider what security levels, caveats or classifications are currently in place on the records, and whether these have long or short-term implications;
- > Consider what personal information is contained in the records, and whether it needs protection in accordance with the Privacy Act, in particular Principle 11 "Limits on disclosure of personal information";
- > Consider access conditions on similar records;
- > Discuss restriction decisions with staff who are familiar with the records, and who are aware of any related sensitive issues or legislative or regulatory requirements;

> Consider any practices, decisions or policies in respect of public access (e.g. If records had been requested under OIA, would any be withheld? And on what grounds?);

> Discuss access with Archives New Zealand as part of the consultation process. As many records are common or similar across government, they can advise on common practice.

**3.6 >** Note that if a restriction is placed on records, members of the public can still request access under the OIA or Privacy Act. All such requests must be dealt with by the controlling public office. It is therefore in the public office's interest to ensure that records are not unnecessarily restricted, to minimise the number of OIA and Privacy requests that are received.

**3.7 >** Remember that the access conditions will be entered in an access register which is available to the public, so they will be subject to public scrutiny.

**3.8 >** When restrictions on access are imposed, the specific conditions relating to the restriction must be detailed in the Access Authority form. The following must be specified:

- > *The duration of the restriction.* An expiry date, or a date for reviewing the restriction, must be specified. Note that the restriction can be extended if necessary.
- > *The date or trigger from which point the restriction is applied.* This is usually based on the date of the last action on the record, rather than the date of transfer, as this allows earlier records to open sooner.
- > *Coverage.* It must be clear which records are covered by the restriction - for example, the file series, sub-series or specific items. In some cases it is necessary to attach a list showing exactly which items are restricted and for how long.
- > *Reasons for imposing restrictions.* For example, personal privacy, commercial sensitivity, or national security. These must be clearly documented and appropriate for the records concerned.
- > *Any special conditions on access.* It may be appropriate to allow public access to the records under specific conditions - for example, viewing is permitted but copying is not.
- > *Who in the public office will be responsible for administering special access requests during the period of restriction?* It is necessary to identify a designation or position within the public office that will deal with requests to view the records under the OIA or Privacy Act.



3.9 > Access restrictions can be withdrawn or varied at any time by the controlling public office, if it becomes clear that the restriction is no longer appropriate. Access restrictions should be monitored on an ongoing basis to ensure that they are kept to a minimum, and records are opened when possible. The public office should complete a new Access Authority form for any change, and submit it to Archives New Zealand.

## 4 > FORMALISING THE ACCESS DECISION

4.1 > Archives New Zealand must be consulted about any proposed access restrictions. Following consultation, the access conditions should be documented on the Access Authority form, which is available from Archives New Zealand offices, as listed below, or the website:

**<http://www.archives.govt.nz/continuum>**

4.2 > The Access Authority should be signed by the administrative head of the public office, or by a senior manager acting under delegated authority. Once approved by the public office, the form should be submitted to Archives New Zealand, which will register the access conditions in the public access register. A copy of the signed form will be returned for the public office's records.

4.3 > For ease of referral and accountability purposes, the public office should retain its Access Authority form in its official recordkeeping system.

## 5 > TYPICAL RESTRICTIONS ON ACCESS

5.1 > This chart outlines nine standard grounds for restricting access to records, and suggests appropriate periods of restriction. Note that these are guidelines only and each set of records should be assessed on its merits. Members of the public can still gain access to records during the restriction period, but need to obtain permission from the responsible public office first.

### GROUND FOR RESTRICTION

To protect commercial interests.

To protect the integrity of political and administrative processes.

To protect personal or public safety, and maintain the rule of law.

To protect legal professional privilege.

To protect national security and international relations.

To prevent the disclosure of sensitive personal information.

To prevent the disclosure of highly sensitive personal information.

To maintain an existing confidentiality agreement.

To protect traditional knowledge.

3. The restriction periods begin on the date of the last action on the record.  
4. The current 25 year restriction for Cabinet papers is an exception to these guidelines, to conform with the requirements of the Cabinet Manual.

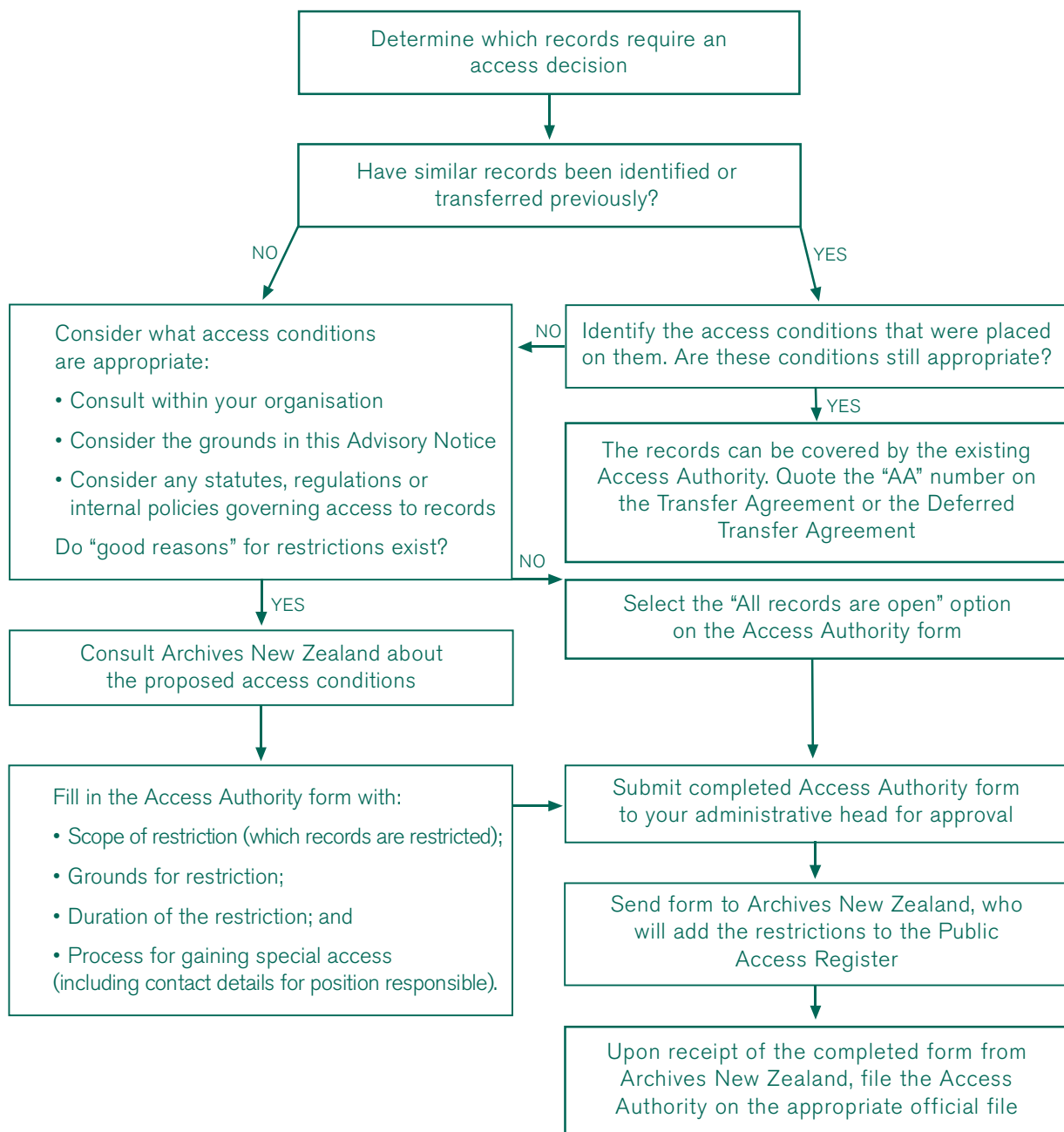


EXAMPLES	SUGGESTED PERIOD <sup>3</sup>
<ul style="list-style-type: none"> <li>› Due Diligence Reports</li> <li>› Business planning for commercial activities</li> <li>› 'Commercial in confidence' material</li> </ul>	10 Years, then open
<ul style="list-style-type: none"> <li>› Confidential minutes, reports and recommendations</li> <li>› Confidential advice by public servants and Ministers</li> <li>› Cabinet papers which have not been publicly released</li> </ul>	10 Years, then open (25 Years for Cabinet Papers <sup>4</sup> )
<ul style="list-style-type: none"> <li>› Information on methods of crime detection</li> <li>› Records documenting security measures</li> </ul>	20 Years, then open
<ul style="list-style-type: none"> <li>› Legal opinions</li> <li>› Confidential legal advice on legislation which is still in force</li> </ul>	To be advised <sup>5</sup>
<ul style="list-style-type: none"> <li>› General military planning</li> <li>› Security and intelligence files</li> <li>› Background papers on foreign leaders and governments</li> </ul>	30 Years, then open
<ul style="list-style-type: none"> <li>› Detailed employment records</li> <li>› Disciplinary case files</li> <li>› Applications for financial assistance</li> </ul>	70 Years, then open
<ul style="list-style-type: none"> <li>› Child welfare files</li> <li>› Medical records</li> <li>› Probation records</li> <li>› Police incident and offence files</li> </ul>	100 Years, then open
<ul style="list-style-type: none"> <li>› Sensitive information supplied by another government</li> <li>› Information gathered with an explicit or implicit undertaking of confidence, such as survey forms</li> </ul>	30 Years, then review
<ul style="list-style-type: none"> <li>› Sensitive information regarding people, places, or cultural practices that would not normally be made public</li> </ul>	70 Years, then review

5. At time of writing, Archives New Zealand was discussing an appropriate period for such restrictions with the Crown Law Office. If you have records that contain legally privileged information, please contact Archives New Zealand.



## PROCESS FOR DETERMINING ACCESS CONDITIONS



For further advice, contact Archives New Zealand offices in:

Wellington	Phone 04 499 5595
Auckland	Phone 09 270 1100
Christchurch	Phone 03 377 0760

Dunedin  
Email  
Website

Phone 03 477 0404  
transfer@archives.govt.nz  
<http://www.archives.govt.nz>





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