

Fact Sheet

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Closure of Public Records under Section 10(1) of the *Public Records Act 1973*

What records does Section 10(1) cover?

Reasons for closure under Section 10 (1) are not specified in the *Public Records Act 1973* (the Act). Although no formal nexus exists between reasons for closure under the Act and Freedom of Information (FOI) legislation, it is customary for categories of exemption under the *FOI Act* to be used when determining whether records should be closed under Section 10 (1).

Under Section 10(1), records may be closed for a specified period that must not exceed 30 years from the date of transfer of the records to PROV. This Section of the Act allows the Minister responsible for the PROV, with the agreement of the Minister responsible for the transferring agency, to close records nominated under Section 10 for up to 30 years from the date of transfer irrespective of the age of the records.

Section 10 closures may not be varied or revoked but may be renewed, provided the total period does not exceed the 30 year limit. Closure of records under Section 10(1) is based on sensitivity and the criticality of the records.

A broad guide to closure under Section 10(1) is as follows:

- Use the FOI exemption categories to determine closures and provide reasons for the initial nomination of records to be closed.
- When considering records for closure, a key component is to conduct a risk assessment based on the security, sensitivity and age of the records, as well as ensuring there is a balance between public benefit and the public's right to know.
- Given that Section 10(1) declarations cannot be varied or revoked, the nominated period of closure needs to be carefully considered and it may be wise to nominate a shorter period than the maximum 30 years.
- It is possible to make subsequent declarations on the expiry of an initial closure, provided that the total period of closure does not exceed 30 years from date of transfer.

Under Section 10(1), records are closed if the consignment includes records that upon release may:

- Reveal Cabinet deliberations or Ministerial submissions to Cabinet less than ten years old;
- Reveal the deliberations or decisions of, or documents prepared specifically for, a closed meeting of a municipal council;
- Divulge matters communicated in confidence by the Government of another country, state or territory or prejudice relations between the State and another government;
- Disclose the internal, deliberative processes of an agency, Minister or municipal council, where such disclosure would be contrary to the public interest;
- Prejudice law enforcement investigations or the effectiveness of law enforcement methods or procedures; disclose confidential sources of information; endanger persons engaged in law enforcement
- Release documents protected by legal professional privilege;
- Reveal information the release of which is prohibited by an enactment;
- Disclose trade secrets or information acquired from a business, commercial or financial undertaking, the release of which may expose the undertaking to a disadvantage;
- Adversely affect the economy of Victoria or a municipal district through the premature disclosure of contemplated movements in bank interest rates, sales tax or municipal rates and charges; the imposition of credit controls; urban re-zoning; formulation of land use and planning controls or the sale or acquisition of land or property by the Crown or a municipal council;
- Disclose instructions given to agency officers engaged in financial, commercial or labour negotiations; the execution of contracts or the defence, prosecution and settlement of cases relating to the financial, property or personnel management interests of the Crown or a municipal council;

- Reveal exempt documents prepared for the Ministerial Council for Companies and Securities or furnished to the National Companies and Securities Commission by the Commonwealth or a State or Territory.

What is the process to close records under section 10(1)?

- Early in the transfer process, the agency identifies records that should be nominated for closure under Section 10(1) of the Act.
- The agency collects and documents evidence to justify the closure. The justification must take into account the record's age, sensitivity of information contained in the records, arrangement and accessibility of records; and balance these against public benefit and the public's right to know.
- The agency consults with PROV to assess records nominated for closure under Section 10(1) and the evidence (as outlined above) used to justify the closure.
- PROV provides advice on precedents and access conventions.
- PROV can provide advice to the agency on the Act's requirements in order to brief the Minister responsible for the records of the public office concerned.
- PROV provides the agency with an Access Authority PRO 7C form that should accompany the brief to the Minister.
- The agency presents the brief and the PRO 7C form to the Minister responsible for the records to advise and gain agreement for the closure.
- Once the Minister has agreed to close the records and has signed the Access Authority PRO 7C form, the agency returns the form with a cover letter to PROV.
- PROV then advises the Minister responsible for PROV to gain their approval.
- Both Ministers must agree to close the records under Section 10(1) before the records can be closed.
- The PROV Minister indicates their approval by counter-signing the PRO 7C form and signing a notice to be published in the Government Gazette, declaring that the records are to be withheld from public inspection.
- The closure of records under Section 10 is then authorised by publication of the declaration in the Government Gazette.

Closure of records under Section 10(1) of the Act does not preclude the public from gaining access under Freedom of Information (FOI) legislation. In accordance with section 15 (1) of the *Freedom of Information Act 1982* the transferring agency is responsible for access decisions regarding FOI requests for closed records in PROV custody.

Further Resources

Fact Sheets are designed to give a brief overview of a key concept. For more information on Access topics see www.prov.vic.gov.au

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