

Fact Sheet

3

Closure of Public Records under Section 10AA of the *Public Records Act 1973*

What records are covered by Section 10AA?

Section 10AA was inserted into the *Public Records Act 1973* (the Act) by the *Terrorism (Community Protection) Amendment Act 2006*. As such, it supports the aims of the *Terrorism (Community Protection) Act* by reducing the ability for public documents to be used in the planning and commission of terrorist acts designed to damage the community and its infrastructure. In general, records closed under Section 10AA will be those considered to be highly prone to misuse and where the effect of misuse would be significant (in the manner specified in the *Terrorism (Community Protection) Act*).

Under Section 10AA, records may be closed either indefinitely or for a specified period. There is no limitation on how long the specified period may be (unlike Section 10 closures, which must not exceed 30 years from the date of transfer). As Section 10AA closures can be extended at any time, and the sensitivity of some records will decrease over time, it is expected that closure periods will initially be generally short (less than 30 years). Records may have closures renewed or extended if judged necessary.

Records that could reasonably be expected to aid in the planning or commission of an act of terrorism may be closed under Section 10AA. This includes, but is not limited to:

- Records documenting current schematics of transportation systems;
- Records showing key elements of power, water and gas delivery systems;
- Records of engineering schematics of public buildings;
- Records documenting the state's current disaster recovery plans, emergency response plans, and other relevant information about individual agency or state wide measures for dealing with attacks and disasters; and
- Records outlining management and security planning for major events and public spaces.

Who may close records under Section 10AA?

Records may be closed under Section 10AA by the Minister for PROV, however the closure is only effected after consultation with the Minister in charge of the agency from which the records are to be transferred, or if the case requires, the agency exercising the functions to which the records relates.

The Act also permits the Keeper of Public Records to close records in PROV custody under Section 10AA as a responsive action once particular risks become known or are magnified by changing circumstances.

Closure of records under Section 10AA 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.

What is the process to close records under section 10AA?

- Early in the transfer process, the agency identifies records that should be nominated for closure under Section 10AA of the Act.
- The agency collects and documents evidence to justify the nomination for closure. The justification must take into account the 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 10AA, present evidence (as outlined above) to justify the closure and obtain agreement with PROV for the closure of those records nominated.

- 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 7E form that should accompany the brief to the Minister.
- The agency presents the brief and the PRO 7E 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 7E form, the agency returns the form with a cover letter to PROV.
- PROV then advises the Minister responsible for PROV to gain their approval.
- The PROV Minister indicates their approval and authorises the closure by counter-signing the PRO 7E form.
- The closure of records under Section 10AA is then authorised by publication of the declaration in the Government Gazette.

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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