

DETERMINING PUBLIC RECORDS ACCESS – A PRACTICAL GUIDE

Queensland State Archives

Use this guide to determine access by the public for records in the custody of Queensland State Archives.

Please do not hesitate to contact us at discovery@archives.qld.gov.au for advice on determining public records access.

The following public records principles **must be considered when making access determinations**. They apply to all Queensland public records:

- Public records are important for **preserving the history** of Queensland.
- Making and keeping accurate public records is important for ensuring the **integrity, accountability and good governance** of public authorities.
- Public records should be managed and accessed in a way that **protects and promotes human rights**, recognising that—
 - a) the **public has a right to access information** kept by public authorities in public records; and
 - b) the disclosure of public records should be facilitated in an **equitable and consistent** way; and
 - c) the **sensitivity of public records declines with the passage of time** but it may be contrary to the public interest or otherwise inappropriate to disclose a particular public record due to the sensitivity of information contained in the record.
- Public records should be managed and accessed in a way that **promotes economic development, innovation and research**.

(Public Records Act 2023, schedule 1, part 2)

Principles about **public records relating to Aboriginal peoples and Torres Strait Islander peoples** are outlined in schedule 1, part 1 of the *Public Records Act 2023*. These principles acknowledge the **knowledge of Aboriginal peoples and Torres Strait Islander peoples**, the **impacts of colonisation** and the **resulting nature of public records** relating to Queensland's Aboriginal peoples and Torres Strait Islander peoples. They also offer high-level guidance for approaching management and access and **must be consulted when assessing records relating to Aboriginal peoples and Torres Strait Islander peoples**.

This guide outlines definitions, considerations, possible restricted access periods and record examples in three sections – [open records](#), [records containing restricted information](#) and [regulated records](#), in accordance with the *Public Records Act 2023* and related legislation.

Open records

OPEN RECORDS	Legislation	Relevance and considerations	Examples
<p>Open records (not restricted or regulated)</p>	<p>Public Records Act 2023, s28</p>	<p>Most records are of a non-personal or non-sensitive nature. Public records in the custody of Queensland State Archives are open to the public unless they are regulated or contain restricted information in keeping with the principles above.</p> <p>To facilitate equitable and consistent disclosure of public records, information that is publicly available elsewhere, such as open court proceedings, in media coverage, in publications or available online (e.g. google maps) should also not be restricted.</p> <p>Metadata for records that are not regulated and do not contain restricted information is open and may be published to QSA's public catalogue, ArchivesSearch.</p>	<p>Accounting records Administration files Audits Correspondence files Land/survey maps Letterbooks Minutes and agendas Photographs (generic)</p>

Records containing restricted information

If the records contain any of the following types of **restricted information**, they may be restricted for the time shown in the Restricted Access Period column.

All restrictions under this section **must be aligned with the public record principles** above as defined in the *Public Records Act 2023*.

Record metadata (for example, item titles and dates) is open unless it also contains restricted information. If the record metadata contains restricted information, it may be restricted for the duration of the RAP for the relevant records.

Sensitivity of metadata should be considered in context – for example, a person’s name by itself in an item title may not be sensitive, but becomes highly sensitive when viewed the context of a series (for example a series titled ‘Criminal proceedings’).

RESTRICTED INFORMATION	Relevant Legislation	Restricted access period (RAP)	Relevance and considerations	Examples
<p>Personal information</p>	<p><i>Public Records Act 2023:</i></p> <ul style="list-style-type: none"> • s28 • s30 • schedule 2, parts 1 & 3 <p><i>Information Privacy Act 2009, s12</i></p>		<p>Personal information means information or an opinion about an identified individual or an individual who is reasonably identifiable from the information or opinion—</p> <ul style="list-style-type: none"> (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not. <p>If a record contains personal information, consider:</p> <ul style="list-style-type: none"> • if the person in question is deceased or likely to be deceased • if the person was an adult or child at the time the record was created • that concerns about privacy diminish over time - however records relating to children may remain highly sensitive • if any of the information can be found in the public domain such as published material, social media, telephone directories or open court processes • the sensitivity of the information if it was released. <p>Please see the Office of the Information Commissioner’s guideline for personal and sensitive information for more information.</p>	

RESTRICTED INFORMATION	Relevant Legislation	Restricted access period (RAP)	Relevance and considerations	Examples
		0 - 30 years	Other personal information is considered low sensitivity and may include an individual's name, address, phone number, or date of birth.	Electoral rolls Indexes
		0 - 65 years	Personal information of medium sensitivity may relate to an individual's relationships, employment, or financial affairs, that is not also personal information of high sensitivity.	Employment records Some land ownership/use records
		0 - 100 years	<p>Personal information of high sensitivity may relate to an individual's:</p> <ul style="list-style-type: none"> • adoption, separation from parents, or birth circumstances • racial or ethnic origin • political opinions • membership of a political association • religious beliefs or affiliations • philosophical beliefs • membership of a professional or trade association • membership of a trade union • sexual orientation or practices • health, medical treatment, or genetic characteristics • biometric identification information • personal information relating to committing an offence <p>This includes information relating to the individual being subject to particular practices or policies because of the above characteristic/s.</p>	Client case files Court & police records Hospital or institutional admission and discharge registers Immigration records Records relating to Aboriginal peoples and Torres Strait Islander peoples Trade union files

RESTRICTED INFORMATION	Relevant Legislation	Restricted access period (RAP)	Relevance and considerations	Examples
Culturally sensitive information	<p><i>Public Records Act 2023:</i></p> <ul style="list-style-type: none"> • s28 • s30 • schedule 2, parts 1 & 3 • schedule 3 	0 - 100 years	<p>Please contact QSA if you are considering a RAP for culturally sensitive information.</p> <p>Culturally sensitive information includes material relating to:</p> <ul style="list-style-type: none"> • Aboriginal Law • Aboriginal tradition • Ailan Kastom • Torres Strait Islander law <p>Consult with appropriate representatives from the Aboriginal and/or Torres Strait Islander communities as needed.</p>	<p>Records that include information regarding sacred or significant sites, traditional customs, or ceremonies</p>
EXEMPT UNDER THE RIGHT TO INFORMATION ACT 2009	<p><i>Public Records Act 2023:</i></p> <ul style="list-style-type: none"> • s28 • s30 • schedule 2, parts 1 & 3 <p><i>Right to Information Act 2009, schedule 3, ss. 7-10</i></p>		<p>The following classes of restricted information are exempt information under the <i>Right to Information Act 2009</i>. For more information about 'exempt information' generally and the application of the relevant sections of the <i>Right to Information Act 2009</i>, see the Office of the Information Commissioner guidelines. The following information is adapted from their advice, and links to the relevant guidance are provided for each section.</p> <p>In this section:</p> <ul style="list-style-type: none"> • Low sensitivity information may include name of project or building, information that is classified as 'official' or publicly available already. • Medium sensitivity information may include records and information classified as 'sensitive', or information that was highly sensitive, but the sensitivity has reduced over time. • High sensitivity information may include financial records, contracts, security related information, some information classified as in-confidence, and records and information classified as 'protected' or 'highly protected'. 	

RESTRICTED INFORMATION	Relevant Legislation	Restricted access period (RAP)	Relevance and considerations	Examples
Legally protected information	<p><i>Public Records Act 2023:</i></p> <ul style="list-style-type: none"> • s28 • s30 • schedule 2, parts 1 & 3 <p><i>Right to Information Act 2009, schedule 3, s7 (legal professional privilege)</i></p>	<p>Low to medium sensitivity: 0 - 30 years</p> <p>High sensitivity: 31 - 65 years</p>	<p>Information subject to legal professional privilege</p> <p>This section applies to records containing information created during the process of giving or obtaining legal advice or providing legal services.</p> <p>The dominant purpose of the information must be seeking or providing legal advice or information which is intended to be used in existing or reasonably anticipated legal proceedings.</p> <p>Consider:</p> <ul style="list-style-type: none"> • If the communications between a client and their lawyer were for the dominant purpose of seeking or providing legal advice • If the communication was confidential and whether it remains confidential • Whether legal professional privilege was waived • If the communications include policy advice or relate to law reform or public policy issues • Whether the communications were disclosed or otherwise shared with another other party <p>See Exempt information - Legal professional privilege on the Office of the Information commissioner website for more information.</p>	<p>Records relating to litigation</p> <p>Legal advice files</p>

RESTRICTED INFORMATION	Relevant Legislation	Restricted access period (RAP)	Relevance and considerations	Examples
	<p><i>Public Records Act 2023:</i></p> <ul style="list-style-type: none"> • s28 • s30 • schedule 2, parts 1 & 3 <p><i>Right to Information Act 2009, schedule 3, s8 (breach of confidence)</i></p>	<p>Low to medium sensitivity: 0 - 30 years</p> <p>High sensitivity: 31 - 65 years</p>	<p>Information that would found an action for breach of confidence</p> <p>This section applies to confidential information which if released to the public may result in a legal action for breach of confidence. An obligation of confidence can be expressly defined in a contract, or can be implied from the circumstances.</p> <p><u>Consider:</u></p> <ul style="list-style-type: none"> • Who the plaintiff would be for any hypothetical legal action • If there is a completed contract in place with that hypothetical plaintiff and whether such a contract contained an express or implied obligation of confidentiality • Whether the information is common knowledge and/or useless or trivial information, has been previously disclosed or is publicly available • If the record contains deliberative process information (deliberative process information includes an opinion, advice or recommendation obtained, prepared, or recorded, and/or a consultation or deliberation that has taken place. Deliberative process information is not to be further restricted unless it consists of information communicated by someone who is not a Minister, a member of staff or a consultant to a Minister or an officer of an agency) <p>See Exempt information - Breach of confidence and Deliberative Process on the Office of the Information commissioner website for more information.</p>	<p>Confidential witness statements</p> <p>Confidential submissions</p> <p>Commercial-in-confidence</p>

RESTRICTED INFORMATION	Relevant Legislation	Restricted access period (RAP)	Relevance and considerations	Examples
<p>Public safety information</p>	<p><i>Public Records Act 2023:</i></p> <ul style="list-style-type: none"> • s28 • s30 • schedule 2, parts 1 & 3 <p><i>Right to Information Act 2009, schedule 3, s10 (law enforcement or public safety information)</i></p>	<p>Low to medium sensitivity: 0 - 30 years</p> <p>High sensitivity: 31 - 65 years</p>	<p>Public safety information is information that that could:</p> <ul style="list-style-type: none"> • bias an investigation or trial • endanger a person’s life, wellbeing, or physical safety including harassment and intimidation • bias the maintenance of law enforcement • endanger the security of a structure or vehicle • help in a person’s escape from custody • affect the wellbeing of cultural and natural resources or the habitat of animals and plants which could be prejudicial to their survival. <p>Consider:</p> <ul style="list-style-type: none"> • Whether the information was given as part of an investigation of a contravention or possible contravention of the law • If the information was given under compulsion • If the information was obtained, used, or prepare for an investigation by a prescribed crime body • If the information was obtained, used, or prepared for the State Intelligence Group of the QPS, the State Security Operations Group of the QPS or for Crime Stoppers • If the information was obtained, used, or prepared for an investigation by the Crime and Misconduct Commission <p>See Exempt information - Law enforcement and public safety on the Office of the Information commissioner website for more information.</p>	<p>Bench records and summons</p> <p>Crime and corruption investigations</p> <p>Criminal files</p> <p>Murder files</p> <p>Plans of existing public buildings</p> <p>Security procedures and plans</p>

RESTRICTED INFORMATION	Relevant Legislation	Restricted access period (RAP)	Relevance and considerations	Examples
<p>Security information</p>	<p><i>Public Records Act 2023:</i></p> <ul style="list-style-type: none"> • s28 • s30 • schedule 2, parts 1 & 3 <p><i>Right to Information Act 2009, schedule 3, s9 (National or State Security information)</i></p>	<p>Low to medium sensitivity: 0 - 30 years</p> <p>High sensitivity: 31 - 65 years</p>	<p>Security information is information that could reasonably be expected to damage the security of the Commonwealth or State.</p> <p>Consider whether the record contains:</p> <ul style="list-style-type: none"> • plans of existing public buildings • schematics of current public transport • key elements of current gas, power, and water delivery • disaster and emergency response/recovery plans. 	<p>Plans of existing public buildings</p> <p>Current public transport schematics</p> <p>Key gas, power and water records</p> <p>Disaster and emergency response/recovery plans</p>

Regulated records

If the records are **regulated**, they must be restricted for a minimum of the years shown in the Restricted Access Period column.

REGULATED RECORDS	Legislation	Restricted access period (RAP)	Considerations	Examples
Cabinet records	<p><i>Public Records Act 2023:</i></p> <ul style="list-style-type: none"> • ss 28 - 29 • schedule 2, parts 1 & 2 <p><i>Right to Information Act 2009:</i></p> <ul style="list-style-type: none"> • schedule 3, s1 (pre-RTI cabinet matters) • schedule 3, s2 (post-RTI cabinet matters) 	<p>20 years for records created after July 2009</p> <p>30 years for records created before July 2009</p>	<p>Cabinet records are documents brought into existence for the consideration of Cabinet.</p>	<p>Cabinet agendas</p> <p>Cabinet briefing notes</p> <p>Cabinet committee records</p> <p>Cabinet decisions, notes of discussions in Cabinet</p> <p>Cabinet minutes</p> <p>Cabinet submissions</p> <p>Reports of factual or statistical information attached to any of the above</p> <p>Drafts of any of the above</p>
Executive Council records	<p><i>Public Records Act 2023:</i></p> <ul style="list-style-type: none"> • ss 28 - 29 	30 years	<p>Executive Council records are records submitted or proposed to be submitted to the Executive Council including any drafts or copies.</p> <p>This includes briefings for ministers, the Governor of Queensland or Chief Executives.</p>	<p>Executive Council minutes</p> <p>Executive Council submissions</p> <p>Proposals</p>

REGULATED RECORDS	Legislation	Restricted access period (RAP)	Considerations	Examples
	<ul style="list-style-type: none"> • schedule 2, parts 1 & 2 <p><i>Right to Information Act 2009</i>, schedule 3, s3 (Executive Council information)</p>			Supporting documentation or a draft of any of the above
Ministerial records	<p><i>Public Records Act 2023</i>:</p> <ul style="list-style-type: none"> • s10 • ss 28 - 29 • schedule 2, parts 1 & 2 	30 years	<p>Ministerial records are records of the Minister or Assistant Minister created or received while the Minister or Assistant Minister was in office, or created or received in relation to the responsibilities of the Minister or Assistant Minister.</p> <p>Core business records of a Minister are further defined in the Office of a Minister of the Crown and Parliamentary Secretaries Retention and Disposal Schedule. The Ministerial Handbook and QSA Ministerial Records Policy provide guidance to Ministers regarding information management and records disposal, including transfer to QSA.</p> <p>Control of ministerial records passes to the archives under s18 of the <i>Public Records Act 2023</i>. Access to closed Ministerial Records is by RTI to the department in which the archives is administered (s35).</p>	Ministerial diaries Pecuniary interest statements Significant correspondence

If regulated records also contain restricted information, they may be restricted for up to the time shown in the Restricted Access Period column for the relevant restricted information type. Any such further restriction **must be aligned with the public record principles** above as defined in the *Public Records Act 2023*.