



Access decisions

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1 Introduction

Under Part 3 of the *Public Records Act 2005* (the Act), New Zealand public offices and local authorities (public sector organisations) have obligations to ensure appropriate access to information and records.

There are two main regimes for determining public access to government information and records:

1. For information and records that have existed for less than 25 years, are in current use and/or in the custody of an organisation, access is usually administered under the *Official Information Act 1982* (OIA), the *Local Government Official Information and Meetings Act 1987* (LGOIMA), and the *Privacy Act 2020*.
2. Information and records that have been in existence for 25 years or are to be transferred to Archives New Zealand or to a local authority archive, must be classified as either 'open access' or 'restricted access'.

The purpose of this guide is to assist these organisations in making determinations about open or restricted access to information and records (and associated metadata).

2 Basis for determining access

When determining whether information and records should be 'open' or 'restricted', organisations should always begin with an assumption of openness unless there are good reasons to restrict. The following important access principles should be considered:

- restrictions should be applied sparingly
- restrictions should have a limited life span
- restrictions should be applied consistently
- restrictions should be easy to implement
- restrictions should reflect the obligations to Māori under Te Tiriti o Waitangi in relation to information and records that are taonga.

2.1 Reasons to restrict access

In order to determine whether there are good reasons to restrict access, organisations should analyse the information and records by first consulting with the staff who create, use or manage them. The following questions are likely to be relevant:

- What security levels, warnings or Government Information Security Classifications¹ are currently in place on the information and records? And do these have long or short-term implications?
- Does the metadata require restriction as well as the content?

¹ [Classification system | Protective Security Requirements](#). Please note that GISC requirements are separate from access requirements under the Act and cannot simply be carried over when transfer occurs.

- If there are security levels, warnings or classifications currently in place (for example, a 'Secret' classification), can the information and records be released at some point? And if yes, what sort of declassification process is it subject to?
- What personal content is there, and does it need protection in accordance with the *Privacy Act 2020*, in particular Part 3, Section 22 Principles 5, 6, 11 and 12.
- What practices, decisions or policies are in place now for public access, for example if the information and records are requested under the OIA or LGOIMA, would any be withheld? And on what grounds?
- Is there any cultural sensitivity to consider in relation to the information and records, for example are any of the information and records taonga?
- How should any relevant standards or advice from the Chief Archivist be taken into account?

2.1.1 *Limitations on access for preservation*

The Chief Archivist can prohibit or limit the access or copying of information and records (and associated metadata) in their custody for preservation reasons, as can the administrative head of a local authority for local authority archives.

2.2 Consistency

There are a number of practical points that organisations need to consider before determining the access status of information and records. These are:

- decisions or access classifications should cover information and records which are related to each other and their ordered sequence, for example, a whole class or series of information and records
- restrictions should, wherever possible, have a limited specified duration
- restrictions need to be practical to implement
- processes should be in place to deal with public requests for permission to view, copy and/or publish 'restricted access' information and records
- access classifications should be applied to both the metadata and content of information and records, and these may be different.

3 When to determine access

3.1 At time of creation/appraisal

Access requirements **should** be determined as part of the appraisal process that occurs and applies when information and records are created. Appraisal is about evaluating an organisation's business context, activities and risks in order to decide what information and records they need to create. As these needs may change over time, this means appraisal should be a recurrent activity as should reassessment of any access restrictions. This will help organisations manage access across time, regardless of format and location.

The benefits of determining access status at time of creation include:

- decisions are made in line with the New Zealand Government Open Access and Licensing (NZGOAL) framework² and the Declaration on Open and Transparent Government³
- information and records (and associated metadata) are prepared for sharing and exchange when all-of-government collaboration occurs
- external accountability obligations under specific legislation are met, for example under the OIA and LGOIMA or other legislation
- privacy protection and security requirements are incorporated in all business process and systems design
- for information and records that are considered of archival or permanent value, access determinations are easier to implement when the information and records (and associated metadata) are transferred to us, an approved repository or become a local authority archive
- information and records (including metadata) are managed in accordance with the requirements of the [Information and records management standard](#).

3.2 At time of transfer

3.2.1 Public offices

If not done at time of creation/appraisal, public offices **must** determine the access status of information and records (and associated metadata) that have been in existence for 25 years or that are about to be transferred to the control of the Chief Archivist.

All decisions to restrict public access **must** be made in consultation with the Chief Archivist and formally documented in an *Access Authority*. This **should** be determined at the time of appraisal but **must** be done before or during the transfer process, or when applying for a deferral of transfer. If a public office has a pre-existing *Access Authority*, it will be reviewed by us to ensure the access determinations are still relevant and valid before transfer.

Access decisions documented in the Access Authority must also be aligned with the list of individual items for transfer. This means that access status and restriction period (if restricted) should be identified at item level for both content and metadata.

Contact us for advice on completing an *Access Authority*.

3.2.2 Local authorities

If not done at time of appraisal, local authorities **must** determine the access status of information and records that have been in existence for 25 years, or that are no longer in current use.

Local authority decisions to restrict access do not require consultation with the Chief Archivist.

² <https://www.data.govt.nz/manage-data/policies/nzgoal>

³ <https://www.data.govt.nz/manage-data/policies/declaration-on-open-and-transparent-government>

4 Duration and conditions

4.1 Public offices

If public information and records have been determined as 'restricted access', both the reason for the 'restriction' and the duration they will be 'restricted' need to be documented and publicised. Any conditions under which public access may be permitted must also be documented and publicised.

Access restrictions on information and records (and associated metadata) that have been transferred to us can be reviewed and amended at any time by the public office in consultation with the Chief Archivist. However, the Chief Archivist may only request a review of access restrictions 10 years after the information and records have been transferred to us.

Responsibility for administering requests to access restricted information and records (and associated metadata) during the period of restriction rests with the relevant public office.

4.2 Local authorities

If local authority information and records have been determined as 'restricted access', the local authority is not required to publicise the reason or the restriction duration unless the information and records concerned are 'protected' and in the control of the Chief Archivist.

A local authority can set a 'restricted access' for a maximum period of 25 years at any one time, which can be extended. The local authority can also vary any conditions on access.

Responsibility for administering access requests during the period of restriction rests with the relevant local authority.

5 Documenting access decisions

Under s,19 of the Act, the Chief Archivist maintains a register of access restrictions placed on public information and records (and associated metadata), including the grounds or reasons for these. This information is available for public inspection.

There is no legislative requirement for local authorities to document their decisions or conditions for access however it is good business practice to document this information and make it publicly available.

5.1 Access status

This means whether public access to information and records (and associated metadata) is 'open' or 'restricted'.

Access Status:	Explanation
Open	The content and/or metadata are open for viewing
Restricted	Conditions are placed on the viewing of the content and/or metadata for a certain period

5.2 Applies from

This means when or at what point the access restriction comes into force.

Applies From:	Explanation
Date created	The date the information and record was created
Date closed	The last content date or date of closure

5.3 Restriction reason, duration and justification

The table below outlines common examples of restriction reasons, durations and justifications.

'Restriction durations' for information and records that have been in existence for 25 years or that are about to be transferred to us are generally calculated from the last content date or date of closure.

If an organisation is making access decisions at the point of creation, they will need to consider how to manage any 'restriction durations' throughout the life of the information and records (and associated metadata).

Reason	Typical duration (in years)	Justification	Examples
Commercial – in confidence	10	Required to protect commercial interests of one or more parties	<ul style="list-style-type: none"> • Government asset sales • Business planning for commercial activities • Due diligence reports • Treaty negotiations
Confidential – political or administrative processes	10 – 25	Required to protect the integrity of political or administrative processes	<ul style="list-style-type: none"> • Confidential advice by public servants and Ministers e.g., minutes, reports and recommendations
Confidential – personal or public safety and maintaining the rule of law	20 – 70	Required to protect personal or public safety and maintain the rule of law	<ul style="list-style-type: none"> • Information on methods of crime detection • Police or other investigative procedures records • Records documenting security measures
Confidential – Cabinet papers	25	Required to protect Cabinet papers which have not been publicly released	<ul style="list-style-type: none"> • Cabinet papers not publicly released
Confidential – existing confidentiality agreement	30 – 60	Required to maintain an existing confidentiality agreement	<ul style="list-style-type: none"> • Sensitive information supplied by another government • Information gathered with an explicit or implicit undertaking of confidence e.g., survey forms
Privacy – sensitive	70	Required to prevent the disclosure of sensitive personal information	<ul style="list-style-type: none"> • Detailed employment records • Disciplinary case files • Applications for financial assistance
National security and international relations	70-100	Required to protect national security and international relations	<ul style="list-style-type: none"> • Military planning information and records • Security and intelligence files • Negotiations • Background papers on foreign leaders

Reason	Typical duration (in years)	Justification	Examples
			and governments
Privacy – highly sensitive	100	Required to prevent the disclosure of highly sensitive personal information	<ul style="list-style-type: none"> • Child welfare files • Medical records • Probation records • Police incident and offence files • Court criminal records
Statutory requirement	Please check relevant legislation	Required where there is a requirement for restriction set out in legislation governing a public office.	<ul style="list-style-type: none"> • Adoption Act 1955 (indefinite restriction) • Ombudsman Act 1975 • Adult Adoption Information Act 1985 • Criminal Records (Clean Slate) Act 2004
Legal privilege	Indefinite until released	<p>Required to protect legal professional privilege. This is any legal advice that has been provided by an internal legal team, a private contractor hired to provide legal advice, or other agency such as Crown Law.</p> <p>Note: information and records containing ‘legal privilege’ will need to be restricted unless the privilege has been waived by the Attorney-General. There may be a general waiver for some types of advice already in existence, in which case these could be made open access. Please check with your legal team if you are unsure.</p>	<ul style="list-style-type: none"> • Legal opinions • Confidential legal advice on legislation which is still in force