



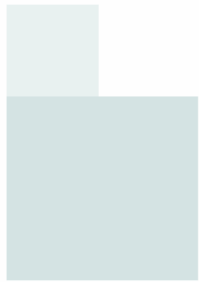
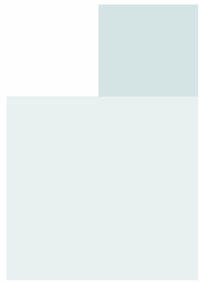
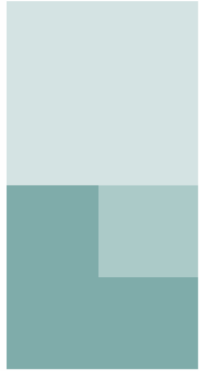
QUEENSLAND STATE ARCHIVES

Management of ASIO Documents in Queensland Public Records

February 2004



Queensland Government
Queensland State Archives



Queensland State Archives

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Scope

These guidelines apply to all public authorities as defined in the *Public Records Act 2002 (Queensland)*.

Purpose

To identify the responsibilities of Queensland public authorities in the management of documents created by ASIO, or documents which contain ASIO information, and to provide advice about their management as public records.

Authority

These guidelines are issued by the State Archivist under section 24 of the *Public Records Act 2002*.

Key requirements for public authorities

Under section 7 of the Public Records Act 2002, chief executives must understand and comply with these guidelines, and must:

- Identify ASIO documents and information held within its recordkeeping system
- Control access to ASIO documents and information
- Notify Queensland State Archives of the existence of any ASIO documents or information prior to a proposed transfer of such records.

Background

Queensland public authorities may have in their custody documents created by ASIO or documents created by other parties which contain ASIO information. These documents may have been captured into a public authority's recordkeeping system.

ASIO is subject to the *Australian Security Intelligence Organisation Act 1979 (Commonwealth)* (the ASIO Act). ASIO's functions include the collection and evaluation of intelligence relevant to security and the provision of advice to Ministers and other authorities on matters relating to security. The ASIO Act defines security as protection of Australia and its people from espionage, sabotage, politically motivated violence (including terrorism), promotion of communal violence, attacks on Australia's defence system, or acts of foreign interference.

The disclosure of information contained in ASIO documents or originating from ASIO information may give rise to national security issues. These guidelines have been developed in recognition of the need to balance the protection of national security against the availability of certain public records.

Roles and responsibilities

Queensland State Archives

- a) Receives transfers of public records that are eventually made accessible to public researchers at the expiration of a determined "restricted access" period.
- b) Manages public access to records in its custody in accordance with the written advice from public authorities on the restricted access applied to records under sections 16, 18 or 19 of the *Public Records Act 2002*.

- c) Prepares regulations to restrict access to identified records under provisions of section 18 of the *Public Records Act 2002*.
- d) Authorises the disposal of public records under section 13 of the *Public Records Act 2002*.
- e) Provides advice to public authorities on these guidelines.

Public Authority

- a) Identifies ASIO documents or ASIO information in documents created by others in its possession and ensures compliance with the ASIO Act and the “requirements to protect national security sensitive information”
- b) Consults with ASIO in regard to exempt information that may be contained in ASIO documents that form part of the public records of Queensland.
- c) Obtains ASIO’s advice as to the wording of the links between exempted information and originals for Queensland State Archives.
- d) Prepares archival public records for transfer to Queensland State Archives.
- e) Notifies Queensland State Archives of the existence of any ASIO documents or information in a proposed transfer of records.
- f) Provides written advice on the “restricted access” period for records transferred to Queensland State Archives.

Australian Security Intelligence Organisation (ASIO)

- a) Examines ASIO documents and documents containing ASIO information that form part of the public records of Queensland.
- b) Advises the public authority in possession of the documents about information that should be exempt from public release as it would contravene the ASIO Act or the “requirements to protect national security sensitive information”.
- c) Provides advice to Queensland public authorities on what records, documents or information should be referred to ASIO for examination.
- d) Provides advice to Queensland public authorities about appropriate security measures to prevent unauthorised access to ASIO documents and unauthorised release of information.
- e) Provides advice to Queensland public authorities as to the wording of the links between exempted information and originals for Queensland State Archives.
- f) If requested, provides advice to Queensland public authorities on the storage and handling of national security classified documents or documents containing ASIO information.

Requirements to protect national security sensitive information

Certain sensitive material must be protected in the interests of national security and the continuing ability of ASIO to effectively perform its functions. The following requirements ensure a balance between the need to release information into the public domain and the need to protect national security. They are also consistent with the exemptions from public availability set out in the *Archives Act 1983 (Commonwealth)*.

A record or part of a record must be exempted if it contains:

- Information or matter which, if disclosed, could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth.
- Information or matter which, if disclosed, would, or could reasonably be expected to disclose or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law.

Information falling within the above categories may include:

- Specific services and countries ASIO has liaison relationships with, and the specific subjects of mutual interest.
- The identity of confidential sources – human and institutional, domestic or foreign.
- Where necessary, the existence of a confidential source.
- Other information which might reveal the identity of a source – a title as opposed to a name, details of a source's activities.

These examples are non-exhaustive, however, and other information, even where apparently innocuous, may give rise to security sensitivities.

Impact of the ASIO Act

The ASIO Act imposes certain recordkeeping obligations on public authorities.

Section 92 of the ASIO Act prohibits the publication of the identity of ASIO officers, employees or agents. Subsection 92(1) relevantly provides as follows:

(1) A person (other than a member of the Committee on ASIO, ASIS and DSD) shall not, except with the consent in writing of the Minister or of the Director-General, publish or cause to be published in a newspaper or other publication, or by radio broadcast or television, or otherwise make public, any matter stating, or from which it could reasonably be inferred, that a person having a particular name or otherwise identified, or a person residing at a particular address, is an officer (not including the Director-General), employee or agent of the Organisation or is in any way connected with such an officer, employee or agent or, subject to subsection (1B), is a former officer (not including a former Director-General), employee or agent of the Organisation or is in any way connected with such a former officer, employee or agent.

Penalty: Imprisonment for one year.

Handling and storage of ASIO information

Officers handling ASIO documents and information, which have not been cleared for release and whose original national security classification stands, must hold a security clearance at the appropriate level.

ASIO documents and information which have not been cleared for release, and whose original national security classification stands, must be stored in accordance with the minimum standards set out in the Commonwealth Protective Security Manual¹.

For advice on these matters, contact ASIO. (See details on page 6).

Chief executive officers of Queensland public authorities must ensure compliance with the prohibition against the identification of ASIO officers set out in section 92 of the ASIO Act and the “requirements to protect national security sensitive information” (see above) with regard to ASIO information in their custody. This applies to ASIO created documents and ASIO information contained in documents created by others.

Decisions in relation to making available public records containing ASIO information must be made by an ASIO officer. Accordingly, documents containing, appearing to contain, or referring to ASIO information must be transferred to ASIO for assessment in accordance with the principles set out in these guidelines.

¹ The Protective Security Manual is issued by the Commonwealth Attorney-General's Department.

Disposal of public records in Queensland

Decisions on the retention of public records for permanent preservation, or the disposal by eventual destruction of records of temporary value, are made by the Queensland State Archivist under section 13 of the *Public Records Act 2002*.

“Disposal”² of a record includes-

- (a) destroying or damaging the record, or part of it; or
- (b) abandoning, transferring, donating, giving away or selling the record, or part of it.

It is not permissible under the *Public Records Act 2002* for public authorities to delete or otherwise remove information from an original ASIO document. The restriction of access to exempt information in ASIO documents or ASIO information contained in documents created by third parties is to be achieved by expunging³ information in *copies* of original documents. Access to original and copied information must then be managed through the imposition of security controls.

Access to ASIO information and documents in the Commonwealth

Like most other Commonwealth records, ASIO records are eligible for release under the *Archives Act 1983 (Commonwealth)* after 30 years. However, because of their nature ASIO records hold some sensitive information that is exempt from public release. The *Archives Act 1983 (Commonwealth)* requires the release of all information that is not exempt. Before ASIO records are released, ASIO examines them to identify exempt information which is then withheld from public access under one of the 15 “exemption categories” described in section 33 of the *Archives Act 1983 (Commonwealth)*.

Access to ASIO information and documents held at Queensland State Archives

The restricted access categories and restricted access periods that apply to Queensland public records are described in section 16 of the *Public Records Act 2002*. It is intended that access to ASIO information and documents be treated consistently in both the Commonwealth and the State jurisdictions. Namely, ASIO documents and information should be accessible after 30 years provided steps have been taken to ensure that release of information does not contravene section 92 of the ASIO Act and “requirements to protect national security sensitive information” (see above).

In addition to the framework of restricted access periods described in the *Public Records Act 2002* access to records can be restricted by regulation under subsections 18(4) and 18(5). The restriction of access by regulation may be appropriate for the management of original ASIO documents that contain exempt information and ASIO should be consulted where necessary. Copies of ASIO documents from which exempt information has been removed would be subject to restricted access periods described in section 16 of the *Public Records Act 2002*. (See section below dealing with transfers of records to Queensland State Archives)

How to deal with ASIO documents or information in the custody of a public authority

Public authorities must comply with restrictions on publication of the identity of ASIO officers and the “requirements to protect national security sensitive information” (see above) by ensuring ASIO information is not released to unauthorised persons. The documents should be held securely and access to them, and the information contained within, should be controlled.

² Schedule 2, Dictionary, *Public Records Act 2002*

³ “Expunging” information from a copy of an original document means deleting, blotting out or obliterating the information that is exempt from release.

How to deal with ASIO documents or information that may form part of a transfer of records to Queensland State Archives

A public authority that is transferring archival public records to Queensland State Archives must inform the State Archivist, in advance, of the existence of ASIO documents or ASIO information in a document created by a third party or by the public authority itself.

Queensland State Archives only accepts transfers of permanent public records. Public records of temporary retention status must be appropriately managed and stored by the public authority itself.

Prior to transferring records that contain ASIO information, the public authority must ensure that the release of the information will not contravene subsection 92(1) of the ASIO Act or "requirements to protect national security sensitive information".

The public authority:

- a) Must inform ASIO that the public authority will be sending certain documents to Queensland State Archives and that the documents will be released under provisions of the *Public Records Act 2002 (Queensland)*.
- b) Must seek advice from ASIO about whether the release of information within a document or documents is a contravention of the ASIO Act or needs to be exempted to ensure protection of national security sensitive material of the type identified in the "requirements to protect national security sensitive information".
- c) Should provide a copy of the original document to ASIO for assessment to identify information which must be expunged before the document is made available to unauthorised persons.
- d) After receiving a copy of the document fit for release, will substitute that copy for the original for inclusion in the transfer of records. (The original will be separated and transferred separately. See below).
- e) Must seal the original ASIO document that contains exempted material or has been exempted in toto, and separate it from the records to be transferred. It is to be transferred separately.
- f) Should label the sealed document containing ASIO information and, after consultation with ASIO as to an appropriate wording, record a link between it and the copied record in the transfer. If the whole document is exempt, that fact should be recorded.
- g) After consultation with ASIO on appropriate wording, should provide information to the Queensland State Archives (QSA) that describes links between the original and the copy. The original records will be listed and transferred separately, but QSA must be able to locate and control both the copy and the original documents.

In all other regards, public authorities then follow normal transfer procedures when preparing records for transfer. These include such tasks as listing the records of the transfer, compiling contextual information about the records, packing the records and arranging transport.

Queensland State Archives can provide assistance in preparing records for transfer.

Contacts at Queensland State Archives

Manager, Agency Services

Tel: 07 3875 8705

Fax: 07 3875 8764

Manager, Transfers and Regulations

Tel: 07 3875 8750

Fax: 07 3875 8764

How to contact ASIO

The Director-General of Security
ASIO Central Office
GPO Box 2176
CANBERRA ACT 2601

Attention: Assistant Director, Public Research

Fax: 02 6234 1446

General requests for assistance may be faxed to the Assistant Director on the above number. Specific documents bearing national security classifications should not be faxed without consultation as this is not a secure fax link. Arrangements will be made for transfer to ASIO of national security classified material.

Glossary

“Record”⁴ means recorded information created or received by an entity in the transaction of business or the conduct of affairs that provides evidence of the business or affairs and includes:-

- a) anything on which there is writing; or
- b) anything on which there are marks, figures, symbols or perforations having a meaning for persons, including persons qualified to interpret them; or
- c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- d) a map, plan, drawing or photograph.

A “public record”⁵ is any of the following records made before or after the commencement of the *Public Records Act 2002*-

- a) a record made for use by, or a purpose of, a public authority, other than a Minister;
- b) a record received or kept by a public authority, other than a Minister, in the exercise of its statutory, administrative or other public responsibilities or for a related purpose;
- c) a Ministerial record.

“Expunging” information from a copy of an original document means deleting, blotting out or obliterating the information that is exempt from release.

⁴ Schedule 2, Dictionary, *Public Records Act 2002*

⁵ Section 6(1), *Public Records Act 2002*