



DEFENCE FORCE WELFARE ASSOCIATION

A member of the Alliance of Defence Service Organisations

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RELEASE OF RECORDS BY THE NATIONAL ARCHIVES OF AUSTRALIA

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The subject of the release of service records by the National Archives of Australia has been the subject of past articles in *Camaraderie*.

Below find:

- Formal advice issued by the NAA
- DFWA comment:

FORMAL ADVICE FROM NATIONAL ARCHIVES

BACKGROUND

The NAA is responsible for making Commonwealth records available to the public under the provisions of the *Archives Act 1983*. The Act requires the National Archives to release records for public access which are in the open access period unless they contain information that falls into one or more of the 16 exemption categories as defined in section 33 of the Act. This applies to both records in the Archives' custody and those still with government agencies.

Following amendments to the Archives Act in May 2010, the closed access period was reduced from 30 years to 20 years. The changes will be phased in over a 10-year period. Each year, the open access period for Commonwealth records will increase by two years. Before release each file is examined by specialist Archives' staff who are delegated under the Act to examine records and make decisions about whether they can be released. Sometimes this is done in consultation with relevant departments and agencies.

The National Archives holds a range of information about identified individuals, including files about service personnel, migrants, and subjects of investigation by the security services. Personal information available in these records may include full name, date and place of birth, addresses, next-of-kin details,

education qualifications, medical details and work history. The majority of researchers seeking access to these files are family historians, subjects of the files or next of kin.

Under section 33 (1)(g) of the Act material can be exempted if it constitutes an unreasonable disclosure of personal affairs. In the case of medical health information, the age of the material, the amount of detail in the record, and whether the subject of the information is deceased is taken into account. Detailed medical histories and material containing information of continuing sensitivity are not released.

FREQUENTLY ASKED QUESTIONS

1. What records are available for possible release?

The Archives Act applies to all records except those of the Courts, some records of the Parliament, governors-general, the monarch and some records held by other national collecting institutions, such as the National Library of Australia. There is a right of access to all other records in the open access period, including those held by government agencies.

Before the National Archives releases records for public access they are examined to ensure they do not contain information requiring exemption.

2. Who can access the documents?

Once the file has been examined and any exemptions have been applied, the file is available to any person who wants to view it.

3. Can normal records of service be released, and if so, to whom?

Yes they can be released, once they have reached the open period and after they have been examined, and to anyone who has requested them.

Service records are used by the services to administer the movements and pay of personnel. They commonly contain biographical information as well as service information such as movements, postings, training and performance reports, changes in rank, and brief mention of injuries or illness.

4. Can medical documents be released?

Minor medical information such as administrative documents in service dossiers are usually suitable for release. Sensitive medical information on service dossiers would generally be removed from the dossiers and retained by the Department of Defence before records are transferred to the National Archives.

Department of Veterans' Affairs (DVA) case files which may include hospital, medical or pension files contain personal information that is sensitive, so therefore are not always available for public release. Because many World War II and post-World War II veterans or their spouses or siblings are still alive DVA case files from later years are not suitable for public release even though they are in the open period. The Archives advises inquirers requesting DVA files or Defence health records to contact the departments directly.

5. Can service performance reports be released, and if so, to whom?

Service performance reports can be released. Section 33 (1)(g) of the Archives Act provides that a record is exempt from public access if it contains 'information or matter of which under this Act would involve the unreasonable disclosure of personal affairs of any person (including a deceased person)'.

Both the Administrative Appeals Tribunal (AAT) and the Federal Court have determined that information relating to a person's professional affairs, including their employment performance, is not considered to be their personal affairs and therefore cannot be exempted under the personal affairs exemption.

Under section 33 (1)(j), information about the business or professional affairs of a person can be withheld where release of this information would adversely impact on lawful business or affairs.

6. Would the service dossiers of SAS soldiers be released?

SAS members' service documents are still in the custody of Department of Defence. At the present time the department is preparing dossiers of those who served in Korea and Vietnam, including the SAS, for transfer to the National Archives. Sensitive operational information is not usually held on a member's file but all records are being checked for sensitive operational and medical information before transfer. If any of this information is found it will be removed from the file and retained by the Department of Defence.

7. Are subjects of files notified before release of documents relating to them?

While the Freedom of Information Act requires agencies to consult individuals named in records before release, the Archives Act contains no such provision. This recognises the difference in age of records each Act deals with and the practical difficulties that such a provision would entail. After more than 20 years it is unlikely that the National Archives would be able to contact the large numbers of individuals about whom information is released each year, so in the interests of consistency and equity the Archives does not seek individual views.

8. Can an individual pre-empt the release of any documents by taking some course of action with the National Archives?

No. The Archives Act requires the National Archives to make open period records available for public access unless they contain exempt information as defined at section 33 of the Act. Any person can apply to the Archives for access to an open period record. No person can seek to pre-empt an application for access being processed. Under the law an applicant is not required to explain why they want access nor are they required to be related to, or to have sought permission from, the subject of the record or the subject's relative.

The National Archives provides access to records through its reading rooms, copying service and its website. Because the Act does not prescribe delivery channels, the National Archives is able to exercise some discretion about what it makes available online. In certain circumstances online access will be withdrawn if the subject of a record, or an immediate relative, objects to a record being online. Where

online access is withdrawn, records will continue to be available through the National Archives' reading rooms and copying service as according to the Archives Act.

9. What, if any, other external documents does the National Archives use to interpret the Act?

Under the Act, the National Archives is the decision maker in relation to providing access to Commonwealth records. Decisions are made using a detailed Access Examination manual which has been informed by relevant decisions by the AAT and Federal Court and sometimes advice sought from government agencies and departments.

Due to changes in the Act reducing the closed period from 30 to 20 years the National Archives is currently reviewing the Access Manual to reflect this change. When the review is completed the Access Manual will be available on the Archives website.

If you seek further information or have concerns about information that has been released, please consult Fact Sheets available on the National Archives of Australia website (www.naa.gov.au) or contact:

Director, Reference & Information Services
National Archives of Australia
PO Box 7425
CANBERRA BUSINESS CENTRE ACT 2610

DFWA RESPONSE

SERVICEMAN AND WOMEN'S RIGHT TO PRIVACY – WHO CARES ?

A note from the National Archives of Australia explaining why they can release military records of members of the ADF has not been well received by the Defence Community. The following letter, recently received by the DFWA from a retired ADF member, says it all:

I know you and the DFWA have been working on this issue for some time now. Following a quick scan of the attached document from the National Archives of Australia, it would appear to me that our Government and its bureaucrats ignore the rights of every service man and woman to have their personal affairs and records kept private. It is a disgrace.

Not only that but it also makes it easier for anyone with criminal intent, should they so desire, to steal the identity of the men and women who served this country with distinction.

This is just another example why I shall be using my best endeavours to make sure that my grandchildren and others do not volunteer for a career in our armed forces.

Clearly, many people do care even if the Government does not.