

SUBMISSION FROM NATIONAL ARCHIVES OF AUSTRALIA

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Submission to Parliamentary joint Committee on ASIO ASIO's Public Reporting Activities

The National Archives of Australia

- as offices in all states and Territories
- was established by the Archives Act 1983 with responsibility for the identification, preservation and accessibility of Commonwealth records of enduring value - including the records generated and maintained by ASIO
- becomes a prescribed agency under the *Financial Management and Accountability Act 1997* on 1 July 2000. The Archives has been a budget funded agency within the Department of Communications, Information Technology and the Arts
- has a collection of over 200 kilometres of records of enduring value - the earliest document dating to 1804 and the latest to 2000
- holds a limited quantity of records created by ASIO
- receives public requests for 2000 record items about ASIO each year
- receives requests for internal reconsideration of about 40 ASIO record items each year
- defends approximately one case involving ASIO records before the Administrative Appeals Tribunal each year

1. SUMMARY

The Attorney-General has asked the Parliamentary Joint Committee on the Australian Security Intelligence Organization to inquire into:

The nature, scope and appropriateness of the way in which ASIO reports to the Australian public on its activities.

This submission from the National Archives of Australia argues that the performance of, and outcomes delivered by, an agency can not be judged on the basis of its public reporting activities alone. The National Archives contends that the records and archives of an agency are crucial to public assessment of its performance and its level of accountability.

The submission also outlines the extent of public interest in the archives of ASIO.

2. BACKGROUND

The Commonwealth appointed its first archivists in 1944. Their initial focus was to identify valuable records, particularly wartime records, and prevent their destruction by the wartime paper salvage campaign. Adequate storage for, and management of, these records and the introduction of a regime to authorise the disposal of Commonwealth records dominated the work of archival activity through the 1950s.

In 1966 the government agreed to the introduction of a 50-year public access rule for Commonwealth records, with an accelerated release of records created up to 1922. In 1970 a 30-year public access rule was introduced for all records other than Cabinet records (two years later Cabinet records became subject to the 30-year rule).

The Archives Act 1983 was one of several laws drafted in the 1970s as part of an administrative law package that included the *Freedom of Information Act 1982*. The Archives Act established a strong archival regime for records of the Commonwealth. The provisions of the Act relating to the disposal and custody of, and public access to, Commonwealth records applied to all records created or maintained by Commonwealth agencies.

The Archives Act stipulates that Commonwealth records:

- may not be disposed of without the authorisation of the National Archives;
- must be in Commonwealth custody unless an exemption is approved by the National Archives and, once 25 years old, should be in the custody of the National Archives. ASIO is exempt from the latter half of this provision; and
- should be publicly accessible once they are 30 years old (regardless of their custody arrangements) providing that they do not contain exempt material of the kind specified in the Archives Act.

3. ARCHIVES AND ACCOUNTABILITY

Public reporting of an agency's activities through budget statements, annual reports, scrutiny of parliamentary committees, newsletters and websites is essential. However, it is, at best, a narrow window into the work of an agency. This is for several reasons. Published information is:

- invariably provided at a summary level;
- often tailored to fit into prescribed templates (for example, annual reports);
- selected and shaped consciously by the authoring agency; and
- on occasion, only available for a fee.

Indeed, the publication of material by agencies is usually a very considered and conscious exercise in communication - as it should be.

In contrast, an agency's records and archives document its procedures, policies, decisions, operations, successes and difficulties in a far more exhaustive and unshaped way. Good recordkeeping, in terms of behaviour, systems and records, is essential for accountability. However, even poor recordkeeping can be vital in providing the public with a continuing understanding of the work of agencies and government and their relationship with the Australian people.

The Commonwealth's archives are a unique public resource representing an important facet of our political, administrative, cultural and social development. The Commonwealth manages and maintains its archives because their preservation and availability are deemed to constitute a 'public good'. Benefits flow to all Australians, whether or not they are direct users of archives.

Archives are used by members of the public for a variety of reasons including to prove entitlements (for example, to benefits), for historical research, for academic research, and for journalism. The archives are central to all of these endeavours as they provide evidence, are a source of memory, and contribute fundamentally to an understanding of our national identity.

Members of the public have access to the records created by Commonwealth agencies:

- under the provisions of the *Freedom of Information Act 1982* - these provide individuals with a statutory right to access Commonwealth records less than 30 years of age. Applications for access to records under FOI are lodged with the agency which created the records. Responding to, and managing, FOI applications is not centralised - each agency to which an application has been made is the decision maker. There is a fee to lodge and to process applications for access to Commonwealth records under the FOI Act. ASIO is exempt from the provisions of the FOI Act; and
- through the access regime assured by the *Archives Act 1983* - a fundamental element of the Archives Act is a requirement that all Commonwealth records, once they reach 30 years of age, should be made publicly available unless they contain exempt

information (the categories of permissible exemption are set out in the Archives Act). This entitlement to basic access to the public record is without cost to the researcher. Access is available via the Archives regardless of which agency created the record and whether or not the record is in the physical custody of the Archives. The access provisions of the Archives Act do apply to ASIO.

Consequently, the public may make an assessment of ASIO's performance not only through the public reporting of its activities but also through scrutiny of its archives.

4. ACCESS TO RECORDS AND ARCHIVES

Public confidence and perceptions of accountability are shaped not only by the existence of a legal entitlement to access but by whether and how such access is facilitated.

The moment at which an individual sees either the original or a copy of the archival document he or she sought (be it a file, film, photograph, map, plan or electronic record) is the culmination of a process. This process is dependent on services, tools and a substantial archival infrastructure. Without these tools and infrastructure a legal entitlement to access, philosophically vital though it is, may be meaningless in practical terms.

The following services are necessary to provide public access to records:

- introductory publications and leaflets that provide information about facilities, services and records - some of the National Archives Fact Sheets are attached;
- access to reference tools, such as databases, websites, indexes, guides and lists, which enable researchers to establish the range of records in* existence and to select those of interest - the National Archives website at www.naa.gov.au provides such tools;
- staff assistance to help researchers understand how to identify records of relevance in the collection, and how to use the available databases, indexes and guides;
- reading rooms where services, tools and records are made available; and
- decisions on the access status (ie whether an item may be made available to the public or whether it is exempt in its entirety or in part) of items sought by researchers.

The National Archives provides these services on behalf of the Commonwealth for its records. In 1998 - 99 the Archives received 68 000 reference inquiries, 25 000 visits were made to its reading rooms and 59 000 items were issued to researchers. The responsiveness and quality of these services is in part dependent on whether national archives are in the custody of the Archives and the cooperation of agencies.

The Archives Act places a general obligation on the Commonwealth to make records available once they reach 30 years of age. Any member of the public may submit an application for such a record in the event that its access status has not been determined. In 1998 - 99 researchers lodged applications for access to 25 000 items. The overwhelming majority of items are released in their entirety for public access. Decisions

on most items (94% in 1998 - 99) are made within the 90-day statutory time limit set by the Archives Act.

An applicant for access to records who is dissatisfied with the outcome of an application may select from a range of options for a review of the initial decision. The most commonly sought review is an internal reconsideration (by an officer of the Archives senior to the officer who made the original decision) of a decision to wholly or partially exempt records. In 1998 - 99 internal reconsideration was sought on 118 items.

In turn, applicants dissatisfied with a decision on an internal reconsideration may apply to the Administrative Appeals Tribunal for a review of the decision. In 1998 - 99 one case (lodged in March 1998) was heard by the Tribunal.

5. PUBLIC INTEREST IN ASIO RECORDS

The Archives holdings of records controlled by ASIO are limited - 330 shelf metres. Given that the agency was established in 1949 and that its predecessors go back to 1916 this is a very modest holding.

Normally an agency transfers records, including agency-created indexes and lists, to the Archives before the records reach 30 years of age when they become eligible for consideration for public release. The Archives enters details about files on its database where the details are available to members of the public who can then request files of interest. ASIO does not usually transfer records, indexes or lists to the Archives. Therefore, members of the public interested in ASIO records submit a request asking for any files which exist about a particular name or subject area. This information is then relayed to ASIO where indexes and lists are checked. If relevant records are found, they are examined by ASIO and then a copy of the file or files is forwarded to the Archives for the final access decision and for issue to the public in the reading room. When the copy is received by the Archives, identifying details are entered on the Archives database and the file title is therefore, from that time, available to the public.

Despite this paucity of information about ASIO records there is considerable public interest in them. Of the 50 000 to 60 000 items issued to the public each year over the last four years, 1500 to 2100 were for records created by ASIO and its predecessors. Of the 270 internal reconsiderations lodged during the last four years, 160 (60%) were for ASIO records. This proportion is not unusual, because of the large number of exemptions applied to ASIO records and the high degree of public interest in them.

Between 1984 and 31 May 2000, 50 applications for review of decisions to exempt records under the Archives Act were lodged with the Administrative Appeals Tribunal. Nine of these proceeded to formal decisions by the Tribunal and the Archives is awaiting a decision on a tenth case heard on 23 -24 May 2000. Nine of the ten cases proceeding to formal decisions by the Tribunal have involved ASIO records.

6. CONCLUSION

The Commonwealth maintains its archives for two reasons - for its own administrative purposes and for use by the public. These records allow public scrutiny of the performance of Commonwealth agencies and are crucial to accountability.

The Archives encourages the Parliamentary Joint Committee on ASIO to recognise the importance of the archives of ASIO to any public assessment of ASIO's activities and role.

The Archives brings to the Committee's attention the existing level of public interest in the archives of ASIO.