

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Group: 2

Program: Other Agency

Question No. BE15/037

Senator Xenophon asked the following question at the hearing on 27 and 28 May 2015:

Senator XENOPHON: Yes. Can I just go to a matter that you may need to take on notice, but you are probably cognisant of it—I think I have touched on this at previous estimates. Can you tell us, either now or on notice, how much money has been spent from 2007 to 2015 in resisting applications made by any applicants to declassify Australia's knowledge of the Indonesian occupation of East Timor and related matters? It is something that you would be familiar with, I take it?

Mr Fricker: I do not think we should characterise it as how much money we have spent resisting. Because honestly, Senator, we encourage people to access records, that is why we exist. If I may be allowed to—I am happy to take that on notice but I think what you are asking—

Senator XENOPHON: Well, if you find the word 'resisting'—

Mr Fricker: is how much money have we spent examining records to make every possible record release to the public domain—is that what you are asking?

Senator XENOPHON: Perhaps I will put it in as neutral terms as possible—some would say 'resist', you may say 'examine'—but I think another way of putting it is that applications have been made for the declassification of documents in respect of East Timor and Australia's knowledge, or lack of knowledge, in terms of certain matters in respect of the Indonesian occupation. As a result of those applications, moneys were expended by the National Archives, resources were used. I am just trying to understand how much was spent in each of those years in respect of that. And I understand there was a relatively recent application that was in the AAT earlier this week.

Mr Fricker: Yes. I am delighted to take that on notice, Senator, provided that I have understood the question, which is how much is expended in us applying the Archives Act to make sure that records are properly released. If you will forgive me, and I am not being disrespectful, but I just worry about this characterisation that I am using some discretionary power to resist people's lawful entitlement to access records of the Commonwealth. We do not do that, but we are bound by the Archives Act. There are exemptions in the Archives Act, so if that is what you are—

Senator XENOPHON: The act does talk about accessibility though—doesn't it?

Mr Fricker: Yes, it does. But section 33 of the act is quite specific in prescribing those records which must remain exempt from access. I am pleased to take that question on notice, but I feel I am obligated to just put on record that that is the question that I would be responding to.

Senator XENOPHON: You are not in any way being disrespectful.

Mr Fricker: Thank you.

The answer to the honourable senator's question is as follows:

Public access to records 2007-2015

Division 3 of Part V of the *Archives Act 1983* (Cth) (Archives Act) contains provisions relating to access to Commonwealth records. Under section 31 the National Archives of Australia (the Archives) must cause Commonwealth records in the open access period, that are not exempt, to be made available for public access. A Commonwealth record is exempt if it falls under one or more of the 16 exemptions defined in section 33 of the Archives Act. These exemptions include national security, defence, international relations, confidential information and personal affairs. The volume of proactive publication in any one year depends on the availability of the Archives resources during that period. The Archives identifies those series of records that appear to have greater public interest and prioritise the proactive disclosure of those records.

In addition to this proactive publication requirement, section 40 of the Archives Act provides a statutory right for persons to make written requests for access to a record referred to in section 31. In deciding whether or not a record is exempt the Director-General of Archives may make arrangements with other Commonwealth institutions for determining whether a record is treated as exempt. The assessment of Commonwealth records to assess their sensitivity, prior to providing public access forms part of the legislative framework in which the Archives is required to operate.

The Archives is committed to promoting and providing access to the national archival collection. The following tables set out the number of records released under the Archives proactive release scheme (section 31) and as a result of written requests from members of the public (section 40).

Table 1: Archives access examination program under section 31

2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14*
255,153	90,010	141,349	260,645	137,011	59,579	173,018	363,695

* Note that 2013-14 figure is much higher than previous years because the Archives was able to reprioritise and direct internal resources to undertake a higher level of proactive disclosure in that period but has limited ability to redirect resources to the same level in the forward years

Table 2: Applications from the public under section 40

2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
36,019	46,841	43,759	46,985	38,625	48,187	43,840	57,058

Table 3: Outcome of access examination under section 31 and 40 (number of records)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Wholly released	286,211	132,339	182,525	303,383	170,616	102,778	212,243	414,453
Wholly released as a	98%	97%	98%	99%	97%	95%	98%	98%

	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13	2013–14
percentage*								
Partially released	4,732	4,064	3,316	4,027	4,732	4,703	4,376	5,641
Withheld from public access	299	448	267	250	289	285	239	659

*rounded to the nearest whole number.

As indicated, the Archives is committed to prioritising the proactive release of Commonwealth records in accordance with our obligations but subject to resource constraints. In that vein, on 19 September 2000, more than 300 records with an average of 250 pages per record, eighty photographs and fifteen tape recordings about Indonesian occupation of East Timor and related matters were released for public access under the accelerated release provisions of the Archives Act. Accelerated release occurs prior to the open access period and in accordance with arrangements approved by the prime minister of the day.

The records released in 2000, cover the period from the announcement by Portugal in 1974 that it was decolonising East Timor to the signing by President Soeharto of the bill integrating East Timor with Indonesia in July 1976. The deaths of five Australia-based journalists at Balibo in October 1975 occurred during this period. The accelerated release of the East Timor records was, at that time, only the third group of records released under these provisions since the proclamation of the Archives Act.

Since 2007, the Archives has released a further 705 records relating to ‘Indonesian occupation of East Timor and related matters’ which again on average contain 250 pages per record. Of those 705 records, 422 records were released in full for public access and 281 were released with one or more exemptions applying. Only two records have been withheld in their entirety on the basis that they are exempt.

Money expended between 2007 to 2015 in applying the Archives Act

External legal expenses

From 2007 to 2015, the Archives spent \$452,781.33 on external legal costs on proceedings relating to the subject matter ‘Indonesian occupation of East Timor and related matters’. Those costs relate to 2 applicants that filed approximately 37 applications in the Administrative Appeals Tribunal (AAT) between 2009 and 2014. Those applications concerned approximately 37 records, which on average contain 250 pages each.

Internal access examination expenses

The Archives has 15.4 full time equivalents (32 actual staff) across all eight offices currently undertaking access examination to facilitate access to Commonwealth records in accordance with the Archives Act. Access examination includes an assessment of whether information should be exempt and includes the referral of records to agencies for advice to consider any potential exemptions. The Archives makes decisions about the records and then makes those decisions publicly available with the relevant Commonwealth record. It takes at least, 10 hours per record to undertake the access examination process for complex and sensitive material required by the Archives Act. Accordingly, for the 705 records that have been assessed since

2007 which relate to 'Indonesian occupation of East Timor and related matters' it has taken at least 7,100 hours for the Archives to access examine those records.