

Archived ASIO files

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.¹

- 4.1 While not a main form of ASIO's public reporting, archived ASIO files are an important part of the organisation's accountability to the Australian public, and provide an opportunity for the public to gain a greater insight into the practicalities of ASIO operations of the past.
- 4.2 The National Archives of Australia² commented on the importance of archived files for ASIO's accountability (and that of all government agencies). According to the Archives, publicity and education material produced by government agencies is

...at best, a narrow window into the work of an agency. 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.³

1 National Archives of Australia, submission no. 13, p. 7.

2 In the body of this report the National Archives of Australia will be referred to as "the Archives".

3 National Archives of Australia, submission no. 13, p. 6.

- 4.3 ASIO acknowledged that archived files remain one of the most significant ways in which members of the public receive information about ASIO's past activities.⁴

Legislative framework for access to files

- 4.4 Commonwealth records are archived, stored and released to the public under rules set out by the *Archives Act 1983*. Not all Commonwealth records are retained – this would simply take up too many resources and too much space. The Archives has responsibility for determining which records are to be kept over a long period of time. Commonwealth agencies cannot destroy records without gaining authority from the Archives to do so.⁵
- 4.5 Under the Archives Act, all Commonwealth records are made available to the public once they reach 30 years of age, unless they contain exempt information. The provisions for exempting information (or whole files) from public release are discussed in detail further in this chapter.
- 4.6 Normally, agencies transfer all 30 year old files to the Archives, including file indexes and lists. The Archives enters the file details onto a database, which can be accessed by the public. Once finding relevant details on the database, members of the public can request Commonwealth files directly from the Archives. However, ASIO does not transfer its files, indexes or file lists to the Archives (this is also the case for the other Australian intelligence agencies).⁶ The process for a person seeking access to an archived ASIO file is:
- a person puts in a request to the Archives for an ASIO file on a particular name or subject area;
 - Archives relays the request to ASIO, which then checks its indexes and file lists;
 - if relevant files are found, they are examined by ASIO (to exempt any sensitive information) and forwarded to the Archives;
 - Archives then examines the file to check that any personal information is not included;

4 ASIO, submission no. 14, p. 15.

5 "Why Records are Kept", National Archives of Australia internet site, at: http://www.naa.gov.au/recordkeeping/disposal/why_keep/contents.html, accessed on 28 July 2000.

6 National Archives of Australia, submission no. 13, p. 9.

- the file details are entered onto the Archives database and it is issued to the public; and
 - the ASIO file details then exist on the Archives database, and any future researchers with an interest in that file/subject will be able find details of it on the database and request the file directly from Archives.
- 4.7 While ASIO and the other intelligence agencies are subject to the provisions of the Archives Act, they are not subject to the *Freedom of Information Act 1982* or the *Privacy Act 1998*, the other two legislative instruments by which the public can access government information.

Interest in ASIO files

- 4.8 The submission from the Archives notes that while there is only a small amount of information about ASIO files available to the public, there is considerable interest in them. Of the 50 000 to 60 000 items issued to the public each year over the past four years, 1500 to 2100 were records created by ASIO.⁷ This includes whole or part-files, photographs, and reels of film.
- 4.9 Dr Frank Cain, of the University of NSW, outlined his interest in ASIO files in a submission the inquiry:

ASIO records provide an essential source for understanding the progress of political events in those important decades of the second half of the 20th century in Australia.⁸

Exemptions from ASIO files

- 4.10 Section 33 of the Archives Act allows material to be exempted from Commonwealth files for a number of reasons. Those exemptions most relevant to ASIO's work include:
- information which could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth (s. 33 (1) (a));

7 National Archives of Australia, submission no. 13, p. 9.

8 Dr Frank Cain, submission no. 10, p. 2.

- disclosure of information that would constitute a breach of confidence (s. 33 (1) (d));
- disclosure of the existence or identity of a confidential source of information relating to the enforcement or administration of the law (s. 33 (1) (e) (ii));
- information which would endanger the life or physical safety of any person (s. 33 (1) (e) (iii)); and
- unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person) (s. 33 (1) (g)).⁹

4.11 In practical terms, this means that information on ASIO files relating to officers' names, sources' names, codenames, and some operational activities are routinely 'blacked out' from files before they are made public. Dennis Richardson (ASIO) told the Committee:

From our point of view, we are concerned primarily about source protection and whether the information or the methodology in a report remains current today.¹⁰

4.12 The Archives reported that very few ASIO files are fully closed to the public, but most files have some blacked-out sections:

I would say on just about every ASIO file there are 10 exemptions, be it a word or a folio or a paragraph.¹¹

4.13 If people are not granted access to ASIO files (or to some information within files), they have several avenues of appeal. These include an application for internal reconsideration of the decision to exempt information, and then formal appeals through the Administrative Appeals Tribunal. These appeal mechanisms are the same for all files held by the Archives, irrespective of the agency they originate from.¹²

4.14 Over the last four years, the Archives has received 270 applications for internal reconsideration of a decision. Of these 270, 160 (60 per cent) were in relation to ASIO records. Over the last 16 years, ten applications to the

9 *Archives Act 1983*, Section 33, available at: http://www.austlii.edu.au/au/legis/cth/consol_act/aa198398/, accessed 31 July 2000.

10 Dennis Richardson, ASIO, Transcript of Evidence 17 July 2000, p. 57.

11 Margaret Kenna, National Archives of Australia, Transcript of Evidence 17 July 2000, p. 52.

12 More information on appeal mechanisms for exempt information is available from a National Archives of Australia factsheet, "How to appeal if we refuse you access" on the website: http://naa.gov.au/publications/fact_sheets/FS12.html, accessed 31 July 2000.

Administrative Appeals Tribunal have proceeded to formal decisions by the Tribunal. Nine of these ten have involved ASIO files.¹³

- 4.15 While the number of formal and informal appeals against decisions involving ASIO files is high, the Archives is not surprised by the high percentage, given the large number of exemptions applied to ASIO files and the high degree of public interest in them.¹⁴

Problems in accessing ASIO files

- 4.16 As outlined above, the Archives does not hold a file index or register for ASIO files over 30 years old. If a person requests an ASIO file, the Archives then requests this file from ASIO and it is delivered minus any exclusions allowed for under the Archives Act (outlined above). Researchers have complained that the lack of a file register makes it very difficult to request ASIO material – they must guess at each file name and hope they come up with a match. According to the Archives, 38 per cent of requests for ASIO files in the past six months have resulted in a 'no record found' response from ASIO.¹⁵
- 4.17 ASIO argued that its file titles have the names of officers, often codenames, source names and liaison countries' names. All of this information is sensitive even 30 years after the fact (for example, to protect the identities of former officers, sources and their families).
- 4.18 ASIO made it clear that it is sometimes willing to help researchers identify the names or identities of files that are relevant to their work:
- Researchers can come to us and discuss with us their area of interest. We have on occasions helped them to narrow precisely where their interest is and we have go from there.¹⁶
- 4.19 ASIO also highlighted a provision in the Archives Act for special access to material which is less than 30 years old, for historical research which will be of benefit to the Commonwealth. ASIO has granted access to files less than 30 years old on four occasions since 1983 – to professional historians, a documentary film-maker and a biographer.¹⁷

13 National Archives of Australia, submission no. 13, p. 9.

14 National Archives of Australia, submission no. 13, p. 9.

15 Margaret Kenna, National Archives of Australia, Transcript of Evidence 17 July 2000, p. 52.

16 Dennis Richardson, ASIO, Transcript of Evidence 17 July 2000, p. 58.

17 ASIO, submission no. 14, p. 15.

Conclusion

- 4.20 A previous Joint Parliamentary Committee on ASIO looked at the issue of archived ASIO files in detail in 1992.¹⁸ In our view, the issues surrounding the release of ASIO files have not changed considerably since that report, where the Committee recommended that the 30-year rule for access to files should remain.
- 4.21 While we have sympathy for the frustrations of researchers trying to access ASIO files, we note the efforts ASIO has made in the past to help some researchers with their task. We urge ASIO to continue to provide assistance to researchers in obtaining information that is less than 30 years old, where appropriate.
- 4.22 One solution to the problem of researchers not knowing the names of files to request would be for ASIO to release a list of file names that are not sensitive – ie, that do not reveal ASIO officers' names, sources' names, and the like. This would at least partly help researchers to access the material they are interested in. We recognise that undertaking such a listing would be time-consuming for ASIO, but note that the organisation has significant staff resources dedicated to archives work.

Recommendation 6

ASIO should provide to the National Archives of Australia a list of its files over 30 years old, excluding the names of files which may contain sensitive information as defined by the Archives Act 1983.

DAVID JULL MP

Presiding Member

17 August 2000

18 Parliamentary Joint Committee on ASIO, *ASIO & the Archives Act: The Effect on ASIO of the Operation of the Access Provisions of the Archives Act*, Parliament of Australia, April 1992.